

## COMPETITION POLICY

Institutionally oriented economists as well as law scholars seem to have become increasingly interested in competition policy, as can be seen in recent studies (e.g., Voigt 2006, Borrell 2005 and Forslid et al. 2005). Forslid and co-authors investigate the fact that some countries, like the US and Canada, are (very) early forerunners of competition policy while others have followed only much later. In order to include countries of similar degree of industrialisation, the study concentrates on the 24 “old” and high-income OECD countries (Table 1), while the later entrants (Korea, Mexico, Poland, Czech Republic, Slovak Republic and Hungary) are not considered.

**Table 1**  
**Competition laws in OECD countries:**  
**Year of introduction and cumulative number**  
**of countries**

1889	Canada	1
1890	USA	2
1926	Norway	3
1947	Japan	4
1948	UK	5
1953	France, Ireland	7
1955	Denmark	8
1957	Germany	9
1958	Netherlands	10
1960	Belgium	11
1962	Spain	12
1970	Luxembourg	13
1974	Australia	14
1977	Greece	15
1984	Portugal	16
1985	Switzerland	17
1986	New Zealand	18
1988	Austria, Finland	20
1990	Italy	21
1993	Iceland, Sweden	23
1994	Turkey	24

Source: Data from Forslid et al. (2005).

The authors describe the behaviour of firms within a Cournot model and determine firms’ profits and households’ utility for those countries with and without competition policy (i.e., anti-trust policy). They show that within this setting, the public welfare effect of competition policy is an increasing function of market size. The reason is, simply put, the larger the home market, the lower the pressure from foreign competitors. This lack of competitive pressure in large home markets is then compensated by competition policy. This is also seen to be one reason why small countries tended to introduce competition policy (much) later than larger ones.

Besides country size, the authors consider a second important variable: the costs of international trade, which have dropped considerably in the long term. One could assume that this factor works in the same way as country size, because trade costs reduce foreign competition. The conclusion would then follow that for small countries which (today) face considerably reduced trade costs it would not be necessary or at least less urgent to introduce a competition policy. But even these countries did so, albeit late. The authors show that high trade costs reduce the incentive for a competition policy when the country is large but increase this incentive when it is small.

Finally, the authors speculate about possible competition policies in large and fast growing countries like China or India and conclude that “these countries may never find it in their interest to implement competition policy”.

Voigt’s paper considers the effects of competition policy on total factor productivity. The work is based on a survey of the competition authorities of 57 countries (see Table 2), who answered 30 questions contained in a questionnaire of 8 pages. For the econometric work the author created four numerical indicators consisting of different sub-variables. The four main indicators focus (1) on legal aspects (“formal basis”), (2) on economic aspects (“economic approach”), (3) on “de jure independence of competition agencies” and (4) on their “de facto independence”.

The main result of the econometric analysis is that competition policy, measured by the four indicators, has a positive effect on total factor productivity. However, it is difficult to distinguish this effect from that which is exerted by broadly defined institutions and their quality. Moreover, the majority of countries has introduced competition legislation only rather recently (after 1990) so that an effect on productivity may not yet be observable.

Borrell (2005) starts with the fact that competition regimes in the world are quite different. He distinguishes five possibilities (see Table 3): (1) doing nothing, i.e. no anti-trust prohibition, no penalties; (2) ex-ante regime of authorisation, i.e. permission for competition restriction (only) by and after registration; (3) ex-post judiciary regime of negligence. Firms restraining competition can be sued before the judiciary by affected business firms and consumers; (4) ex-post administrative regime of negligence. A

**Table 2****Further countries with competition laws**

Albania	Guatemala	Philippines
Argentina	Hungary	Poland
Armenia	Indonesia	Senegal
Brazil	Israel	Slovakia
Bulgaria	Jamaica	South Africa
China	Kazakhstan	Taiwan
Costa Rica	Latvia	Tanzania
Croatia	Lithuania	Thailand
Cyprus	Mexico	Tunisia
Czech Republic	Moldova	Uzbekistan
Dominican Republic	Morocco	Venezuela
El Salvador	Paraguay	Zambia
Estonia	Peru	Zimbabwe

Note: Countries already contained in Table 1 have been left out.

Source: Voigt (2006).

competition authority analyses (a) whether competition has been restrained and (b) whether the restraint is illegal. If both questions are answered in the affirmative, affected parties can claim remedies before the judiciary; (5) ex-post strict liability regime. Parties affected by competition can sue the causing firms in tort law, civil law or criminal law processes. The restraint as such is illegal.

The author then asks why countries have opted for one of the different possibilities of competition control regimes. He sets up a model that is based on the theory of law enforcement and comes to the conclusion that what matters is a country's institutional strength. With very weak institutions, firms restrain-

ing competition can subvert any anti-trust legislation and will employ resources to do so. Thus, it is better for the country not to have any competition control regime at all. At a moderate level of institutional weakness, with moderate costs for firms to subvert the law, an ex-ante authorisation regime is adequate. For a country with highly developed and strong institutions that make it costly for firms to subvert competition law, an ex-post negligence regime is optimal.

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## References

- Borrell, J.-R.(2005), "Choosing among American, European, or no Antitrust at all", *Working Paper University of Barcelona*.
- Forslid, R., J. Häckner and A. Muren (2005), "When Do Countries Introduce Competition Policy?" *Working Paper Stockholm University*.
- Voigt, S. (2006), "The Economic Effects of Competition Policy – Cross-country Evidence Using Four New Indicators", *Working Paper University of Kassel*.

**Table 3****Possible anti-trust regimes**

Anti-trust regimes	Examples
Doing nothing	Several developing countries
Ex-ante regime of authorisation	Early cartel policy in Britain, Spain; present merger control in European countries and the US; block authorisations of agreements between competitors in the EU (until 2004)
Ex-post judiciary regime of negligence	US: Regime of illegality under the rule-of-reason criteria
Ex-post administrative regime of negligence	In force in most European countries and at the EU level
Ex-post strict liability regime	US: Regime of per se illegality of hard core cartels

Source: Borrell (2005).