COMPETITION ADVOCACY: TIME FOR A RETHINK?

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Abstract:

This paper examines the conventional wisdom concerning competition advocacy, paying particular attention to the applicability of such wisdom to developing countries. The definition of competition advocacy, its evaluation, and the likelihood of its successful implementation are discussed in some detail. The paper concludes with a call for considerably more thought about what, hitherto, has been one of the relatively uncontroversial aspects of many competition authorities' activities.

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1. Introduction.

By and large, the competition advocacy function of competition authorities has not been a source of discord among the competition/antitrust community. This stands in marked contrast to the competition law enforcement function, where its application in specific cases has aroused controversy. With respect to the former, discussions in the competition/antitrust community often concern how to improve the effectiveness of competition advocacy initiatives and, to that end, a number of reports by national and international bodies have been published in recent years that attempt to distill the principal lessons for policymakers.

The purpose of this article is to take a hard look at what competition advocacy is, the means used to evaluate this function of competition authorities, and the likelihood of related activities being implemented successfully. The approach taken here does not reflect any antipathy by the author towards competition advocacy, or competition law and policy more generally. The critical stance reflects a desire to understand competition advocacy as best as possible, so that appropriate lessons can be drawn for policymakers, officials, and other interested parties. The need for appropriate policy advice in this area is pressing, precisely because there is a presumption in some of the existing reports on competition advocacy that this activity should be prioritized over the enforcement of competition law in developing countries.

In the next section of this paper the definition of competition advocacy is examined closely and a number of implications of this definition stated. The third section of this paper considers the appropriate criteria for evaluating competition advocacy, and looks at some of the metrics employed in the extant literature. The fourth section contains a discussion of the likely success of competition advocacy initiatives and relates this discussion to a prominent theory concerning the factors that influence the regulatory process. The fifth section of this paper includes concluding remarks and a discussion of some implications for policymaking and future analysis.

2. The definition and significance of competition advocacy.

The material in this section is organized into two parts. The first part includes an overview of competition advocacy, drawing in particular on the reports published in recent years by leading international bodies. The second part contains a discussion of a prominent definition of competition advocacy and identifies a number of non-trivial policy choices that are raised by it and by competition advocacy more generally.

2.1. The central elements of competition advocacy.

Although one can find earlier definitions of competition advocacy, the definition advanced by the Advocacy Working Group of the International Competition Network (ICN) in a report in 2002 has gained considerable currency in the competition/antitrust community. That definition is reproduced in full below:

> "Competition advocacy refers to 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 to the benefits of competition" (ICN 2002, i).

This definition, then, refers to both the ends and means of competition advocacy. In fact, ICN (2002) explains that there are two parts to the definition: a first part that "refers to practically all activities of the competition authority that do not fall under the enforcement category"

(page i) and a second part that identifies to whom competition advocacy is directed and for what purpose. As far as the latter part is concerned, some advocacy is directed towards other public bodies that regulate the economy and some towards society, which ultimately benefits from greater inter-firm rivalry.

A large number of activities have been classified as forms of competition advocacy. ICN (2004, 47-48) notes that these activities include performing reviews of existing and proposed laws and regulations; providing advice on state measures that might foster anti-competitive practices and associated resource misallocation; outreach activities to educate the public directly, through the holding of seminars and the publication of newsletters, or indirectly through the media; informing judges and legislators about competition policy-related matters; and undertaking studies of actual or potential state measures that may influence market outcomes.

The objectives of competition advocacy, a competition authority's duties in this regard, and the procedures to be followed by a competition authority and other state bodies, can be codified in law. A competition authority may have the legal right to be consulted at a certain point in time on proposals by state bodies to change the manner in which the economy is regulated. Moreover, the manner in which other state bodies respond to the advice proffered by the competition authority in the conduct of its competition advocacy function can be enshrined in law. Finally, representatives of the competition authority, typically the head or its designee, can be given the right to sit on other government bodies on terms established in law including, in principle, the cabinet of a government or other senior decision-making governmental fora. Countries differ markedly in the extent to which legislation defines the ends and means of the competition advocacy functions of competition authorities. Furthermore, nothing in the above definition suggests that this function need be enshrined in legislation, even though in some jurisdictions it is.

Three rationales for undertaking competition advocacy are advanced in ICN (2002) and relate principally to the regulation-related "target" of advocacy identified above. The first rationale offered is that public intervention in an economy can hinder inter-firm rivalry, for example, when a government agency specifies the prices to be charged by taxis in a certain geographic area (such as within the limits of a city.) It is often argued that competition authorities should complement their enforcement activities against private sector threats to competition arising from the ordinary course of commerce with measures to eliminate, revise, deter, or limit the harm done by government regulations and other forms of state intervention to the economy (ICN 2002, ii).

The second rationale, which is related to the first but is nevertheless distinct, is that competition advocacy by the competition authority goes some way to counter the influence of groups that seek the implementation of state measures which advance their own interests (ICN 2002, ii). Competition advocacy, then, is concerned with both existing state intervention and possible future interventions. It has been argued that here the competition authority acts on behalf of those other groups in society for whom the costs of organization are so large, or the costs of informing themselves so high, to offer effective opposition to proposals that will favor the proponents' economic interests at the expense of the competitive process.[2]

The third rationale in ICN (2002) is that, to the extent that competition advocacy prevents anti-competitive regulations being implemented, competition advocacy can discourage lobbing by private interests in the first place. This, in turn, is said to have two benefits: reducing the amount of societal resources that are "wasted" in such lobbying and reducing the likeli-

[2] Cooper, Pautler, and Zywicki (2004) advance such an argument couched in terms of the so-called economic theory of regulation. This argument is described in greater detail in section four of this paper.

hood of regulatory capture, whereby private entities align the interests of a regulator with their own (ICN 2002, ii).

Competition advocacy is said to be particularly important for developing countries. Interestingly, the reports of the ICN's Advocacy Working Group appear to have become firmer on this matter over time. The report issued by this Group in 2002 noted that "it has often been argued that in transition and developing countries competition authorities should give priority to advocacy over enforcement actions" (ICN 2002, iii). The report issued in 2004 by this Group drops the qualifier "it has often been argued that…" and offers three reasons for prioritizing competition advocacy. These reasons are reproduced directly below:

> "First, in developing and transition countries, the spread of market reform has given rise to an intensive rule making process. Dialogue between the competition authority and other rule makers at an early stage may ensure that competition provides the foundation for legislation. Second, liberalization has also heightened the activity of interest groups as they lobby for lost privileges. Competition authorities are considered to be less prone to regulatory capture by interest groups than, for example, sector-specific regulators and through advocacy competition authorities can instill competitive values in sector-specific regulation, reducing the possibility of regulatory capture. Third, law enforcement requires sophisticated adjudication of competition cases which young competition authorities and judicial systems often find challenging" (ICN 2004, 48).

Such statements are significant because they provide clear advice not just to engage in competition advocacy but to assign greater relevance to this function of a competition authority over another function, namely enforcement. Interestingly, in its Peer Review of the Chilean competition authority, the Organisation for Economic Co-operation and Development (OECD) concluded a description of competition advocacy with the following broad statement:

> "For developing countries without well established competition regimes, promoting competition principles to the general public is an ongoing task, indeed perhaps the most important task, at least at first" (OECD 2004a, 56).

This OECD statement can be read as going further than the one by the ICN, as the former identifies one type of competition advocacy as deserving of priority. In fairness, it should be noted that giving priority to a particular state act does not necessarily imply undertaking that act to the exclusion of other state acts, such as the enforcement of competition law.

Over time the body of information on competition advocacy has grown with the writings of scholars[3], the publications of competition authorities[4], and by international bodies and organizations[5]. A particularly informative source is a report prepared by the ICN after it conducted a survey of the competition advocacy activities of its member competition authorities in March 2002. Fifty-three competition authorities from fifty jurisdictions responded to a survey instrument that contained forty-four questions. The main findings of this survey were[6] (1) a clear majority of survey respondents felt that competition advocacy had an important role in addressing state-imposed or state-condoned constraints on competition, (2) "autonomy" of the competition authority was "generally considered" to be a determinant of effective competition advocacy, especially as that autonomy relates to the appointment, renewal, and dismissal of senior officials of the competition authority and to the process by which the authority's budget is set, (3) participation, especially at an early stage, by the competition authority in legislative

[3] See, e.g., Kovacic (1997) and Cooper, Pautler, and Zywicki (2004, 11-21).

[4] See, e.g., Romania (2005, 13-28).

[5] See, e.g., ICN (2002, 23-101), ICN (2004, 47-76) and OECD (2004b, 3-9).

[6] All quotations in this paragraph are taken from pages xiii-xiv of ICN (2002).

and regulatory decision-making is "the most important component of competition advocacy," (4) transparency enhances the effectiveness of competition advocacy by building public support, as does the perception of the credibility and public neutrality of the competition authority, (5) developing and industrialized countries differ in their public-facing communication strategies with the latter using more targeted approaches and publicizing and undertaking special studies and the former employing the mass media, (6) other than the last point, few other material differences could be identified from the survey responses of developing and industrialized countries, (7) additional resources would allow competition authorities to undertake more effective competition advocacy and authorities in developing countries said they needed more expertise about regulated sectors, and (8) clear objectives should be set for international cooperation and technical assistance on competition advocacy.

2.2. Commentary on the definition of competition advocacy.

In this subsection various aspects of the definition of competition advocacy are discussed. The purpose here is not to be critical *per se*, but to identify a number of important assumptions and policy choices underlying the well-known definition of competition advocacy advanced by the International Competition Network. It is hoped that this discussion will allow for more informed decision-making especially, as noted above, because competition advocacy is thought to be a priority for developing countries.

The first point to be made is that the ICN's definition identifies competition advocacy with competition authorities. This may seem rather obvious, but nevertheless it is worth asking why a state should give the function of competition advocacy to a competition authority. What are the advantages of bundling the functions of enforcing competition law and competition advocacy? A distinct question is what is the comparative advantage of a competition authority in conducting competition advocacy over other governmental and non-governmental actors? The latter question is relevant, especially as the ICN's definition does not rule out others from conducting competition advocacy.

There may well be very good answers to these two questions. For instance, the expertise that a competition authority develops to enforce competition law may be usefully applied in analyzing existing or future potential regulations. The competition authority may have access to better data than that available to any private non-governmental organization or researcher, but as other state bodies may have comparable access to such data there are limits here to this particular advantage of competition authorities. Another advantage of competition authorities over non-state providers of competition advocacy is that the latter may have objectives other than promoting competition and this factor alone may color the latter's analyses and policy recommendations.

The significance of these two questions is that, arguably, the design of a new competition advocacy function should take into account existing forms of competition advocacy or other potential sources of competition advocacy. Ideally, the competition advocacy function given to a competition authority should reinforce, and even exploit complementarities with, other parties that promote pro-competitive regulation, such as non-governmental organizations and independent commentators (some of whom may appear in the national media), rather than displace effective alternatives.

Even in a country, perhaps a developing country, where initially there are no existing advocates of pro-competitive regulation, the question still arises to whom the state should allocate the function of competition advocacy. Should the function be given to a new commission, perhaps linked to the government's economics or development ministry or to the legislature, to the competition authority, or should public resources be used to foster non-state commen-

tary on actual or potential state regulations of economic activity? As far as the latter alternative is concerned, one option would be to give a committee of expert persons, who are not members of the government, the authority and budget to engage in competition advocacy. In short, when it comes to allocating the competition advocacy function governments have many choices available to them and competition authorities ought to have compelling reasons why that function should be given to them and not to some other party.

The possibility that there could be multiple providers of competition advocacy raises other questions. How should a competition authority with an advocacy function take advantage of a situation where others are engaged in competition advocacy too? Is there an obvious division of labor on competition advocacy between different providers, where specialization is driven by respective comparative advantages or by any legal restrictions on the activities undertaken by each supplier of such advocacy? Since advocacy often follows analysis, what happens if two or more providers of competition advocacy disagree in their policy recommendations, or disagree with the competition authority's recommendation on the matter in hand? How does a competition authority "win" a competition for policy advice, bearing in mind that the "market place" for ideas is often very different that for commercially traded goods and services? These questions are relevant not only to the actual or potential providers of competition advocacy, such as a competition authority, but also to the governments and legislatures which are designing competition policies and deciding how much to fund different pro-competition initiatives.

The next set of matters raised by the ICN's definition of competition advocacy concerns the objective of this function, namely, "…the promotion of a competitive environment for economic activities." It should be noted immediately that this objective does not constitute an endorsement of far-reaching deregulation. In fairness to many authors on competition advocacy, the distinction is made between regulation per se, which may be motivated by non-efficiency considerations, and the potentially anti-competitive effects of regulation. The replacement (or avoidance) of regulations with larger anti-competitive effects by those state measures with less adverse consequences is said to be one operational way of interpreting the objective of competition advocacy.

The ICN's definition, alas, does not say which state measures fall under the scrutiny of competition advocacy. Presumably state regulatory decisions not to act can fall within the remit of competition advocacy as can decisions to impose regulatory measures, the former sometimes affecting market outcomes too. This implies that, in some circumstances, competition authorities ought to be prepared to advocate the implementation of state intervention in those markets where sub-optimal outcomes are being generated by factors unrelated to other forms of state intervention or to the nature of inter-firm rivalry. (Natural monopolies may well be a relevant example here.) This further emphasizes the point that competition advocacy does not amount to blanket calls to either deregulate or to promote laissez-faire.

The question does arise, however, as to what promoting a competitive environment means. For example, does this term mean the promotion of inter-firm rivalry, the entry of new firms, or the ability to enter a new market? If the real goal is to promote entry, and therefore to add to the number of competitors, then competition advocacy would result in recommendations to lower entry barriers and, in the limit, to pay subsidies to firms that enter designated markets. However, the term "competitive environment" seems to suggest that the state measures are broader than those that promote entry into markets.

The term "competitive environment" is imprecise and does not provide a sound basis upon which to compare the effects of different possible regulations of economic activity. One possible way forward, and one that would be consistent with much of the discussions of competition advocacy in the ICN's publications and elsewhere, is to interpret this objective to mean

the promotion of regulations that improve, and in the limit optimize, the allocation of resources as understood by micro-economists. That is, to increase (and ideally to maximize) the sum of measures of producer and consumer welfare. Seen in this light, there is both a metric and a set of well-established analytical tools that can be used to implement competition advocacy. This is not to say that the application of those tools will always lead to the same policy recommendations (recall President Truman's complaints about two-handed economists) and this approach should probably not be seen as a panacea.

If the overall goal of competition advocacy is to promote better resource allocation, or economic efficiency as it is commonly known, then others matters arise. Perhaps the most important of these matters is that the goal of competition advocacy may well differ from that of the country's competition law or economic policy in general. For sure, these goals could be the same, but what happens if they are not? If, as is the case in many developing and industrialized countries, the promotion of exports or small and medium sized enterprises are goals of national competition law, do these goals or that of promoting economic efficiency take priority in the conduct of competition advocacy? More generally, to what extent should any non-efficiency objectives of national competition law be factored into the conduct of competition advocacy?

Many of the apparent conflicts between goals can be resolved by noting that competition advocacy seeks the implementation of the least distorting form of government intervention to attain any given non-efficiency objective. A different way of looking at this matter is to argue that a competition advocacy function, which promotes the least distortionary form of government intervention, is all the more necessary when governments consciously depart from efficient market outcomes so as to attain any non-economic objectives of national competition law and, for that matter, any such objectives in other national laws bearing on economic activity.

One consequence of adopting a micro-economic perspective on competition advocacy is that it involves taking on board some very clear recommendations concerning how governments should best redistribute national income. Microeconomic analyses, in particular those based on perfectly competitive market structures, have created a strong presumption in favor of using lump sum taxes and subsidies to redistribute income across groups in society and avoiding state measures that deliberately alter prices in a manner that favors one group over another.[7] Thus, from this microeconomic perspective, a government would be advised to eliminate rent controls, which benefit renters some of whom may have lower incomes, and replace them with direct payments to those renters deemed to have to insufficient incomes.

While this policy recommendation seems straightforward enough, two related matters are worth bearing in mind. First, the informational requirements and implementation costs of using taxes and subsidies to redistribute income may be greater than those necessary to implement the original regulation, and these factors should be taken into account (along with others, including the potential for resource misallocation) when formulating policy recommendations. Secondly, it should not be assumed that every government has the capacity to transfer income using lump sum taxes and subsidies, in which case the only way to attain a state's particular distributional objectives may well be to control prices or to intervene in certain markets. Given the weak nature of taxation and expenditure systems in some developing countries, in particular in the fifty or so least developed countries, the proper identification of the least distortionary form of government intervention to attain a specified non-efficiency-related goal need not result in the same policy recommendation for all countries.

[7] See, for example, the analysis of government intervention in Pinydck and Rubinfeld (2004, 287-320).

The third comment on the ICN's definition of competition advocacy concerns the scope of this particular function. While this definition is quite clear about the government entities that could, in principle, receive competition advocacy, nothing is said about the sectoral coverage of this function. The definition certainly does not provide any guidance as to which entities, policies, and sectors could or should be excluded from competition advocacy, even though a state can decide which matters fall within the mandate of those charged with implementing this function. On this point, however, it is difficult to find in the extant literature suggestions to limit the scope of competition advocacy.

An interesting and related matter is whether the scope of competition advocacy and the scope of a competition authority's enforcement powers are the same. As is well known, for better or for worse, sectoral exemptions from competition law are common in jurisdictions at every level of development. This raises the logical possibility that the sectoral coverage of competition advocacy could be broader than the sectoral coverage of the enforcement-related aspects of national competition law. When such differences in sectoral coverage exist, presumably this has implications for discussions on the substitutability and complementarity of competition advocacy and enforcement. Perhaps more importantly, the government entities covered by competition law and enforcement and competition advocacy must surely differ, not least because the judiciary itself is unlikely to be the object of enforcement of competition law! In terms of entities and sectors covered, then, competition advocacy can be broader in scope than competition enforcement, but nothing prevents a government or legislature from designing the former so that its scope is narrower than the latter.

For policymakers that are designing a competition advocacy function the scope of this function also raises questions as to what, if anything, the recipients of competition advocacy should do with the advice that they receive. This is particularly important for government ministries, sectoral regulators, sub-national governments, and even private entities that have state mandates. At a minimum care must be taken to ensure that competition advocacy does not result in a competition authority providing advice that is tantamount to recommending that the other party break the law. This will require the legislation governing these public parties' activities to state that the effect on competition, or the opinions of the competition authority, must be taken into account when designing regulations and associated policies. Without such legal provisions some recipients of competition advocacy may be able to argue the competition authority is asking it to take into account factors are not in the recipients' legal mandates. For already-established regulators and state bodies this may require a change in legislation of their mandates at the time the competition advocacy function is created. Failure to take these additional legal steps may result in the scope of the competition advocacy function being in practice considerably narrower than originally envisaged in the legislation creating that function.

If anything the ICN's definition of competition advocacy places all of the emphasis on the advice and public awareness activities of a competition authority and, therefore, none on the recipients of that advice. Perhaps it would be better to think of a system of competition advocacy, with suppliers and recipients of advice, than to characterize competition advocacy in terms of the activities of one particular government agency, namely, the competition authority.

To the extent that the activities of a government's foreign, trade, and transport ministries fall within the scope of competition advocacy, then the competition authority may well believe it has the right to comment on the influence of foreign regulations that influence market outcomes at home and on international negotiations that have direct implications for domestic and foreign regulation. This is not to say that competition authorities would or should undertake negotiations with a foreign government but arguably the negotiating mandates and any associated outcomes could well be the subject of competition advocacy initiatives. Govern-

ment and legislatures may want to take this into account when designing a competition advocacy function, as the government ministries concerned are unlikely to welcome interventions from the competition authority on such matters. Moreover, given the relatively high status of foreign ministries (and sometimes trade ministries) within governments, designers of a competition advocacy function ought to consider what is the appropriate status to attach to the providers of competition advocacy (here taken to be the senior officials of the competition authority) if their advice is to be given a serious hearing. This matter is all the more important as many competition authorities are relatively recent creations and their officials may not be held in the same regard as the heads of more established government offices.

The fourth set of comments on the ICN's definition of competition advocacy refers to the means by which this function is to be executed. Specifically, this definition states that competition advocacy is to be implemented "by means of non-enforcement mechanisms." Presumably this refers to the activities undertaken by the competition authority that are not directly related to the same authority's legal mandate concerning the investigation, prosecution, and in some cases, punishment of anti-competitive practices that private (and possibly public) entities are thought to have engaged in. This is not a terribly helpful formulation as arguably there are other non-enforcement functions that a competition authority can undertake even if it is not attempting to raise awareness of the effects of competition or trying to influence actual and proposed state regulations. For example, surely some accountability-related activities of a competition authority (whether it be directly to a legislature and indirectly through a responsible minister) would be undertaken in the absence of a competition advocacy function? In principle, competition authorities could be accountable for their use of public funds, hiring decisions, enforcement priorities (which may not relate to actual enforcement actions in cases), as well as for enforcement-related decisions. In a sense, then, the ICN definition of competition advocacy is probably too broad.[8]

It would be wrong to infer from the ICN's definition of competition advocacy that its proponents conceive of enforcement action and competition advocacy as necessarily unrelated activities. As noted earlier, however, it is may be possible to identify sectors and entities where competition advocacy is possible and enforcement action is not. Yet, there are numerous potential inter-relationships between competition advocacy and the enforcement of competition law that policymakers ought to bear in mind when designing a system of competition advocacy. For example, the successful implementation of competition advocacy in a given market may save considerable resources, should subsequent enforcement action become unnecessary. Moreover, the information and expertise acquired during an enforcement action may be fruitfully used in competition advocacy activities. These examples highlight that there can be intertemporal and contemporaneous relationships between competition advocacy and enforcement, and that each activity can sometimes substitute for the other and sometimes complement the other.

In sum, the purpose of this discussion has been to identify a number of fundamental matters that arise from one prominent definition of competition advocacy. The matters raised here are arguably relevant to other definitions of competition advocacy that were found while researching for this article. Thus, this discussion should not be interpreted as suggesting that the ICN definition is particularly flawed. Rather the goal has been to identify the significant policy choices that underlie the decision to adopt a competition advocacy function. The fact that there are many options available to governments in this regard, and their exist differences

[8] Incidentally, none of this is to say that once an authority has a competition advocacy function that this would not have implications for the manner in which a competition authority undertakes its accountability-related activities.

across countries in the options chosen, raises the question of how best to evaluate national systems of competition advocacy, a topic that is discussed in the next section of this article.

3. Evaluating competition advocacy.

Developing better techniques to evaluate competition advocacy is important for several reasons. First public agencies, such as competition authorities, are accountable to (typically elected) representatives for their use of state resources and the powers entrusted to them and the latter may want evidence of the effectiveness of the former's activities. Those representatives face a broad range of competing demands for societal resources and may employ some metrics to assist them in allocating funds and personnel across government functions. Similar remarks could be made about bilateral donors and international organizations that support technical assistance projects on different types of competition policy initiatives, including nurturing competition advocacy. Second, many competition authorities want to know what best practices can be established for competition advocacy, and this too requires a notion of what constitutes success in competition advocacy and the formulas so-to-speak for success.

A third reason is that competition authorities have to decide how to allocate scarce budgetary resources, personnel time, media exposure, and other inputs across the enforcement and advocacy functions that it may have recognizing, as noted earlier, the interconnections between these functions. In similar vein, an evaluation of the returns on resources invested in competition advocacy and in enforcement would shed light on the wisdom of the advice given to developing countries that they should prioritize competition advocacy. A fourth reason is that competition authorities may want to establish priorities over the different types of competition advocacy that it can perform, recognizing that the payoffs from different types may not be the same. Finally, from a societal viewpoint there could be interest in how well competition authorities perform competition advocacy compared to other providers of competition advocacy, be they state bodies (such as legislative watchdogs and committees) or private initiatives.

Making the case for evaluating competition advocacy turns out to be a lot easier than conducting such evaluations properly. To date, published evaluations have taken the form of assessments by competition authorities of their own advocacy activities, survey questionnaires that seek to establish general impressions as to what factors impede or facilitate the successful implementation of competition advocacy, and accounts of individual competition advocacy initiatives, with typically binary evaluations of how successful a given initiative was. These evaluation methods have been principally qualitative in nature, with the competition authorities themselves often choosing both whether to participate in any particular evaluation and what examples of competition advocacy to highlight.

Without seeming to dismiss qualitative evidence, which itself can be very useful, it is a concern that the class of quantitative event studies that have been performed on competition enforcement actions have not yet been conducted on competition advocacy initiatives. This unfortunate outcome probably reflects the fact that conducting such empirical evaluations is difficult as the example in the next paragraph demonstrates. Even so, the paucity of empirical estimates suggests that some attempts at quantification, however imperfect, are needed. At the very least, they might stimulate further attempts at quantification and refinements in the methodologies employed.

Suppose, for example, that a certain advocacy initiative was "successful" in that it prevented an anti-competitive regulation from being imposed. Here one might want to quantify the welfare losses that were avoided and argue that these losses constitute the benefit from undertaking this competition advocacy initiative. One difficulty with this line of reasoning, however, is that it may be inappropriate to attribute the decision not to implement the regulation solely to

the competition advocacy of the competition authority. Other types of advocacy may have been influential too. Moreover it may be inappropriate to assume that, in the absence of the initiative by the competition authority, the anti-competitive regulation would have been imposed in its initially proposed form. Other parties that seek to promote competition could well have been successful in altering the proposal so as to limit its anti-competitive effect. Here defining the counterfactual is very difficult and implicitly or explicitly requires making assumptions about how ideas, information, private sector influence, and competing groups influence regulatory outcomes. Put another way, most evaluations of competition advocacy contain implicit assumptions about the workings of the regulatory process, assumptions which may be inconsistent, irrelevant, or open to challenge. Quantitative evaluations are no different from qualitative evaluations in this respect.

Matters are not much better when it comes to evaluating the determinants of the public's awareness of the benefits of competition and the potential contribution of the competition authority in this regard. There are, for sure, some intermediate indicators that might be useful here, such as the percentage of the population (or legislature or judiciary) who are aware of the role of the competition authority, its outreach activities, and whether they find that the competition authority's "message" compelling. Moreover, surveys of general attitudes towards pro-competitive reforms could, if carefully interpreted, reveal something about the effectiveness of competition advocacy initiatives. However, it would be important in this case to strip out any changes in public attitudes towards reforms that were caused by other factors, such as perceptions of current and prior macroeconomic performance. Even if this were accomplished, it is difficult to put a number on the value of a five percent (say) swing in public support behind promoting competition.

In sum, of the five rationales mentioned above for evaluating competition advocacy, a comprehensive approach to implementing all but the second requires some type of quantitative evidence on the impact of competition advocacy measures. At present, much evidence of this nature is not available. Should this situation remain so then the competition advocacy function itself could become vulnerable to attack on value-for-money grounds from both the very private interests that advocacy seeks to counter and from those government officials who would like the resources given to competition advocacy to be allocated to some other activity.

Where lessons have been learned, they have tended to relate to best practices for the organization and conduct of competition advocacy, see ICN (2002 and 2004) and the recall the eight lessons identified at the end of section two of this article. The most important reported lessons are institutional in nature and would in most jurisdictions almost certainly require legislation to implement, rather than relating to strategies and tactics that could be employed under existing institutional arrangements (see ICN 2002, xiii-xiv). If true, these lessons create a premium on putting the appropriate legal structures in place for effective competition advocacy, including probably the revision of existing competition and regulatory statutes. Competition authorities that adopt competition advocacy functions on their own volition, therefore, may find their effectiveness in advocacy compromised by an inadequate set of legal and institutional arrangements. Moreover, weak competition authorities may be reluctant to seek legislative changes (that would, on the above advice, increase the expected effectiveness of competition advocacy) because they may fear that their authority's other powers and prerogatives may be eroded when the matter comes before the legislature. The last two examples identify circumstances why sub-optimal competition advocacy may persist in some countries.

In many respects the evaluation of competition advocacy is in its infancy, with some qualitative evidence to guide policymaking. Useful quantitative evidence is almost non-existent. In the light of the available evidence, one question that arises is whether the policy recommendation that developing countries prioritize competition advocacy over enforcement has the necessary empirical support.

4. Competition advocacy and the economic theory of regulation.

In the last section the experience of competition authorities was drawn upon to identify potential best practices for the organization and conduct of competition advocacy. This is not the only source of information on regulatory processes. These processes have been studied for decades and it would be worth asking what the insights of leading schools of thought on regulation and regulatory change imply about the likely success of competition advocacy and the preconditions for such success. This line of inquiry may lead to an alternative set of perspectives on competition advocacy and policy recommendations.

Until the 1960s, in the United States at least, the leading theory of economic regulation and regulatory change emphasized that market failure was the rationale for regulation and that state entities, sometimes guided by in-house and external experts, would introduce regulation to eliminate, or at least reduce, resource misallocation in markets and associated inefficiencies. Moreover, regulations would be amended as underlying market conditions changed with the same goal in mind. This theory, therefore, explained not only why regulations were needed in principle but also how they were implemented in practice. Efficiency considerations were central. What does this theory imply about the need for and likely success of competition advocacy? To the extent that the regulatory process is guided by correcting market failures only and improving the allocation of resources, then there would be little need for one type of competition advocacy. Here regulators would follow precisely the same objective that motivates competition advocacy and so would implement the least distortive form of regulation. However, as this theory is silent on whether the public needs to be educated about the benefits of competition, then one cannot rule out the need for the awareness-raising component of competition policy.

The market failure-based theories of regulation began to lose currency in the 1970s as more scholars questioned their ability to account for the pattern of regulation observed in the American economy.[9] From the seminal analysis of George Stigler on the factors accounting for the supply and demand for regulation were emphasized with greater force (Stigler 1971, 3-21). These explanations, collectively known as the economic theory of regulation, sought to explain the pattern of actual regulation by considering the motives of politicians to supply regulation (in return for various forms of electorally-valuable support) and the demand for regulation by interest groups (that have both the resources to organize and to acquire information necessary to influence political decision-making.) On this view politicians are treated like other agents in microeconomic analyses, that is, as self-interested persons who take actions that maximize their own well-being. Since politicians either legislate regulation, or create the agencies that implement regulation, state intervention in markets is no longer driven purely by efficiency considerations. Peltzman (1989) provides the following straightforward list of predictions concerning the characteristics of regulation that can be found in the literature on the economic theory of regulation:

> "--Compact, well-organized groups will tend to benefit more from regulation than broad, diffuse groups. This probably creates a bias in favor of producer groups, because they are usually well organized relative to all consumers…
>
> --Regulatory policy will seek to preserve a politically optimal distribution of rents across this coalition [of influential interest groups]. Thus, over time, the policy will tend to offset changes in this optimal distribution arising from shifts in demand or cost conditions…
>
> --Because the political payoff to regulation arising from distributing wealth, the regulatory process is sensitive to deadweight losses. Policies that reduce the total wealth

[9] Peltzman (1989) provides an overview of this aspect of the literature on regulation.

available for distribution will be avoided, because, other things being equal, they reduce the political payoff from regulation" (page 13).

In the light of these findings, what does the economic theory of regulation imply about the rationale and likely success of competition advocacy?

Some scholars (notably Cooper, Pautler, and Zywicki, 2004) have argued that this theory provides a compelling rationale for allocating a competition advocacy function to a state body. The disperse losses from actual or proposed regulations imply that those often hurt by such government measures may not have the incentive to bear the informational and organizational costs to oppose those producer interest groups who support the imposition of these measures. The latter groups tend to be smaller in number, making their collective action less costly to organize and ensuring that typically any benefits of regulation are spread over a limited number of beneficiaries. In these circumstances, Cooper, Pautler, and Zywicki (2004) argue that "it is useful to identify a public entity tasked with the responsibility of representing dispersed consumers and competitors as an end in itself in the political process" (page 6). What would a competition authority do here? According to Cooper, Pautler, and Zywicki the authority would use its understanding of market forces to explain to the public and to politicians whether any proposed regulations are, in fact, in the public good, as their proponents often claim. The same authors also recognize, however, that competition authorities can only provide information and not votes, campaign contributions, and other electoral benefits, which are what politicians are thought to value in this framework In short, the effectiveness of competition advocacy will, on this view, turn on the relative strength of information and ideas as compared to private interests. It would seem, therefore, that although this line of reasoning provides a rationale for establishing a competition advocacy function, it does not offer assurances that competition advocacy will generally be successful.

The economic theory of regulation provides other doubts about the potential success of competition advocacy. To see this, some elaboration of one aspect of this theory is needed first. This theory has been used to study the factors that determine the degree of regulation (or state intervention) across sectors. Gary Becker provided an elegant treatment of what happens when private producer interests from different industries offer inducements to self-interested politicians to award them benefits or to cushion them from economic costs (Becker 1983, 370-400). Becker showed that although inefficient regulatory policies may well result from this process, there is an in built constraint on the degree of inefficiency. Politicians who seek electorally-valuable support from interest groups know that regulatory policies that are inefficient reduce the total willingness of those groups to pay for state intervention. On this view, politicians have an incentive to find ways to satisfy the demand for privileges that minimize the overall reduction in the size of the economic pie (Becker 1983, 384-388).

What does this perspective suggest about the likely effects of competition advocacy? On the whole the writings about competition advocacy tend to refer to opposition by a competition authority to a single regulatory measure. Moreover, there is a presumption that policymakers or designated officials choose regulations without regard to the inefficiencies that those regulations create. Becker's seminal analysis suggests that, to the contrary, politicians are well aware of the losses created by inefficient regulations and that they choose those regulations which minimize the degree of inefficiency while delivering a certain level of favors to producer interests. There is, then, already a built in constraint on the regulatory process and not because politicians are benign but because their ability to extract forms of electoral support are reduced by inefficient regulation (Becker 1983, 384-388). For sure, a "successful" initiative of competition advocacy may reduce the inefficiency in a given sector's regulations, but if politicians still find it optimal maintain the original supply of privileges then the net effect of competition advocacy will be to displace one form of anti-competitive regulation for another. Moreover, the newly implemented form of regulation may be more inefficient that the regula-

tion that it replaced, an outcome that is likely if, as Becker shows, politicians chose the original set of regulatory inventions to minimize the total degree of distortion to markets in the first place.

The economic theory of regulation represents the most widely-accepted body of research concerning the determinants and consequences of regulatory processes. The fact that competition advocacy has not been successfully reconciled with the tenets and findings of this theory is, to put it mildly, disturbing for the following reason. Proponents of competition advocacy tend to rely on economic assumptions and tools to show that many forms of government intervention distort market outcomes. Yet, application of the same economic framework to the study of regulatory processes calls into question the need for certain types of competition advocacy, its likelihood of success, and whether in fact it will actually reduce the total amount of regulatory distortions in the economy. As a matter of logic one can reject the economic theory of regulation without rejecting the economic analysis of government intervention in markets. However, the basis of that rejection should be spelled out. In other words, an alternative explanation of the process by which regulations get made and amended would have to be advanced, and its implications for competition advocacy examined. Until such an alternative has been spelt out and until it has gained sufficient currency among scholars of regulation, then some doubt must exist over the conceptual rationale for competition advocacy.

5. Concluding remarks and policy implications.

Competition advocacy has acquired considerable prominence in discussions in international fora, including at the Organisation for Economic Co-operation and Development and the International Competition Network. There appears to be considerable agreement among the competition/antitrust community that this function should be undertaken by competition authorities. Some have gone further and argued that this function should be the priority for competition authorities in developing countries.

In this paper a hard look has been taken at the definition of competition advocacy, the rationales and means for evaluating competition advocacy, and the relationship between competition advocacy and well-established scholarly research on the regulatory process. In a number of places the conventional wisdom on competition advocacy was found to be wanting. This is not to say that such wisdom is fatally flawed and consequently readers should not conclude that competition advocacy should necessarily be abandoned or that it is fundamentally misconceived. Rather, considerably more thought is needed to better identify the forms of successful competition advocacy, why such advocacy works, and the benefits that flow from it. Without such developments, competition advocacy will be vulnerable to attack on a number of grounds, including whether it provides value-for-money. Since undertaking competition advocacy often involves arguing against influential private sector interests, competition authorities cannot expect much mercy from their critics in this regard.

Turning to developing countries, one important implication of this study is that the policy recommendation that they prioritize competition advocacy, given what little is known about its benefits and how to conduct it successfully, is surely misplaced, or at least premature. There may come a time when there is sufficient evidence to sustain such a policy recommendation, but that time is someway off in the future.

Much more evidence on how countries can make the most of their existing institutional structures for advancing competition advocacy is needed, recognizing that many of those structures fall far short of the recommendations found in recent international reports. Legislative change may not be politically feasible in some countries, in which case those giving advice should not make the perfect (legislative reforms) the enemy of the good. Plus, it would be unwise to

assume that the good is good enough, given the other competing demands for resources in societies and the effectiveness of other possible sources of competition advocacy.

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