

Free market and Buyers Beware? Where are we today and what is the optimal level of government protection to protect competition and consumers in Singapore?

Abstract

Singapore's competition and consumer protection landscape has shifted considerably in recent years. This essay takes stock of policy developments on these two fronts, and characterises an optimal level of government protection that is aligned with the realities of policy-making. It argues that Singapore's existing regulatory framework represents a departure from both the *caveat emptor* doctrine and the free market principle of minimal government intervention. This approach rightly recognises the radical remoulding of economic and legal paradigms in this field, as well as the unique role occupied by the public sector.

It is an approach that has served Singapore well. For the most part, she is home to robust competition, honest market conduct and a coherent policy programme. While Singapore has much to thank the Competition and Consumer Commission of Singapore ("**CCCS**") for, any discussion of her progress on this front would be incomplete without a consideration of the contributions made by other institutions. Hence, this essay also draws attention to the role that other public bodies and organisations play in protecting consumers' interests, sustaining competition and promoting public awareness. It concludes by reflecting on concerns laid bare by the COVID-19 pandemic, and proposing possible policy revisions.

1 Introduction

That Singapore has made tremendous advances since the implementation of the CPFTA and Competition Act needs no saying. On the consumer rights front, the once-cherished principle of *caveat emptor* has been replaced with a more consumer-friendly regime. This has helped to correct power imbalances between consumers and producers that arise from information asymmetries and unfair commercial practices.

In the antitrust sphere, CCCS's calibrated competition agenda has bolstered Singapore's reputation as an open and fair market – not a free one. Far from pedantry, this distinction must be made as government intervention in the form of antitrust law is by definition antithetical to free market economics. CCCS's interventions have been vital to the restoration of competition and deterrence of anti-competitive conduct. In addition, its embrace of behavioural insights and systematic, evidence-based style of investigations are noteworthy.

This essay also recognises that many competition-related policies fall outside CCCS's remit. Most public bodies are responsible for regulating competition in some form, for instance through occupational licensing, intellectual property laws and land use restrictions. Such policies naturally influence the degree of market freedom in Singapore, and inform the view that promoting social welfare is one of the state's most important functions.

Characterising the “optimal level” of government protection is a tricky affair. In principle, the state should aim to correct market failures and weigh the benefits of regulation against its costs. The reality is that policy-making takes place under informational

constraints and in continually evolving conditions. Hence, this essay takes the view that implementing the “optimal” policy is both a science and an art.

Do our public bodies currently operate at this level of government protection? This essay argues that they are nearly, but not quite, there. It suggests avenues by which the current policy framework can be rejigged, and reflects on competition and consumer protection in the time of COVID-19.

2 Optimal policy design

Broadly speaking, the implementation of competition and consumer protection policy can be decomposed into three main decisions: when, how, by how much to intervene. In theory, the state would intervene only to correct market failures (such as information asymmetry and negative externalities), remedy behavioural biases (including status quo bias and mental accounting), or otherwise promote efficiency and equity. The precise policies to be used and the level of government intervention would then be determined through cost-benefit analysis. For example, consumer protection policy can shield consumers from frauds and unsafe products, raise trust and facilitate more informed decision-making. At the same time, it could unintentionally raise barriers to entry by making compliance too cumbersome, and thereby deter the indigenous entrepreneurship that Singapore vitally needs.

Yet one can take issue with several aspects of this approach. First, achieving the loosely defined objectives of efficiency and equity are easier said than defined in concrete terms, let alone done. Second, almost all policy-making invokes some sort

of tradeoff between efficiency and equity. Third, inevitable information shortfalls and competitive markets in constant flux make precise cost-benefit analysis practically impossible. All these layers of ambiguity and complexity mark a significant departure of real-world policy design from its theoretical ideal.

Hence, implementing competition and consumer protection policy is both a science and an art.

The science features in a rigorous, evidence-based approach to investigations and policy design. CCCS's extensive public consultations and systematic pursuit of cartel investigations are testament to this. It also keeps on the pulse of academic breakthroughs, most recently relating to behavioural economics and the aftermarket literature. To complement this, CCCS has accumulated a body of knowledge on case law in jurisdictions such as the European Union and United Kingdom, applying them to its decisions where relevant. CCCS's conduct of economic and legal analysis has adapted admirably to changes in the antitrust and consumer protection sphere.

The delicate handling of agents' underlying motives is an art. Merger applicants have strong incentives to overstate efficiency gains, exaggerate the contestability of their markets, and downplay any detrimental effects on competition or consumer welfare. Price-fixing firms may find it in their interest to appeal for reduced penalties by claiming financial hardship or ignorance. Aggrieved consumers might be prone to hyperbole in their complaints about unfair trade practices. As arbiter of market competition and consumer protection, CCCS ensures that their voices are heard, but ultimately listens to the facts.

Finally, tailoring policy to industry- and context-specific factors is part science, part art. No off-the-shelf approach exists to state intervention, so a big challenge for CCCS and other public bodies is to ensure that policy is fit for purpose. For example, the strategic nature and natural monopoly structure of sectors such as electricity, gas, and transport mean that they are better regulated by specialised authorities under alternative frameworks. Such sectors have been exempted from the Competition Act.

Even amongst the industries that fall within CCCS's remit, economic and legal analysis must be adapted according to the context. The Grab/Uber merger took place in a market which featured network externalities and hence a two-sided platform. In contrast, the acquisition of Veolia by SembWaste occurred in the waste collection market, which does not feature significant barriers to entry. Furthermore, Veolia and SembWaste notified CCCS of the proposed transaction prior to undertaking it, whereas Grab and Uber proceeded with their merger without doing so. Naturally, factors such as competitive dynamics and timing will inform CCCS's assessment of cases. In conclusion, policy must be able to accommodate idiosyncrasies across industries and circumstances.

Taking stock, competition and consumer protection policy should enhance welfare and remove market distortions. Regulators should conduct cost-benefit analysis to the best of their ability, with cognisance of the information constraints they face. In addition, a practical policymaking strategy should embrace the complexities that arise from evolving economic and legal principles, self-interested actors and idiosyncratic cases.

Does the reality live up to our ideals, and how accurately are we described by the phrase “free market and buyers beware”?

3 Where we stand now

i. Competition

“Free market” is a misnomer for developed economies, and Singapore is no exception. Our market-oriented system ensures that market forces drive the bulk of economic activity, subject to some degree of state regulation. Unfettered competition and unbridled free market forces can sometimes give rise to suboptimal market outcomes such as consumer detriment or prohibitive prices. Government intervention, applied judiciously, can correct market failures and promote social welfare.

For example, professions such as architecture, law and medicine are subject to occupational licensing in Singapore. By raising the barriers to occupational entry, such measures curtail competition in the labour market. Yet they serve the important role of promoting quality and public safety, which might otherwise be compromised by unlicensed practitioners. Singapore’s laws surrounding intellectual property – widely regarded as the best in Asia – effectively grant temporary monopoly power to entrepreneurs in the name of spurring innovation.

Turning our attention to CCCS, it is clear that its various functions, such as the investigation of cartels and assessment of mergers, have helped to preserve vigorous competition in our economy. In the past year, the agency has held lift spare parts suppliers accountable for alleged abuses of dominance, cleared a proposal for

commercial cooperation between two airlines, and evaluated the competitive effects of countless proposed mergers and acquisitions. Although the visible hand of the state means that we relinquish the 'free market' label, our antitrust landscape facilitates improved market outcomes and fairer competition between businesses.

Government regulations permeate many aspects of our economic life, suggesting that Singapore is better described as an open, mixed market than a free one. The policies detailed above reflect an emphasis on social welfare and efficiency, rather than the dogmatic pursuit of competition. A robust competition policy framework and considerable public sector involvement have served Singapore well: she came top in the Heritage Foundation's 2020 Index of Economic Freedom. Yet ongoing cartel activity and anti-competitive practices are a known unknown: they are almost certainly taking place, but can be difficult to weed out without informants. Furthermore, mergers are an inevitable fact of a competitive market order. Considering that the work of a competition regulator will never be complete, several suggestions for policymaking are put forth in Section 4.

ii. Consumer protection

Singapore's consumer protection framework has transitioned from an emphasis on *caveat emptor* to a more consumer-friendly stance. This reflects a greater recognition of information asymmetries and the behavioural biases that aggravate them.

Since taking on the function of administering the CPFTA in 2018, CCCS has led regulatory efforts to facilitate consumer protection. It has taken measures against errant businesses over a range of unfair trading practices, including misleading

discount periods, subscription traps and misrepresented terms and conditions. It has also sought to make the CPFTA more comprehensible to local businesses by clarifying certain aspects of the legislation, beginning with its draft pricing transparency guidelines. A recent development in CCCS's approach to consumer protection is its pivot towards behavioural considerations: the OECD (2020) reports that the CCCS is looking to conduct behavioural experiments in the near future, perhaps relating to search engines and astroturfing.

Demand-side tools, such as consumer education and information disclosure, play a strategic role as well. CCCS does not go this alone: CASE disseminates educational materials extensively, curates a "blacklist" of transgressing companies and assists in the formation of advisory councils such as the Advertising Standards Authority of Singapore. The mass media is also a key actor, particularly when a controversial episode brings consumer protection to the forefront of public consciousness. Events, such as the Sim Lim Square controversies of 2014, resonate with consumers and provide valuable opportunities for organic discourse and education.

These institutions have helped to advance consumer rights and place consumer protection higher on the national agenda. However, the 14,867 complaints received by CASE in 2019 – a mere lower bound considering the unsavoury trading practices that go unreported – suggest that violations of consumer rights can be curbed, but not extinguished altogether. They are perpetuated primarily by three factors: ignorance about the CPFTA, risk-taking businessowners who seek quick bucks and embrace the perceived low risk of penalty, and creative destruction which drives firms out of

business before their commitments to customers are met. Several policy recommendations are detailed below.

4 What now?

i. Vigilance during the COVID-19 pandemic

In the coming months, Singapore's economy will be profoundly reshaped by the COVID-19 pandemic. Stimulus measures will alleviate the economic damage wrought by the coronavirus, but we should nevertheless be prepared for a surge of business bankruptcies and closures. These events, as well as a tide of M&A transactions involving distressed targets, will have lasting implications for market concentration. Tremendous financial pressures could also impel companies to fix prices or and undertake collusive practices. By monitoring market dynamics and acting swiftly, CCCS's actions could make all the difference between a competitive market and a collusive or excessively concentrated one.

Current events also raise the spectre of companies taking advantage of consumers' anxieties. Consumers have been left vulnerable to unfair commercial practices, such as online retailers not fulfilling their orders or businesses misrepresenting the health properties of their products. Furthermore, an impending wave of abrupt business closures could leave consumers with pre-paid packages short-changed. It is undeniable that consumer protection concerns have been aggravated by the pandemic. If CCCS and organisations such as CASE are able to demonstrate their unwavering commitment to consumer welfare, even during this period, they will set an admirable precedent for consumer protection for a long time to come.

ii. Re-evaluation of our incentive structures

CCCS's investigations relating to anti-competitive conduct are largely reactive rather than proactive in nature. Investigations typically take place after the fact. By the time they are concluded, infringements of the Competition Act or CPFTA could already have resulted in significant detriment to consumer welfare, efficiency and innovation. Therefore, there might be a greater role for deterrence in confronting anticompetitive conduct. For example, involvement in cartel activity does not give rise to criminal liability in Singapore at present, whereas antitrust conspiracies such as bid rigging are felonies punishable by a fine, and/or up to ten years' imprisonment for individuals in the USA.

By the logic of skin in the game, an institutional environment that makes individuals personally liable for antitrust violations would alter the incentive structure and dissuade managers from anti-competitive conduct. A similar line of reasoning could be applied to our consumer protection legislation. To ensure that punishments remain just and fair, they should continue to be meted out according to the circumstances of the case.

iii. Competition considerations beyond CCCS

Market competition and its implications for efficiency should factor into policy-making at all relevant public bodies, not just CCCS. This is because competition is not a function of competition policy alone – it is influenced by international trade, foreign direct investment, intellectual property rights (IPR), government procurement and more. Yet these all fall outside CCCS's remit. Markets could become more contestable

and innovative if competition is made more of an institutional priority in other public bodies.

We are already seeing glimpses of this – for example, the EU-Singapore Free Trade Agreement has improved the EU's access to Singapore's services markets and vice versa. If in future FTA talks, services are similarly negotiated on the basis of a 'positive list' of sectors, Singapore's policymakers could consider adding suitable sectors into the mix. This is particularly as improved communications technologies enhance the tradability of services. Tweaks to our IPR regime have also been made, particularly with the launch of Ipos International and revision of the Copyright Act. The hope is that our policymakers continue to develop policy mechanisms with competition in mind.

5 Conclusion

Singapore has made considerable headway on the competition and consumer protection fronts. Its institutional environment has accommodated idiosyncrasies well, and its policies rightly target the correction of market failures rather than competition and consumer protection for their own sake. At the same time, CCCS has upheld its reputation as an honest and efficient arbiter, and adapted admirably to changes in competition and consumer protection paradigms.

However, if we intend to reap all the benefits of competition and consumer welfare, our policies must reflect that the two depend on far more than just the CCCS. Policies across our public bodies must be developed with a more deliberate focus on competitive dynamics and consumer protection.

As a deft regulator operating in a robust institutional framework, CCCS entered the COVID-19 pandemic on a firm footing. It must remain vigilant at this critical juncture, as history suggests that anti-competitive and unfair business practices go hand in hand with economic distress and consumer anxiety. CCCS's leadership and actions today will have lasting consequences on our economy, long after COVID-19 has run its course. When the worst of the pandemic is behind us, a re-evaluation of our established incentive structures could do us good.

References

OECD (2020), "Measuring consumer detriment and the impact of consumer policy: Feasibility study", *OECD Digital Economy Papers*, No. 293, OECD Publishing, Paris, <https://doi.org/10.1787/0c2e643b-en>.