



UNSW Law

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**Towards Competitive Neutrality: The Role of
Competition Authorities**

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Summary of Presentation

- Role of government in markets
- Competitive neutrality (CN) : continuum of approaches
- CN frameworks: law, policy and advocacy
- Transparency, accountability and measuring outcomes

Government impact in markets: significant and lasting

- Laws and regulations
- Policy decisions
- Government business in markets: SOEs and other
- Competition law assumes that a level playing field will deliver the most efficient competitors providing goods and services at the lowest prices and also stimulate innovation
- Notably in the Russian Federation more than 50% of antitrust complaints considered by FAS annually relate to government agencies and SOEs

Competitive neutrality (CN) policy

- Acceptance that significant government businesses in competition with the private sector should not have a competitive advantage just because they are owned and controlled by government
- CN is steps or mechanisms put in place to ensure that the market is “neutral” as between the private and the public sectors
- CN has both national and international implications
- Interesting relationship with industrial policy and state capitalism

CN issues

- Immunity from taxes, charges and regulatory requirements
 - Explicit or implicit government guarantee on debts
 - Concessional interest rates on loans
 - No accounting for depreciation expenses
 - No expectation of achieving a commercial rate of return
 - Effective immunity from bankruptcy
 - Pricing policies which do not fully account for production costs
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- There are also potential disadvantages of government businesses: greater accountability; community service obligations; reduced managerial autonomy ; compliance with other government policies, etc

CN as a broader concept

- Regulatory review can also be considered part of competitive neutrality initiatives since many of the laws and regulations which offend against competitive markets benefit government bodies, particularly at a more local level
- For this reason this presentation will also discuss some examples of regulatory review which have impact on the level playing field in relation to government conduct

Approaches to dealing with CN: on a continuum

- Implementation by law

 - As part of a law on state subsidies

 - As part of an administrative monopoly law or other regulation

- Implementation by policy or agreement

 - As part of a formal Competition Policy framework or its own?

 - May be enforceable or not

- Addressed by advocacy

2014 research project for UNCTAD RPP

- Surveys of a number of countries: China, India, Malaysia, Pakistan, Russia, Switzerland, Vietnam
- Focused on Asian jurisdictions in publication: research webpage
- <https://unctad.org/en/Pages/DITC/CompetitionLaw/ResearchPartnership/Competitive-Neutrality.aspx>
- At that time only India showed any real appetite for CN policy reform

CN frameworks: hand in hand with application of competition law to SOEs

- EU- supported by various provisions of the law
- China- Administrative Monopoly (AML)(law) and Fair Competition Review (by law)
- Australia- part of National Competition Policy- by agreement
- Philippines- National Competition Policy

Role of advocacy

- Key activity of competition regulators
- Focus on administrative activity of government including business operations via SOEs
- Regulators participate in lawmaking and policy activities or give other advice commentary and recommendations
- Advocacy has political challenges – independence of regulator may be an important factor in success
- Ultimately, conflict between the right of government to implement laws and policies in what it considers to be the best interests of citizens and competition outcomes
- This requires balancing multiple policy goals of which competition is just one

Jurisdictions with a formal advocacy role include:

- Czech Republic
- French Polynesia
- Indonesia
- Lithuania
- Mexico
- New Caledonia
- Serbia
- Vietnam

Accountability, transparency and review: is there any compulsion on government to act on recommendations?

- Australia
- UK
- Ireland

Thank You

For further information or to make a contribution email me at:

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