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Competition Policy and Industrial Development

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Industrial Policy

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COMPETITION POLICY AND INDUSTRIAL DEVELOPMENT

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Introduction

Competition policy – especially antitrust – is not usually seen as part of an industrial policy framework. In fact, they are often viewed as conflicting with each other. The present chapter intends to discuss the role that should be ascribed, under an unorthodox framework, to competition policy within, or at least related to, industrial policy.

A general discussion of competition policy will be undertaken in the first section, which will comment briefly on its main objectives and scope. Some basic theoretical issues will be addressed in order to shed some light on what are usually seen as points of conflict between competition and industrial policies. The second section presents the experience of selected developed economies, as well as newly industrialized ones, examining both competition and industrial policies alongside the process of industrial development. It will focus on the unequal emphasis given to each policy through time by different countries and their specific institutional means of enforcing each one. The third section presents some implications stemming from both the general framework and the historical experiences introduced with respect to the design of competition policy in relatively advanced developing economies. A brief conclusion will follow.

Two important points should be kept in mind when reading this chapter. First, when addressing developing economies, our concern is directed towards the newly industrialized ones; economies still in the early stages of industrial development (and even more so economies without significant industrial structure) will not be discussed in detail. Second, this is a qualitative study – that is, limited to identifying and describing patterns of interaction between competition and industrial policies in selected countries. No quantitative attempt is made to measure these policies' impact.

Objectives and scope of competition policy as related to industrial policy

Although other objectives can be added, the main goal of competition policy is to sustain or increase competition within a market environment with a view to preserving or enhancing economic efficiency and social welfare. Both productive and allocative efficiency are expected to increase with the “degree of competitiveness” of markets, the usual exception being natural monopolies or activities considered to need regulation for some reason (with the possible tradeoffs between “allocative” and “dynamic” efficiency, discussed in the chapter by Cimoli, Dosi, Nelson, and Stiglitz; see also below).

Note also that competition policy has a much broader scope than antitrust policy, as important as the latter may be (and usually is). While antitrust is mainly defensive, being able to preserve to some extent competitive market structures and conducts – both through prevention and punishment of abuses of market power – competition can be stimulated by many other means, ranging from trade policy (e.g. reducing tariff and non-tariff protection) to some industrial technology policies (e.g. research and development (R&D) and innovation incentives).

Theory and normative issues

Competition policy, in general, and antitrust, in particular, may be viewed as part of a regulatory framework, involving some kind of systematic market intervention. Within that framework, let us distinguish between forms of regulation where intervention measures are continuously active – call them “active regulation” – and other forms, including antitrust, where intervention is not permanent but only triggered by some specific cause, whether structural or behavioral, and whose means are less pro-active – call it “reactive regulation.”

For mainstream economists the *rationale* for both kinds of intervention is “market

failure.” However, from our unorthodox standpoint this is rather misleading.¹ Markets do not fail because they stand far from the “ideal” of perfect competition, not least because the static model of perfect competition is in no way a theoretical or normative ideal, as Schumpeter showed long ago. The basic reason to support public intervention concerning competition issues through active and reactive regulation is not because markets do not work properly, but because they can and *should*, from a normative standpoint, operate under a permanent pressure to reduce costs and prices and foster innovative efforts. Instead of simply replacing markets with direct state intervention, which does not work in many instances, competition policies ought to be seen as the set of measures providing the incentives as well as the “sticks” fostering innovative behaviors. In order to reach this target the simple guideline “the higher the number of competitors, the better,” usually will not do. Indeed, we at least know from Schumpeter that such “dynamic competition” can be achieved even in oligopolistic industries – indeed *mostly* in such industries.

From this perspective, one can say that laissez faire economists support free markets for the wrong reasons. They idealize perfect competition for its supposed spontaneous ability to maximize static allocative efficiency, while markets should be seen, as Schumpeter taught us, as powerful mechanisms – under appropriate incentives and regulation – to foster economic progress through innovation. The sort of efficiency that is entailed by this process clearly cannot be reduced to the static allocative one, but instead should be understood, from an evolutionary perspective, as a type of dynamic efficiency where *selection* plays a dominant role.²

In turn, such a criterion has two sides, namely, first, the conduciveness of a particular competitive configuration for “virtuous” corporate behaviors – in terms of technological and organizational innovation and imitation; second, the degrees of *selective* efficiency – in terms of the efficiency and speed by which they “weed out” far-from-the frontier technologies and organizational arrangements.

Under such a framework, it becomes easier to acknowledge that competition policy and industrial policy may be brought together on essentially the same normative grounds.

Competition policy as part of an industrial policy

Competition policy may conflict – and often does – with two other typical public policies: trade policy and industrial policy.

Given that trade policy is designed to protect local industries against foreign competition, not to protect local competition or consumers, some degree of conflict is inevitable and the problem is simply how to manage it when it occurs, as long as trade policy is a permanent national policy.

As to industrial policy, conflicts with competition policies, we shall argue, seem to be in some degree overestimated, as competition policy could (and should) be seen as part of, instead of as opposed to, industrial policy, at least in the case of industrialized economies – including newly industrialized countries (NICs).³ When one takes industrial policies to be “the aggregate of policies that directly and indirectly affect industrial performance through its impact on microeconomic variables” (Jorde and Teece, 1997, p. 12), they include competition policies. Granted that, however, important tradeoffs and complementarity requirements might emerge between competition policies and policies aimed at other objectives – including technological learning and strengthening of the domestic industrial base. Moreover, as we shall argue below, such complementarities and tradeoffs are likely to vary according to the degrees of industrialization and the distance from the international frontier of the various countries.

A wider concept of industrial policy is required if one intends to bring into its frame strategic attempts to influence the transformation of an existing industrial structure into a more

dynamic and innovative one through learning and capability accumulation, as recorded in most cases of successful industrial and technological catch up. Competition policy should be seen, at the very least, as a necessary complement to sectoral industrial policies. But it is arguably more than that – it is an integral *part* of it.

In short, competitive pressures on individual firms must be strong enough not only to dissipate monopolistic rents but, more importantly, to induce firms to adopt active competitive strategies instead of just profiting from the incentives provided by industrial and technology policies.

A first angle from which to tackle the possible conflict between competition policies and other industrial policies is in terms of the “Schumpeterian tradeoffs” discussed in Nelson and Winter (1982), i.e. the widely accepted fact that “aspects of the structure that are conducive to innovation may be detrimental to the achievement of Pareto optimality in the short run” (p. 329). Note that such a tradeoff is particularly relevant for industrial development – our main concern here – under at least two aspects.

First, firms in industrializing economies usually face higher constraints (from several sources) that hinder efforts to innovate, to learn or to keep pace with technical progress, making them more sensitive to all measures curtailing their margins and market shares. Second, and more importantly, the efforts to increase innovative capabilities of local firms usually require protracted learning, which in turn may involve some degrees of protection against competition, especially from potential foreign entrants.

Yet market structures and innovation are related in complex ways, and there is probably no straightforward solution to this tradeoff. Not only it is theoretically doubtful whether an “optimal” tradeoff level could ever be devised, but any policy designed to substantially change a given industry structure in a predetermined way is likely to fail, since structure is essentially

endogenous to any one regime of Schumpeterian competition (Nelson and Winter, 1982, p. 333).

In this respect, the way antitrust policy is practiced today in many developed countries, though clearly not sufficient in itself to promote competition, steps on relatively safe ground when it limits itself to structural intervention aimed at preventing “artificial” forms of concentration (e.g. through mergers and acquisitions) from gathering market power and monopoly rents with few or no efficiency gains, as well as repressing anticompetitive behaviors. Moreover, “extra profits” are accepted and usually not considered illegal when resulting from innovation-driven competition. Curiously, since the old rigid structuralist approach ceased to rule in antitrust (in the late 1980s), not only neoclassical micro theory, but even the “Schumpeterian tradeoff” have been embodied, to some extent, in antitrust laws and practices (although the latter only implicitly).

As a result, in the last two decades or so, mechanistic measures of industry concentration and market dominance as such have been losing their former prominent place in antitrust policies in favor of a more flexible, analytically-oriented view of efficiency-enhancing mergers and acquisitions and a greater concern towards anticompetitive behavior.

Different tradeoffs and complementarity requirements characterize different stages of development. As already mentioned, history tells a general story whereby economies in their early stages of industrialization require significant measures of “infant industry” protection. Indeed, it will be argued below, competition policies tend to appear much later along the development process. Here, our primary concern, however, is the relationship between competition policies and other industrial policies in countries which are still in the process of technological catching-up but already have a significant industrial base, say like Brazil today or Japan half a century ago.⁴

As discussed at length in other chapters of this volume, industrial policies, *in a narrow*

sense, refer to that subset of economic policies seeking to provide special advantages or assistance to particular industries or firms (see also McFetridge 1985). It has also historically been the rule throughout the 18th, 19th and 20th centuries that those which were “newly industrialized” catching-up economies – including the United States, Germany and Japan – were driven by the objective of fostering production upgrades and innovative learning by domestic firms. Above some degree of industrialization, however, in order to be effective “supply side” policies aimed at increasing capabilities and knowledge accumulation also require some (variable) degree of market selection and regulatory measures curbing rent-seeking behaviors. Let us consider how various countries have dealt with such requirements.

Industrial policy and competition policy: some lessons from international experience

Begin by noticing that it is hard to find a single developed country that has adopted strictly one single policy direction (either “pro-competition” or discretionary sectoral policies) to the complete exclusion of the other in its development. Industrial development paths, at least from a minimum level of industrialization already achieved, are consistently characterized by some degree of interaction (on different levels) between competition and industrial policies, although this relationship changes over time.

In this study a few countries have been selected with the objective of identifying different patterns of interaction between the two sets of policies, presenting experiences both from developed and developing countries. As expected, differences in competition and industrial policies are observed both across time and across countries, illustrating divergences in policy objectives underlying their application and enforcement.

Moreover, the frameworks in which competition and industrial policies, in the narrow

sense, interact in developed and developing countries are rather contrasting and so are the windows of observation of such interactions. At one extreme – in the case of the U.S. – one has the whole period since the Sherman Act to observe the unfolding of competition and industrial policies (albeit often not named in that way). Conversely, most of the countries that industrialized after World War II did not have competition policies until the 1990s.⁵ And we know that the lag between introduction of the policies, their implementation and whatever possible economic effect is quite long. In most developing countries neither the industrialization nor the introduction of competition have been completed, so it is probably too soon to draw conclusions from their preliminary results.⁶

Industrial and competition policies in developed countries (U.S. and Europe): a brief account

The United States is the best known example of a country approaching the technological frontier at the time when it adopted antitrust legislation as a prominent part of its national economic policy framework. U.S. antitrust laws have been a centerpiece of the country's competition policy for over a century, often taken as a benchmark for assessing policies in other countries.

Since the Sherman Act was passed in 1890, and the current institutional structure was created in 1914, the responsibility for U.S. competition policy has been maintained by two federal antitrust agencies: the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division, each with its own functions: the latter with criminal enforcement power (price fixing and cartel behavior) and an active role in shaping competition policy, and the former more focused on structural issues and their implications for consumers.⁷

We have already mentioned the changes in the general philosophy which antitrust policies underwent. For a good part of the 20th century the focus was on quantitative structural indicators

such as market shares and degrees of concentration taken to suggest the possibility of exercising market power. More recently, starting in the 1980s, such a perspective has shifted toward a much greater emphasis on actual anti-competitive practices and less on structural indicators.

The U.S. convention on competition policy, however, did not prevent the active implementation of industrial policies from time to time – particularly in the process of building new industries during depressions, when economic development was considered more important than competition in some particular markets and placed under the broad heading of “national security.”⁸

Even nowadays, although the U.S. does not have a coherent, comprehensive industrial policy, the government consistently pursues many specific industrial policies that, together, deeply influence industry evolution and industrial performance. Indeed, the U.S. has a long history of industrial policy, witnessed by the extent to which the state has, in various ways, supported the growth, development, and continuing viability of agriculture and of the aircraft, airline, railroad, automotive, shipping, semiconductors, oil, and banking industries.

Europe has in common with the U.S. the fact that competition policies came much later than the industrialization phase, but national experiences significantly differ. So, for example, in some cases like France the state has a long history of direct intervention in the economy both as a producer and an indicative planner, but competition policies did not play a major role.⁹ On the other hand, German competition policies, at least since World War II, look much more like the U.S. ones. The birth of the European Community, and then the European Union, has brought a good part of competition policies – together with the power to legislate and with the enforcing institutions – under the authority of the European Commission, while leaving to national authorities the regulation of national markets.¹⁰ European competition policy was originally built primarily to curb possible distortions in intra-European trade and foster the emergence of a single

European market. It has fully taken on board the repression of anti-competitive practices (a famous example is the EU vs. Microsoft case) and also expanded its reach into “industrial policy” domains such as state subsidies to firms and the “fairness” of access to financial resources.

The relationship between such an “expansive” notion of competition policies and industrial policies in a more traditional sense is a good example of both the possible complementarities and the possible tensions. So, for example, the exercise of competition policies has not interfered with the policies (explicit or implicit) which led to the development of the aeronautical “European champion” Airbus. On the other hand the “expansive” interpretation – involving also control over subsidies, etc. – makes discretionary forms of policy measures more difficult to implement.

Industrial and competition policies in Asia

The first Asian case to be examined is Japan. This country offers an interesting basis for analysis both because of its successful industrialization and growth strategy as well as for its policy package. Then, the Korean situation will be briefly examined, along with the infant Chinese and Indian competition policies.

These four Asian examples show distinct patterns of interaction between industrial and competition policies which seem closely associated with the level of development. Since World War II, Japan has been characterized by an emphasis on industrial policy associated with the existence of antitrust rules and a competition policy that comprised non-official exceptions for some industries. Today, however, the country seems to have chosen a setup based on a more balanced coexistence of industrial and competition policies. Yet during earlier stages of development no competition policies were in place, while industrial policies date back more than

a century. Korea seems to be going through a changing process headed towards the Japanese model. China and India, on the other hand, have shown a predominance of industrial policies based on direct state intervention, with some recent competition concerns.

Japan

Japan had systematic industrial policies beginning with its early industrializing effort after the Meiji restoration in the late 19th century. All the way through most of the post-war years, the chief goal of Japan's economic policy has been development and growth, with competition sometimes seen as inconsistent with that goal.

Indeed, although Japan has had a competition law since 1947 (Act Concerning Prohibition of Private Monopolization of Fair Trade, known as the Anti-Monopoly Act – AMA) throughout the 1960s, 70s, and 80s, its competition policy was largely subordinated to policies promoting industrial and trade objectives, and important sectors of the Japanese economy were dominated by officially accepted cartels (see also Evenett 2005).

At the same time, the systematic manipulation of market and industry structures and the use of “administrative guidance” with respect to firms and whole industries has always been done with measures which prevented rent-seeking behaviors (more on this in Amsden and Sing, 1994).

Things have changed considerably in the last 15-20 years. Mostly in response to international pressure – particularly in trade disputes with the U.S. – Japan implemented several measures to strengthen its competition law and enforcement capabilities, adopting explicit commitments to increase the resources and the visibility of competition enforcement.^{11, 12} The Antimonopoly Law now looks rather similar to the Western model, and the Fair Trade Commission has improved its enforcement record.

Industrial policies also significantly changed, evolving from discretionary promotion of sectors and firms to more “competition friendly” innovation policies. Even now, however, though there is no general exemption from the competition law, the latter cannot effectively reach most government actions, since competition authorities only deal with voluntary anti-competitive behaviors. So, if a specific statute governs an industry, conduct in accordance with this statute or an order properly issued under it does not violate the law.

Korea

The Korean case, both for industrial and competition policies, is highly similar to the Japanese one. Korea had a strong, active industrial policy due to government encouragement and provision of direct incentives for the growth of large corporations, the *chaebol*. Since the national goal was fast economic growth, industrial and trade policies targeted towards maximizing local firms’ investment and market share in the global market took priority over other policies. Hence, even though Korea has had for a considerable time an official competition policy, as well as competition laws, as a result of its lax enforcement the country has reached one of the highest levels of industrial concentration in the world.

Only in the early 1980s did competition policies gain relevance. The current antimonopoly law is the 1980 Monopoly Regulation and Fair Trade Act (MRFTA), and the responsibility for its enforcement was given to a new agency, the Korea Fair Trade Commission (KFTC), created within the Economic Planning Board.¹³ Even though they were designed to “mark a significant departure from the tradition of a government-led economy to a market economy based on private initiative and competition,” the continuing price control practices mean that implicit or explicit forms of price collusion remain routine practice.^{14, 15}

At the same time, cartels are still tolerated and exceptions to the competition laws and regulations continue to be current practices in Korea (Wise 2003). In addition, several aspects of Korean competition policy are designed not to promote competition, but to protect the interests of small and medium-sized businesses. Furthermore, while in principle the MRFTA applies to all industries, and exceptions for a few industries were abolished in 1999, some cartels remain protected by particular statutes.¹⁶

In 2003 the Korean government made a new attempt to enforce competition by laying out a “Three-Year Market Reform Roadmap” as a proposal for a more transparent market economy. In order to help the implementation of the roadmap, the MRFTA and its Enforcement Decree were revised and entered into force on April 1, 2005, with three main objectives: (i) promotion of market competition, (ii) improvement of regulation on large business conglomerates, and (iii) strengthening of market self-regulation. The results, however, are yet to be seen.

To sum up, recent competition policies in Korea entail broad objectives – ranging from the repression of unfair commercial practices to the protection of consumer rights and the development of small and medium-sized firms, but we are still at an early stage of implementation. The Korean experience is quite similar to the Japanese one, with a gradual introduction of pro-competition measures only beyond a rather high threshold of development.

China

Chinese policies have been characterized by high levels of intervention and the intense use of control mechanisms by the government well past the strict era of communist planning, and central planning mechanisms persist in this century.¹⁷ Industrial policies of various types continue to be formulated at the national level and implemented both at the national and local levels in

almost all sectors of the economy.¹⁸

However, China did not have a competition policy until the early 1980s, and even now the country has no anti-monopoly law; provisions controlling monopolies and anticompetitive conducts are distributed among different laws, rules and regulations.¹⁹ Nevertheless, even a superficial look at the Chinese competition policy (or the absence of it) reveals that what the government calls competition rules are, in fact, an assembly of prohibitions of illegal commercial practices which are only in some cases related to competition. There is no single bureau accountable for competition in China, and there is also no evidence of an active competition policy as defined above.²⁰

In sum, there is no interaction between industrial and competition policies, but rather a complete suppression of competition rules under a strongly interventionist industrial policy, replacing the former role of central economic planning.

India

Like China, India's government has traditionally taken a significant part in industrialization. Since the end of World War II, the government has tried to guide industrial development through centralized planning and a package of industrial policy measures; and under the "new policy" regime from the 90s onward, various industrial policies have continued to be implemented.²¹ Competition policies, though, are a much more recent phenomenon.

It is true that India has had a competition law nearly since independence – the Monopolies and Restrictive Trade Practices (MRTP) Act, meant to be implemented by the MRTP commission – but with little or no bite. In fact some commentators suggest that its role has been primarily that of a barrier to import competition.²² In 2002 a new competition bill was passed,

which created the Competition Commission of India (CCI). From an antitrust standpoint, the new law seems rather ambiguous, as it gives the commission powers to take action against restrictive trade practices (such as cartels) but at the same time expressly allows firms that “contribute to economic development” to cause “adverse effects on competition.”²³ The same argument is put forward when examining the criteria for determining whether mergers or acquisitions have adverse effects on competition.

When the 2002 Competition Act was introduced, the question of whether or not it was similar to the old law in substance (though not in form) was raised, mostly because it seemed “not-so-pro-competition.”²⁴ Since the publishing of the Competition Act was preceded by intense discussions on its form and content, it was determined that there ought to be a transition period during which the implementation of competition policy/law was done gradually.^{25, 26}

So far the interaction between competition and industrial policies in India has been very limited. As industrialization and growth have been major policy goals in the country, industrial policies have been predominant over competition policies until recently. In the 1990s this position began to soften, and trade and competition policies became part of the official economic concerns. Presently, the results of the 2002 Competition Act are not clear, but the gradualism in its implementation – combined with the law’s exceptions to anticompetitive practices – indicate that competition does not yet seem to be a priority concern for the Indian government.

Industrial and competition policies in Latin America

Although legal prohibitions of monopolies and anticompetitive conducts can be found in many Latin American countries since the late 1850s, competition policy was not a policy objective in these countries. Competition regulations were regarded only as a means to ban some anti-

commercial practices, while state monopolies and price controls were widely used as mechanisms of both industrial and macroeconomic policies. Until recently competition was not part of any structured policy, and had very little enforcement in Latin America.

From the late 1980s throughout the 90s a transition – not yet concluded – has been taking place in Latin America. As discussed at length in several other chapters of this book, its countries' main industrial policies have shifted, if at all, from import-substitution industrial policies to horizontal industrial policies compatible with the conditions imposed by the International Monetary Fund and other multilateral organisms. With that shift, competition policies have also gained significance.

In the following we will briefly examine the experiences of Brazil, Argentina, Chile and Mexico. They show, as to the interaction between competition and industrial policies, a relatively homogeneous pattern. These countries' industrial development was, until the end of the 1970s, based on the predominance of industrial policy over competition policy (nonexistent in most cases), with state direct investment, market protection and incentives to national companies. Nowadays they again appear synchronized in a regime characterized by greater emphasis on foreign and domestic market competition.

Mexico

The prohibition of monopolies and monopolistic practices introduced in Mexico in the late 1850s should not be mistaken with an effective competition law. As with virtually all Latin American NICs, Mexico's economic policy was marked by protectionist industrial policies from the end of World War II to the 1980s, and most government industrialization efforts were directed at building an industrial structure by means of import substitution. After the 1982 debt crisis,

economic policy changed as the country adopted new economic policies, including trade and financial liberalization, industrial deregulation and privatization.

Competition policy was introduced in Mexico as a follow up of the 1980s reforms. The starting point was the adoption, in 1993, of the Federal Law of Economic Competition (LFCE) and creation of the Federal Competition Commission (CFC), an agency attached to the Ministry of Economy but with technical and operational autonomy.^{27,28}

In 1995 a National Development Plan was adopted, together with sector “exceptions” to the trade and competition reforms. In addition, the “Industrial Policy and Foreign Trade Program” was created, aimed at the coordination of public and private measures onto selected industries.²⁹ The Secretariat of Economy is the government department now in charge of industrial policy in Mexico, and its declared aim is to enhance industry competitiveness under NAFTA and WTO constraints.³⁰

A particular feature of Mexican competition regulations is that the CFC is responsible for determining which economic agents may participate in any privatization procedure. Specific powers were, then, granted to the commission regarding competitive conditions in these markets.³¹

Brazil

From the end of World War II until the 1980s Brazil adopted an import substitution industrialization policy that was able to build an almost complete industrial structure. Particularly during the military governments, this strategy led to very high average growth rates. Economy was tightly controlled, through mechanisms including price and wage controls. In addition, major industrial firms either belonged to the state or were private monopolies – or at least very

concentrated oligopolies accepted or even induced by the government.

Although there had been a law concerning competition since 1962 (as well as a competition commission – the Administrative Council of Economic Law (CADE)), it mainly dealt with unfair commercial practices. As the law was not applicable either to state-controlled industries or to regulated sectors – the core of the industry, in a word – competition provisions were not enforced except for very few cases of “abusive pricing.”

In the 1980s, however [as discussed in greater detail in Castro’s chapter], Brazil went through severe macroeconomic problems. Economic policies then refocused on stabilizing the economy, with a relative neglect for industrial policies. From 1990 onward, industrial policies also switched towards a more liberal approach based mainly on horizontal measures, and a trade reform severely cut import barriers.

Price stabilization was finally achieved in 1994, but by then all attempts to implement a coordinated industrial policy had been virtually abandoned, while economic policy was limited to sustain economic stability, mostly through restrictive fiscal and monetary policies. In the same period, a new competition law was passed (n. 8.884/94). This law enhanced CADE’s powers and made it an independent agency. It also defined the forbidden anticompetitive conducts, imposing far more severe penalties than before. Additionally, two new agencies were created: the Secretariat for Economic Law (SDE) and the Secretariat of Economic Monitoring (SEAE).³² Not even regulated sectors are exempted from the competition law, and there is no practical case yet of an industrial policy explicitly conflicting with competition rules.³³

Along with changes in the competition institutional framework, adjustments were made in the whole policy framework. While traditional (sector-specific) industrial policy mechanisms were virtually abandoned, competition enhancement was seen as a tool to promote innovation and competitiveness in industry. In 1995, the Cardoso government issued a policy framework

aimed at creating “the conditions that will enable Brazilian firms to make the transition from the defensive strategies dominant in the initial phase of trade liberalization to more assertive strategies based on increased productivity and technological innovation” (MDIC 1995).³⁴

The outcomes of the policies implemented since the mid-90s are not yet clear but seem to be of limited reach. As the new regime is recent, and the majority of the policies publicized by the government were not, in fact, implemented, it is risky to try to draw sharp conclusions. Competition, however, has established itself as an important component to be considered in policy decisions regarding industry.

Argentina

Argentina, like its neighbors, adopted import substitution policies that included strong state intervention, protective barriers and subsidies. The regime lasted until the 1980s, when Argentina too went through a period of high inflation and macroeconomic instability.

There was no competition policy and no competition law until the 1980 Competition Act (n. 22.262) created the CNDC – National Commission for Competition Defense. During the 1980s, though, competition was still not regarded as relevant and the law was not seriously enforced.

In the 1990s a stabilization plan was adopted and, among other reforms, all public companies were privatized and trade and financial barriers were abandoned. In 1999, after the consolidation of the reforms and apparent price stabilization, the competition law was replaced by a new one (n. 25.156) which introduced *ex ante* review and authorization of mergers and acquisitions. This gave CNDC full jurisdiction on competition issues in every sector of the economy and created an autonomous Competition Court to replace the CNDC.

Since 2003 the CNDC reports to the Technical Co-ordination Secretariat of the Ministry of Economy and Production.³⁵ CNDC is responsible for investigating cases or conducts that might violate the law, and produces reports and recommendations to the Secretariat.³⁶ The agency also issues non-binding recommendations on competition matters to other governmental agencies.

Chile

Chile basically followed the same industrialization model as the Latin American countries discussed above. Like Mexico and Brazil, it did have a sort of competition law before the macroeconomic reforms of the 1980s, but the Chilean competition authority, before 1980, took action only in a few cases.^{37, 38} At the same time price control mechanisms were in place, and the State controlled many key industries.

During the military dictatorship that took power after 1973, a major “free market” reform program was implemented. A “Law for the Defense of Free Competition” was adopted in December 1973 as part of the military government’s program that emphasized trade liberalization, privatization, and deregulation.^{39, 40} However, not much effort was devoted to the implementation of competition policies until the end of the 1990s.⁴¹

By the time the military government was replaced by an elected civilian one, Chile had already privatized electricity, telecommunications, and steel production, and eventually the competition bodies also began playing a more important role in some infrastructural sectors. In 1999, a new law (n. 19.610) changed the competition institutions, replacing the former commissions with a new independent antitrust tribunal. In 2003, law n. 19.911 produced a new competition tribunal.

In 2005 the Ministry of Economics changed and systematized the text of the competition law (decree n. 1/05). The competition tribunal, responsible for the final decision involving competition issues, is now an independent entity with judicial powers. In addition, the competition enforcement agency has extended its powers to investigate and to intervene in every action or agreement that may affect competition.

Conversely, present industrial policy focuses mainly on promoting competitiveness rather than protecting or giving incentives to particular industries. Financial and fiscal incentives are granted for exports and investment in “horizontal” manners.

Competition policies and development: some conclusions on the historical lessons

The brief overview of the role of competition policies in developed countries and in relatively advanced developing countries highlights a variety of experiences and also a variety of combinations between competition policies and industrial policies of various kinds. Still, some lessons can be drawn.

First, the interaction between competition and industrial policies, and their possible conflict, crucially depends on the levels of development. An historical stylized fact is that a potential conflict between antitrust policy and industrial policy is mainly circumscribed to early stages of industrial development and catchup. In such contexts, industrial policy usually performs a leading role while antitrust law, if existing at all, tends not to be fully enforced or is partially replaced by surrogate mechanisms of competition. In fact, in all countries competition policies historically came much later than industrial policies aimed at industrialization.

Second, the potential conflict between competition policies and industrial policies tends to fade away in relatively advanced developing-but-industrialized countries.⁴² As briefly discussed

above, at a relatively advanced stage of industrialization there is no significant tradeoff between industrial policy – at this point focused on *competitiveness* and *technology catchup* – and competition policy. There may exist, however, differences between the policies appropriate for “frontier” countries and those suited for catching-up countries, although we suggest these differences regard mostly *industrial and technological (learning) policies* rather than competition policies (in general) and antitrust (in particular).

Competition policies themselves have significantly changed over the last quarter of a century under the influence of the transition in the U.S. from a rigid structurally-oriented static posture to a more pragmatic and, in some ways, more “Schumpeterian” one. As a result, most antitrust laws and policies nowadays involve (i) *structural* preventive controls, e.g. of merger and acquisitions, and (ii) *conduct* repressive controls of horizontal and vertical anti-competitive strategies and behaviors. Simultaneously, the so-called antitrust “efficiency defenses” are increasingly becoming accepted worldwide, as they already are to a good extent in the U.S. Arguments in court are largely supported by technical tools from economic analysis rather than considerations and commonplace beliefs, per se. More specifically, the possible *efficiency enhancing* effects of a merger or of a strategy tend to be carefully analyzed and balanced against the possible welfare and/or competition losses. As Porter (1990) put it, “when faced with tradeoffs, we should weight progressiveness higher than static efficiency or a snapshot of price-cost margins, because innovativeness is by far the most important source of growth and welfare, greatly outweighing price-cost margins ... and even static efficiency” (pp. 662-4). In turn, under the efficiency enhancing effects – for example in the case of mergers – they not only include the usual static efficiency gains, such as cost-reducing scale effects, but also pro-innovative effects stemming from asset complementarities and R&D risk sharing.

However, some other concerns are found in the literature which appear not to be covered

by current antitrust doctrine and practices, and could therefore possibly require specific changes in competition policies for developing economies. One of them is the idea of a tradeoff between productivity growth, profitability and investment, on the one hand, and competition, on the other, which would lead to “optimal” levels of competition – especially for developing countries in need of fast economic growth – below the maximum, as opposed to the conventional view of as much competition as possibly being an end in itself.⁴³

The concept of a higher or lower “degree” of competition, however, seems to have been caught in the same static trap that we are trying to avoid. Where is to be found a benchmark for maximum competition – would it be perfect competition? And how is its degree to be assessed – would a lower one correspond to higher market concentration, achieved through permissive antitrust rules? If we take a dynamic concept of competition, i.e. a Schumpeterian view, as in section 1 above, then higher competition should mean higher pressure on several competitive attributes, especially the innovative drive, no matter the degree of market concentration; in this sense there *cannot* be such a thing as “too much competition.” Moreover, the causal link between profit rates and investment is also very doubtful, on similar grounds. If more competition implies a higher innovative drive, then it also leads *ceteris paribus* to more, not less, productivity growth, through quicker imitation and, most likely, innovation and some related additional investment. High investment rates require many conditions, not only (or necessarily) current profitability: in addition to access to external finance, market growth – which is probably related to *more* competition, not less, as already commented – is paramount. Alternatively, less competition usually implies lower pressure on competitive attributes by firms, whatever the degree of market concentration, and therefore more “accommodation” to existing market positions and possibly (although this may be difficult to generalize) to lower investment rates, at least in domestic markets.

Another concern is that specific competition policy in late industrializing countries should be devised to cope specifically with local harmful effects of mergers and acquisitions promoted by large multinational corporations, often increasing their market dominance and threatening domestic firms that are building up capabilities to compete in international markets.⁴⁴ How frequently these circumstances occur is difficult to assess empirically. In advanced NICs, relatively large local companies facing multinationals and possessing significant market power in domestic markets are far from uncommon, no matter how large their differences in terms of international market shares. Stronger empirical evidence on the real significance of such claims should be provided before major changes in antitrust rules, especially for relatively advanced developing countries, can be justified – such as removing antitrust restrictions to mergers among large local firms.⁴⁵

Final remarks

Once a dynamic view of competition is acknowledged, in which market success and profitability is related more to the innovativeness of firms and their ability to cope with ever-changing environments than to the number of competitors and to static allocative efficiency effects, industrial and competition policies are more easily seen as complementary rather than opposed to each other.

Above a certain industrialization threshold, different national experiences suggest the possibility of several viable combinations of industrial and competition policies, instead of a general and unequivocal tradeoff between them. In any case, a “stylized fact” is that such tradeoffs can be very sharp at early stages of industrialization but tends to fade away as catch-up proceeds, turning into a near complementarity. By the same token, such tradeoffs tend to be

much less common at present in relatively advanced NICs than in their earlier industrialization stages.

It is too early to assess the effects of the current “quasi Schumpeterian” competition policies, even in frontier countries, and more so in “advanced NICs” where they have often been introduced – as we saw in the foregoing section – only very recently. What one can say is that a priori such competition policies do not seem to entail systematic tradeoffs with technological and industrial policies. Certainly, there are quite a few historical cases when the objective of creating “national champions” contrasted with any standard competition policy prescription. The development of many Japanese and later Korean industries are good cases in point. However, the success of these experiences was also due to the fact that quasi-monopolistic or oligopolistic domestic firms were forced, quite early on, to compete fiercely on the international markets.

With all the foregoing caveat in mind, the bottom line message of this essay is that competition policies of various kinds – including antitrust policies – do have an important role to play also in advanced industrializing countries (as opposed to countries at an early stage of industrialization). Of course they cannot come alone: other policies aimed at strengthening the technological capabilities and competitiveness of domestic firms are of paramount importance. But pro-competition provisions should be viewed as a permanent “Schumpeterian stick” discouraging sheer rent-seeking behaviors and reinforcing the competitive drive of the local economic environment.

Notes

- ¹ See Cimoli et al. in this volume.
- ² This could be seen as one of the normative counterparts of Nelson & Winter's (1982) classic evolutionary perspective. Briefly, a *selective* efficiency could be defined as a measure of the extent to which a given market, as a selective environment, effectively induces an economic *evolution* along an innovative trajectory. Although there is no room here to discuss it in detail, the basic idea is that *selection* is, in principle, what markets can do best, provided some competition policy is not absent.
- ³ This is clearly not true for those economies – outside the scope of our discussion – still in the early stages of industrial development, which are in need of some kind of significant infant industry protection and where such conflicts might possibly emerge in the case of a competition policy being fully adopted in said early stages. See also below.
- ⁴ On the latter cf. Jacquemin (1987) and Johnson (1995), among others.
- ⁵ Their introduction has often been part of the International Monetary Fund or World Bank conditionalities, which pushed most developing economies to pass competition statutes over the last 10-15 years. According to Singh (2002), until 1990 only 16 developing countries had formal competition policies. During the 1990s, under pressure and with the technical assistance from international financial institutions and the World Trade Organization, 50 countries have completed their competition legislation, and another 27 are in the process of doing so.
- ⁶ According to Scherer (1994), it takes about 10 years for countries to acquire the necessary expertise and experience to implement competition rules effectively. Some experiences shown here have just now completed this period, as others (the Indian one, for instance) have just been implemented. Therefore, there is plenty of information about policy designs and very little information about policy implementation on developing countries.
- ⁷ See Foer & Lande (1999).
- ⁸ The National Industrial Recovery Act, for instance, was central to the New Deal recovery effort. It was an attempt to promote economic stability by means of an integrated regulatory framework governing production and pricing across sectors. Antitrust was largely eclipsed during this period.
- ⁹ See Cohen & Pisani-Ferry (2002).
- ¹⁰ So no attempt is made to interfere with national competition policies as long as they relate only to domestic competition and do not have “an appreciable impact on actual or potential” trade between EU member states (Lianos, 2002).
- ¹¹ The perceived laxity of the enforcement of competition law in Japan was a major concern pursued by the U.S. in the Structural Impediments Initiative (SII) – a set of bilateral negotiations initiated in 1989 to address “outstanding obstacles to trade and investment” between the two countries.
- ¹² As a result, in 1991 the FTC made a formal cartel prosecution for the first time in 17 years.
- ¹³ The MRFTA covers all traditional issues of competition policies, like anti-competitive mergers and acquisitions, cartels, resale price maintenance, monopolization, attempts to monopolize, and exclusive transactions. In addition, the law addresses unfair trade practices, as well as undue subsidies, debt guarantees, and equity investment among affiliates of large business groups. Available at the Korea Fair Trade Commission: <http://www.ftc.go.kr/eng/laws/statutes.php>
- ¹⁴ Available at the Korea Fair Trade Commission: <http://www.ftc.go.kr/eng/>
- ¹⁵ According to Wise (1993), the government paid special attention to prices in concentrated industries, where market leaders were to report price changes in advance – pursuant to informal administrative guidance. The Economic Planning Board monitored prices until 1993 and reportedly used the process to stabilize prices.
- ¹⁶ In 1999, the Omnibus Cartel Repeal Act eliminated the statutory authority for 20 cartels that were exempted from the KFTC actions, but although some of these were effective immediately, others will be phased in over a period of several years (Wise 2003).
- ¹⁷ See Xiao Juan (2002) and Xiaoye (2002).
- ¹⁸ See Lui (2005) and the chapter by Dahlman in this volume.
- ¹⁹ The most important are the 1980 Regulations on Development and Protection of Competition, the 1993 Unfair Competition Law and the 1998 Price Law (Lin 2002).
- ²⁰ According to Xiaoye (2002), the Chinese government has been discussing a Monopoly Act for years now, even though there is no consensus about how to introduce further competition.
- ²¹ See Sharma, Jansson, and Saqib (1991) and the chapters by Singh and by Dahlman in this volume.

22 Bhattacharjea (2003).

23 Chakravarthy (2004).

24 *Ibid.*

25 Those discussions included the topic of the protections to the domestic industry as well as the relationship between industrial policy, competition policy, and the economic development objectives.

26 The Indian government decided that the Competition Act would be introduced in phases: during its first year (2003), the Competition Commission would carry out only competition advocacy functions (and the old competition law would remain effective); on the second year some provisions would become effective, and that process would continue until all the Competition Act's provisions became effective.

27 It should be noted, however, that although the Competition Law was published in 1992, its rules for implementation were only introduced in 1998.

28 Available at the CFC: <http://www.cfc.gob.mx/>

29 Available at the Secretariat of Commerce and Industrial Promotion: <http://www.secofi-siem.gob.mx/portalsiem/>

30 Industrial policy in Mexico has the constraint not to conflict with the competition policy objectives acknowledged in the LFCE, namely, the protection of the competitive process and of free market access by preventing monopolies, monopolistic practices, etc. Available at:

<http://www.cfc.gob.mx/contenedor.asp?P=Results.asp?txtDir=http://xeon2/cfc01/Documentos/>

31 In regulated infrastructure sectors, for example, a favorable opinion from the commission is necessary for those interested in concessions or licenses issued by regulators. The commission can also determine whether or not the regulators may impose price regulations and access controls (as well as defining if and when, due to market changes, effective competition may be restored and the regulatory controls ended) and address possible competitive effects of proposed changes to federal policies or new laws proposed by the government.

32 The SDE is an agency of the Ministry of Justice responsible for the preliminary investigations and procedures before submitting cases to CADE, which take final decisions in all competition matters, and SEAE is an agency of the Ministry of Economics that assists SDE's investigations in economic issues. Further information on the Brazilian Competition System can be found in the CADE's website: <http://www.cade.gov.br/>

33 In cases of anticompetitive conduct in regulated sectors, the respective specific agency contributes technical opinions to the investigations.

34 From the document 'Industrial, Technological and External Trade Policy.' Interestingly, the present government – that so strongly opposed to the former one's proposals – published a similar document entitled 'Guidelines of Industrial, Technological and External Trade Policy' in November 2003. Both documents are available at <http://www.mdic.gov.br>. See also Melo (2001).

35 See the CNCD website: <http://www.mecon.gov.ar/cndc/home.htm>.

36 The Secretariat takes the final decisions in competition matters, but according to the CNDC website, and their final decisions regularly follow CNDC's recommendations. On 17 August 2005 the Argentinean Government submitted to the National Congress a draft bill for the amendment of the Competition Law, under which the secretariat of the Ministry of Economy will have a veto right over economic concentrations that require prior approval. Available at: <http://competition.practicallaw.com/jsp/multiJurisUpdates.jsp>

37 Dating from 1959, Law n. 13.305 ruled on several subjects, not only competition.

38 According to Winslow (2004), from 1963 to 1972 the agency had only seven cases, all minor.

39 Decree Law n. 211 of 1973, modified by Law n. 19.610 from 1999.

40 Competition policy was given little importance during the early stage of the privatization program, but so were the former industrial policies.

41 Winslow (2004).

42 A somewhat similar distinction among developing countries is suggested by Singh and Dhumale (1999) where "advanced NICs" are clearly distinguished from less developed economies, although an equally sharp distinction is not made with respect to the appropriate competition policies to follow, as suggested here.

43 Singh (2002), p. 16; also Amsden & Singh (1994).

44 Singh (2002), pp. 12-15; also Singh & Dhumale (1999), p. 5.

45 Singh (2002), p. 20.

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