Competition policy development in New Zealand

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Competition Policy: the CER approach
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(http://iscr.org.nz)
Overview

• Background: New Zealand’s economic evolution 1984-2013

• Competition Law and Regulation:
  – There are general principles: but one rule does not fit all
  – Economy-specific elements to implementation
  – Evolution in economy-specific cases
    • Electricity
    • Dairy
Background

- 1960s-1984 economy centrally controlled: fixed exchange rates, subsidies, declining performance

- 1984 crisis

- 1984-1991 economy wide deregulation


- Domestic competition greatly assisted by CER 1970s-1980s and tariff reductions
Background

- Variety: important for consumer and producer welfare and competition

- Economic productivity growth good 1991-2001
NZ Competition Law

• Applied “generic” microeconomic principles

• Apply to fit shape of the economy and stage of development

• Implementation criteria varied to reflect small open isolated economy e.g.
  - Level of HHI thresholds
  - Emphasis on the efficiency test (as opposed to consumer surplus) in decisions.
  - Relatedly, the particular role of export/domestic activity in competition law decisions
Related but different approaches to the same competition issue are not uncommon even among established systems (Taken from Winkler 2013)

Classification of predation tests

Market perspective and level of causality

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<th>EU</th>
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- EU
- AT
- NZ
- US
- EU Com

Market Perspective: dynamic vs. static

Causality: high vs. low
NZ Natural Monopoly Regulation: evolution

• 1984-2001 regulate with competition law (light handed) and self regulation

• Distinct natural monopoly characteristics revealed; some industry regulation was slow and arguably ineffective

• Tendency to try home-design rather than learn from other jurisdictions

• Stronger argument for adopting similar cross-country regulatory approaches than competition law: because regulation is applied to non-traded goods
Competition Law and Regulation: evolution

• Commerce Act changed regularly from 2000

• Competition law changes in early 2000: strengthened emphasis on affiliated actions

• Firm-specific regulation, changes in form and subject have been regular since 2001: now includes price control administered by the Commerce Commission:

• Economy wide: regulatory statutes continue to grow very rapidly
NZ Electricity: evolution

- **Corporatisation**
  - NZED ➔ ECNZ (almost single buyer model)

- **Competition**
  - Franchise areas removed
  - Transmission split from ECNZ
  - Information disclosure & price control
  - ECNZ split 4 generation companies
    1 privatised 3 SOE’s

- **Learning**
  - 1996 ➔ contract market (industry)
  - 2001 ➔ dry year severe consumer & political concern
  - 2003 ➔ Electricity Commission (political oversight)
  - 2010 ➔ Electricity Authority (more stand alone)

1970s
- State-owned generation & transmission, Local Government owned distribution and retail
- Department corporatised

1987
- Governance for data Measurement/record ing

1992
- Spot market

1994
- Separation of distribution/lines and energy (retail)
- Legislation enforcing Transmission charges

1996
- 1998/9

1998/9
- Hedge market developed

2002/03

2010-2013
NZ Electricity: 2013

Energy only Market, priced at cost of next unit of capacity, no taxpayer-funded investment, risks assigned to those best able to manage them

**Oligopoly**: 4-6 large firms/fringe competition: workable competition possible
3 SOEs operate as if good businesses

1/3 households and 1/3 commercial firms and 1/3 large industrials

*(National HV Grid)* Natural monopoly SOE
(investment/prices regulated by the Commerce Commission)

*(Local LV Grid)* Natural monopoly
(18 cooperatives/regulation Commerce Commission)

Attached to the grid *(Transco)*
Electricity: NZ country-specific issue

60% is hydro generation with limited storage and very volatile water supplies

Yet influential analysts from other jurisdictions use frameworks that have no supply uncertainty to (inappropriately) report on NZ market performance.
NZ Dairy: country-specific issue

**Importance:** dairy products in 2012 were approximately 25% of NZ exports, 30% of world trade and 2% world milk supply

**Question:** how to ensure a workably competitive domestic milk market that enables firms to be tested for their efficiency in the product market and in their organisational form?

**Regulation design using economic principles**
NZ Dairy: evolution

Agriculture un-subsidised: but dairy competition inhibited

Remove monopoly export seller: replace with Fonterra coop: 96% milk market

Discipline: external prices

Regulation: Fonterra open entry and exit of suppliers at “fair value” shares, and forced to supply some manufacturing milk

Fonterra: introduces spot market for manufactured dairy products

Fonterra: introduces share trading including open market non-voting share-backed units open entry/exit preserved

1920s
000
500 cooperatives
Monopoly Export seller + 4 coops

1984
2000
 Fonterra and 2 other coops

2001
Entry

2008
 Fonterra and approx 6 coop/investor firms

2010
 Milk product growth Fonterra market share 88%

2012
New Zealand Competition Law and Regulation are still evolving

Thank you for your attention
Some References

Various studies New Zealand Institute for the Study of competition and Regulation: 
www.iscr.org.nz


