

Comment on Mats Bergman: Competition law, competition policy, and deregulation

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The paper is well structured and deals with the important relation between the competition authority, the competition law, sector authorities and structural decisions. This is a discussion which is very much on the agenda today. The problems on which the paper focuses are familiar to the Swedish Competition Authority and we may have direct practical use of the conclusions of the paper.

1. Regulatory reforms

In Sweden, the liberalization of markets started early and with a broader approach than in most other European countries. Free store opening hours were introduced already during the 1970s, the banking and insurance sectors came next during the 1980s, and then during the 1990s, we had a whole range of regulatory reforms. There have been pros and cons but the benefits for the consumers are clear.

The paper focuses on the price and cost reductions that have arisen as a result of the liberalizations. Naturally, these efficiency gains are important, but I would also like to underline that there are other benefits for the consumers as well, such as a wider choice, new products and services and last but not least, better availability. The taxi market can be taken as an example of a market where the liberalization has had wider benefits than price cuts.

Throughout the paper, the concept used to describe the changes in markets is deregulation. This, in a way, is not entirely proper. In so-called deregulated sectors, there is a need for a lot of new rules just to protect the competition. Liberalization of markets is an alternative, but even better perhaps is the concept “regulatory reform” which is used by the OECD, amongst others.

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2. Competition law and sector-specific regulation complementarity

The opening up of markets must be well prepared and our experience says that a whole set of rules protecting the new competition must be implemented. I am the first to agree that competition law, sector-specific regulation, and the work by the competition authority and that of the regulator are complementary. As the paper correctly points out, the competitive situation in a deregulated industry—or more properly, in an industry opened up to competition—cannot be expected to reach a normal situation very quickly. This calls for sector-specific regulation that must remain even beyond the first few years after deregulation. I have no problem with this conclusion, but I am not totally convinced that this is also true in the long run.

According to the paper, there is no clear tendency that the deregulated markets need less attention from the competition authority as time passes. One basis for this conclusion is an analysis of important competition law cases in Sweden. Deregulated industries appear to be over-represented by a factor of three in the important cases handled by the Swedish Competition Authority, and the effect seems to remain in the long run.

My opinion is that this may be a result of the priorities made by the competition authority. Much attention has been given to markets opened up to competition because they are fragile. Further, during the period studied, there has been a constant entry of new “deregulated” markets, and this has also influenced the number of cases. Thus, the statistical material on the competition authority’s decisions does not provide a good basis for the conclusions that reformed markets need long-term surveillance by the authorities.

Another important issue is whether the “complementary model” of regulation, with its emphasis on separate sector-specific agencies, increases the risk for regulatory capture in the long run. The sector-specific regulator may be more easily influenced by the industry, which may be more inclined to ask the sector-specific regulator to solve problems on the market that the firms should tackle on commercial conditions. As entrants become stronger, their need for protection will decrease and the demands on the incumbent company will change.

An interesting model for handling the relation between the competition authority and the sector-specific regulators can be found in the

Netherlands. There, the sector-specific and the general competition authorities are kept under the same roof to eventually, when markets are mature, make it easier to dismantle the sector-specific regulatory organizations.

The paper makes a distinction between sheltering and creating competition. I find this a bit philosophic. To me, the competition authority “creates” competition when it applies the competition act and succeeds in e.g. ending the abuse of a dominant position by the incumbent and thus making it possible for new entrants to come into the market.

3. Sector-specific features

The paper claims that the sector-specific regulation is not applied with consistent vigilance between industries and that this suggests the need for an inter-industry comparison of the regulatory framework. On the other hand, it is stated that in network industries, sector-specific regulation can be dismantled if deregulation creates competition in the bottleneck stage, i.e. if multiple infrastructures are created. The telecom industry is taken as an example where multiple infrastructures have surfaced, but this has not led regulators to dismantle the specific regulation in this sector. Does this mean that we cannot apply the same model to all deregulated network industries and that this is a problem we ought to go deeper into?

4. Concluding remarks

Currently there is a discussion on both the control model and ownership structures, and the paper is very valuable in this discussion. I fully support the conclusions concerning the short run, although I disagree to some extent when it comes to the long run.