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Assessment of competition commission of European Union and Singapore and its effect on new firms and consumer power

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Abstract: *Competition law protect the competition process by prohibiting three major competitive activities, such as anti-competitive agreement, abuse of dominance and anti-competitive mergers, (Singapore Academic of Law 2012). This helps to reinforce pro-enterprise and pro-competition policies, enhance the efficiency of markets and strengthen countries economic competitiveness, (Lane 2000, p1). The American Sherman Acts of 1890 is taken as the starting point of modern competition law but the roots of competition law lie much deeper,(Furse, 2008, p3). However, after the American Sherman Act of 1890, this competition law was enacted in the law of many nations. E.g. Singapore 2004, UK 1998, etc, therefore this research tend to compare and give assessment of competition commission of Singapore and that of European Union and shows how the market power of the existing firms negatively affecting the emergence of the new firms as well as the consumer power in the two economies.*
Key words: *market power, prohibition, mergers and acquisitions, competition, agreement and bargaining.*

I. Introduction

Competition law or competition commission as it is commonly known in European Union and Singapore is an authority saddle with anti-competitive activities in a state. The American Sherman acts of 1890 were taken as the foundation of the contemporary competition law which is practices universally today. The major anti-competitive activities prohibiting by competitive law includes anti-competitive agreement, abuse of dominance and anti-competitive mergers. This research tend to compare and give assessment of competition commission of Singapore and that of European Union and shows how the market power of the existing firms negatively affecting the emergence of the new firms as well as the consumer power in the two economies. The market power of the two countries competitive law were carefully assessed and result shown that market demand supply and technology lead to market power. This is for the reason that the market demand curve is always at a negative slope. Firms collude to have a fixed supply of output and patent right of a firm all lead to market power. These activities resulted to price discrimination, discouragement of many firms from entry the market and reduction of the welfare of both the producer and the consumer. Conclusively practical recommendations were provided for the competition commissions of the two countries studied and other countries that practice the competition law were suggested for effective existence of firms. This include, weaker firms should merged if not many firms will fold up from the market and make room for natural monopoly, provision of enable environment for the emergence of firms to facilitate a healthy competition in the economy which increase growth of firms as well as employment and GDP level. Finally, organisations of social forum whereby consumer will be allow expressing their view concerning the service of firms.

1.1 The competition law of Singapore

1. 2 Main features of competition law of Singapore

The competition commission of Singapore (2009) give the features of competition law of Singapore to include:

Making complaints – if you suspect that any business, company or organisation is engaged in agreement or conduct that infringes the competition Act, a complaint can be file with the competition commission of Singapore CCS. More especially if you believe that there has been a breach of any of the following prohibitions under the competition Act:

- Agreements, decisions and practices that prevent, restrict or distorts competition (section 34 prohibition)
- Abuse of dominance position (section 47 prohibition)
- Mergers and acquisitions that substantially lessen competition (section 54 prohibition)

The competition commission of Singapore (CCS) is interested hearing from persons with useful information on cartel activity in Singapore. e.g. companies /business who are part of the cartel, origin of the cartel, the nature of the industry where the cartel is operating documents or other information evidencing agreements, decisions or practice of the cartel.
Seeking guidance and decisions – this implies undertakings need not notify CCS of their agreement or conduct. But there may be occasion when they have serious concern as to whether they are infringing the Acts prohibitions. In such situations, they may find it useful to take independent legal advice on these matters. Where relevant, they may also apply to CCS for:

- Guidance as to whether, in CCS view the agreement or conduct is likely to infringe the competition Act, the Act as it is anti-competitive or
- A decision by CCS as to whether the agreement or conduct does in fact infringe the Act.

Notifying a merger – it is not necessary for merger parties to notify CCS of their mergers, except if it may lead to a substantial lessening of competition.
Filing under block exemption order – this exempt category of agreement from the section 34 prohibition on anti –competitive agreements, decision and practices.

1.3 Competition enforcement authority in Singapore

The competition authority in Singapore that enforces the competition law is the competition commission of Singapore (ministry of trade and industry Singapore 2009). The commission has power to investigate and adjudicate anti-competitive activities.

1.4 European competition law

1.5 Features of European competition law

Motta (2009), furse (2008) and Rudger & McCulloch (2009) give features of European competition law to include:
Horizontal and vertical agreement – the agreement among competitors and agreements between producers and middlemen are prohibited except on R &D.
Abuse of dominant position - this implies a behaviour which through recourse to method different from which condition normal competition in market has the effect of hindering the maintenance of the degree of competition. Such activity is prohibited.
Both horizontal and vertical mergers are regulated by the mergers regulation 4064/89 and successive modification – each project of concentration should be reported to the Mergers Task Force (MTF) for investigation, a special unit of the competition directory of the European commission.

1.6 Enforcement authority of European competition law

European competition law has its main provisions contain in article 81 and 82 of the treaty of European communities and in the mergers regulation,(Motta 2009,p31).the European competition law is enforced by the European commission EC or DG comp. at the communities level and by National competition Authorities at members state. The court of first instance CFI preside any case of EC and the European court of justice decides on appeal against CFI.

1.7 Comparison of European commission and competition commission of Singapore

Both commissions have power to investigate and adjudicate anti-competitive activities. That is activities which affect the welfare of the consumers.

Mergers are regulated by the commission to avoid substantial lessen of competition in the market which would be detrimental to the consumers. This activity is monitored by the both commissions in their respective areas.
The commissions prohibit agreements, decision by association of undertaking and concerted practices which may affect trade in their various countries areas. That is, decisions that affect the prevention, restriction or distortion of competition in these economies.
Block exemption exempts a category of agreements or decision. If an agreement contributes to improving economic progress without imposing undue restriction cannot be prohibited. This is considered by the both countries commissions as seen on the countries features above.

II The method used by the competition commission of Singapore to assess market power

Market power refers to the ability of a firm to influence or control the terms and condition on which goods are bought and sold, (Carlton and Perloff 1994). Monopolies can influence price by varying their output because consumer have choice of rival products. Competition Commission of Singapore (2007) states that, the method use by the competition commission of Singapore to access the presence of market power include:

Low entries barriers – an undertaking with persistently high market share may not necessary have market power where there is a strong threat of potential competition. If entry into the market is easy, the incumbent might be constraint to act competitively so as to avoid attracting entry over time by potential competitors.
Bidding markets – sometimes buyers choose their suppliers through procurement auctions or tenders. In these circumstances even if there are only a few suppliers, competition might be intense. This is more likely to be the case where tenders are large and infrequent so that suppliers are more likely to bid, where suppliers are not subject to capacity constraints so that for any particular bid, all suppliers are likely to placed competitive bids, and where suppliers are not differentiated so that for any particular bid, all suppliers are equally placed to win the contract. In this type of market an undertaking might have a high market share at a single point in time. However, if competition at bidding stage is effective, this currently high market share would not necessarily reflect market power.
Successful innovation – in a market where undertakings compete to improve the quality of their products, a persistently high market share might indicate persistently successful innovation and so would not necessary mean that competition is not effective.
Product differentiation – sometimes the relevant market will contain product that are differentiated. In this case, undertakings with relatively low market shares might have a degree of market power because other products in the market are not very close substitutes.
Price responsiveness of competitors – sometimes an undertaking's competitors will not be in a position to increase output in response to higher prices in the market. E.g. suppose an undertaken operate in a market where all undertakings have limited capacity and are unable to increase output substantially. In this case, the undertakings would be in a strong position to increase prices above competitive levels than an identical undertaking with a similar market share operating in a market where its competitors were not close to full capacity.

2.1 Method use by European commission to assess market power

motta (2009, p121) states that the market power can be assess through:

Ease and likelihood of entry – if a firm try to increase its prices, existing competitors might react by increasing their capacities, this will limit the firms' market power. Potential entrants might also constraint the ability of a firm to raise prices. The most vital market theory is that if entry is easy, rapid and costless, a firm would not be able to charge a high margin because large profits would attract competitors into the industry.
Buyer power – the ability of a firm to charge high prices also depend on the degree of concentration of the buyer. A firm is clearly freer to exert market power if it faces a large number of dispersed consumers or buyers than if it faces one or a few strong buyers. A strong buyer can use it bargaining power to stimulate competition among sellers, either by threatening to switch orders from one seller to another or by threatening to start upstream production itself.

The central role of market share – for example, a monopolist firm has 100% of the market, which have highest possible market power. On the other hand one would expect a firm holding tiny share of the market to be unable to exercise much market power. Restrain on the ability of setting high prices will come from competitors, and a firm low market share will indicate that this firm has strong competitors.
Measuring market share and assessing relative strengths – once a market has been defined, market shares of all the relevant firms in the market can be calculated. This will give a first picture of the relative competitive positions of the firms in that market.
Some market are characterise by large and infrequent orders made by small numbers of buyers, as a result of that market share should be calculated over a relatively long period such as three to five years because of likely variance in market share as calculated in short time period.

2.2 Similarities of market power assessment between European commission and competition commission of Singapore.

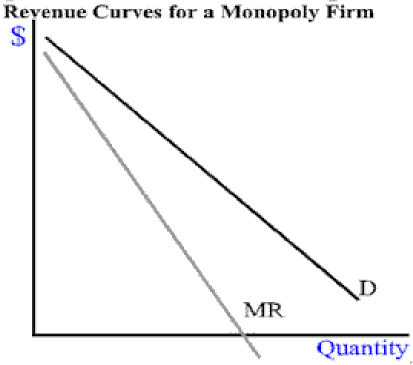
Both commissions assess market power base on low entry barriers: - In this case any attempt by the incumbent firm to increase prices, his competitors would increase their sales and it would also attract new entrants into the market. The market power of the firm would be limited.
Both commissions also assess the market power base on the responsiveness of buyer's power toward purchasing of the seller's products: - The buyer may stimulate competition among sellers by threatening to switch order from one seller to another. This therefore negatively affects the market power of the firm or seller.

111 The features of market demand, supply and technology that can lead to market power

As we have seen above, Market power refers to the ability of a firm to influence or control the terms and condition on which goods are bought and sold, (Carlton and Perloff 1994). In economics, market power exists when a firm faces downward sloping demand for its own output. Even when firms only have a very small

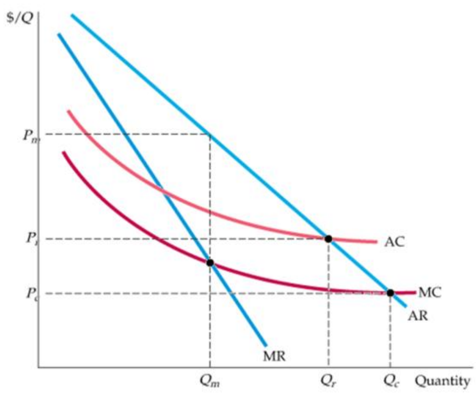
degree of market power, the qualitative features of their behaviour are the same as monopoly. Thus monopoly can be use to illustrate the general results (Fingleton 2000).
Pindyck and Rubinfeld (2009, p368) examine the features of monopoly power that result from market demand, supply and technology to include:
The elasticity of market demand– if there is only one firm, a pure monopolist, its demand curve is the market demand curve. In this case, the firm's degree of monopoly power depends completely on the elasticity of market demand. E.g. because the demand for oil is fairly inelastic, OPEC could raise oil prices far above marginal production cost during the 1970s and early 1980s. On the other hand the demands for commodities such as coffee, cocoa, tin and copper are much more elastic, attempts by producers to cartelise these markets and raises prices have largely failed. In each case, the elasticity of market demand limits the potential monopoly power of individual producers. The market demand curve of a monopoly firm can be further shown below.

Figure 10-1 **The Demand and Marginal Revenue Curves for a Monopoly Firm**



Source: Ruby (2003).

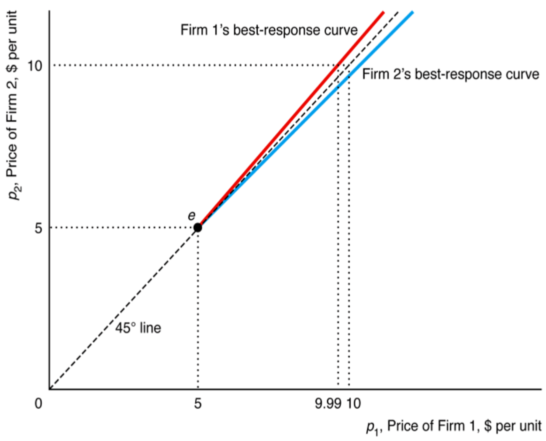
The numbers of firms – other things being equal, the monopoly power of each firm will fall as the number of firm's increases. As more and more firms compete, each firm will find it harder to raise prices and avoid losing sales to other firms. What matters, of course, is not just the total number of major players, firms with significant market share. Eg, if only two large firms account for 90% of sales in a market, with another 20 firms accounting for remaining 10%, the two large firms might have considerable monopoly power. When only a few firms account for most of the sales in a market, such market is term highly concentrated market (Fingleton 2000, p19)
It is sometimes said that the greatest fear for American business is competition. But we would expect that when few firms are in a market, their managers will prefer that no new firms enter. An increase in the number of firms can only reduce the monopoly power of each incumbent firm.
Sometimes there are natural barriers to entry. E.g. one firm may have a patent on the technology needed to produce a particular product. This makes it impossible for other firms to enter the market at least until the patent expires. Other legally created rights work in the same way, a copy right can limit the sale of a book, music, or computer software program to a single company and the need for a government licence can prevent new firms from entering the markets for telephone services, television broadcasting, or interstate trucking.
Robert and Cave (1999) and Gal (2003) contended that a firm is a natural monopoly if it is able to serve the entire market demand at a lower cost than any combination of two or more smaller, more specialise firms. If the monopoly firm services a single market, then economies of scale are sufficient for the firm to be a natural monopoly. E.g. **the graph below would further explain how regulatory agency regulates firm prices to competitive level.**



The graph above denotes that the firm is a natural monopoly because it has economies of scale over it output range. If price were regulated to be P_c the firm would lose money and go out of business. Setting price at P_r firm remain in business, excess profit is zero.

The interaction among firms – the ways in which competing firms interact is the most important determinant of monopoly power. Suppose there are two firms in a market. They might compete aggressively, undercutting one another's prices to capture more market share. This could drive prices down to nearly competitive levels. Each firm will fear that if it raises its price it will be undercut and lose market share. As a result, it will have little monopoly power.

On the other hand, the firms might not compete much. They might even collude, agreeing to limit supply output and raise prices. Because rising prices in concert rather than individually is more likely to be profitable, collusion can generate substantial monopoly power. Therefore, monopoly power is smaller when firms compete aggressively and is larger when they cooperate. This can be further explaining on the graph below using Bertrand model. Firms decide simultaneously what price to charge as in competition because of incentive to undercut and these make them to cooperate and have monopoly power in the market.
Bertrand equilibrium price equals marginal cost because of incentive to undercut.

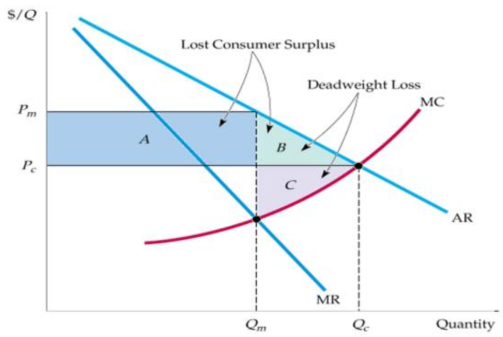


IV The consequences of market power on prices, products' quality and welfare

4.1 Consequences on welfare

Brux (2010 p311) and Pindyk & Rubbinfeld (209, p394) states that, in a competitive market price equals marginal cost MC. Monopoly power on the other hand implies that price exceeds marginal cost. Because monopoly power result in higher prices and lower quantities produced, this would make consumers worse off and the firms better off. But suppose we value the welfare of consumers the same as that of producers, in this case the consumer surplus and producers surplus are compare when a monopolist supplies the entire market. Consumer surplus is a benefits that consumer received beyond what he paid for good; while producer surplus is the analogous measure for producers. To maximise profit the firm produces at a point where MC=MR. in a competitive market, price must equal marginal cost.

Under monopoly, if the price is higher, consumer buy less because of the higher price, those consumers who buy the goods at p_m lose surplus and those consumers who will not buy at a higher price but at a price p_x below the high price also lose surplus, an amount given by triangle B. The total loss of consumer surplus is therefore A + B. the producer gain triangle A by selling at higher price and loss triangle C. The total gain in producer surplus is A – C. Subtracting the loss of consumer surplus from the gain in producer surplus, the net loss is B + C, and this is the deadweight loss from monopoly power. These can be further shown on the graph below.

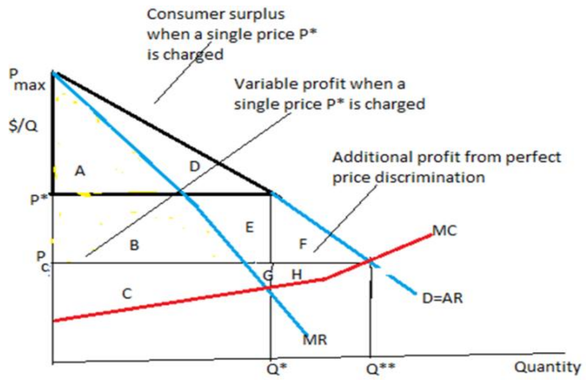


4.2 Consequences of market power on prices

Market power resulted to price discrimination. That is practice of changing different prices to different consumers for similar goods, (Pindyk and Rubbinfeld 2009). In this case firm charge what the market will bear and different market segment will bear substantially different prices. Eg American Automobile produces varieties of Cars.

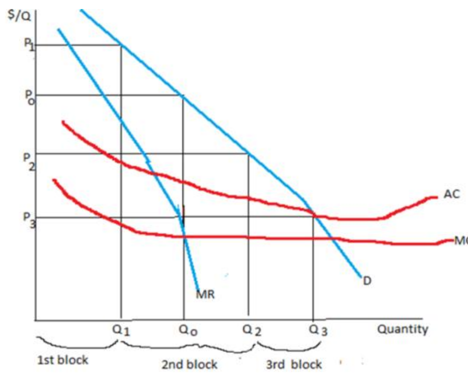
Price discrimination can take three broad forms which we call first, second and third degree price discrimination.

First degree price discrimination – a firm would like to charge a different price to each customer if it could, it would charge maximum price from customer for each unit bought. We call this customer's reservation price. The practice of reservation price is called perfect first degree price discrimination. These can be further explaining in the graph below



The above graph denotes that because the firm charges each consumer her reservation price, it is profitable to expand output to Q^{xx}. When only a single price P^{x} is charge, the firm's variable profit is the area between the marginal revenue and marginal cost curve. With perfect price discrimination, this profit expands to the area between the demand curve and the marginal cost curve.

Second degree price discrimination – in some market, as each consumer purchases many units of a good over any given period, his reservation price declines with the number of units purchased. In this case a firm can discriminate according to quantity consumed. E.g., a single roll of Kodak film might be priced $5, while a box containing 4 rolls might be priced $14, making average price per roll $3.50. This can be further shown on the graph below.



The graph above denotes prices that are charge for different quantities of the same goods. There are economic of scale; average and marginal costs are declining. Second-degree price discrimination can make consumer better off.
Third degree price discrimination – it is a practice of dividing consumer into two o more groups with separate demand curves and charging different prices to each group.

4.3 Consequences of market power on products quality

Brux (2010 p307) contend that products are frequently differentiated and act as a barrier to the entry of new firms. This is a characteristic that make the product of one firm different from another firm in the eyes of the buyer. The different may be real (style, quality, colour or taste). Eg household laundry bleach, despite the uniformity of the product Clorox has dominated the bleach market for many years, commanding a higher price than other brands because many consumers are convinced that Clorox is a quality product than other brands in the market. Product differentiation acts as a barrier to entry because new firms must spend a great deal of money on advertising their product in an effort to compete against the established product already in the market.

V. Factors facilitating the emergence of collusion among firms

To know the relevant factors that facilitate the emergence of collusion, it is imperatives to know what collusion are all about. Therefore, the concept of collusion in economics denotes a situation where firms' prices are higher than some competitive bench mark. That is a situation where firms set prices which are close enough to monopoly prices (Motta 2009, p138 and Kuhn, K. U 2001). For collusion to arise, there are two elements that must exist. These are thus:

- It participant must be able to detect in a timely way a deviation occurred.
- There must be a punishment which follows a deviation.

The factors that facilitate the emergence of collusion among firms as portrayed by (Motta 2009, p142 and Furse 2008, p181) in a given sector e.g. cement industry include:
Concentration – the extent to which a market is taken up by a limited numbers of firms. The comparison between gains and losses from deviations illustrates why this is the case. Imagine that there are many firms of identical size and of large capacity, which co-exist in the cement industry. In a collusive situation, each of them will set a high price and get a small share of the total profits. However, if one of them deviate and sets price lower than the rivals, it might get all the market for itself. Even if the punishment was harsh, so that a very small stream of expected profits will follows after a deviation, the gains from deviating would be so extraordinary in the deviation period that they would outweigh the collusive profits forgone during the punishment period. Compare this situation with the extreme one where there are only two firms in the cement industry. At a collusive equilibrium, each would get half the market so that gains from deviating are smaller relative to the lower profits due to the punishment which follows.
Entry barriers – the easier entry into an industry the more difficult to sustains collusive prices. When prices and profits are high, new firms will be attracted into the industry and this tends to disrupt the collusive outcome, by two possible mechanisms. Suppose the new entrant does not want to pursue a collusive strategy and behave aggressively. This will subtract market shares to the incumbent firms that will have to decrease prices to keep their customers hence breaking the collusive equilibrium.
Regularity and frequency of orders – regular orders facilitate collusion. In deed an unusually large order would give a very strong temptation to deviate, by deviating, a firm would make unusually large profits, and the perspective of losing collusive profits obtained under the typically small expected demand is not enough to deter the deviation.

Buyer power – a stronger buyer can make use of its bargaining power to stimulate competition among the cement sellers, either by threatening to redirect orders from a current seller to other or to potential entrants or by threatening to start upstream production itself.
Snyder (1996) added that by concentrating its orders, a powerful buyer can also manage to break collusion.
Symmetry – competition authorities and court regard symmetry among firms as a factor which facilitates collusion. For example, it is assume that people who are in a similar position would find it easier to arrive at an agreement which suits all of them. Compte etal (2002) states that largest firm has the highest incentives to deviate from collusion and the smallest firms have difficulties to punish. Therefore a more equal distribution of capacities would help collusion.

VI conclusion and Recommendations

6.1 Conclusion

In conclusion, we have seen how competition law have worked in Singapore and EU. The Acts has given the commissions the right to investigate and adjudicate anti-competitive activities. The enforcement authorities use different method to access the present of market power, this enable them to detect anti-competitive activities of firms. However, market demand, supply and technology also can lead to market power. This is because the market demand curve is always at a negative slope; firms collude to have a fixed supply or output and patent right of a firm all lead to market power.

Market power therefore resulted to price discrimination, discourages many firms from entry the market and reduces the welfare of both the producers and the consumer. Finally, the variables facilitating the emergence of collusion among firms in a given industry were also discussed.

6.2 Recommendations

Competition enforcement authorities should allowed weaker firms, who are ready to merged, if not many firms will fold up from the market and make room for natural monopoly. That is Firm that enjoys economies of scale and scope thereby forcing other competitors out the market. This deters the welfare of the consumers, and led to unemployment as well as fall in the GDP growth rate of the economy.

Competition enforcement authorities should also advocate for good enable environment for the emergence of firms to facilitate a healthy competition in the economies. The increase and growth of firms will increase employment and GDP level of the economies.

The enforcement authorities should constantly organised a forum where consumers will come to express their view concerning the services of the firms.

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