

Competition policy in troubled times?

Martin Lodge argues that competition as a policy objective requires renewed consideration

Over the past three decades, the primacy of competition and market-based ideas has been at the heart of public policy. More recently, this unquestioned status of competition has been shaken. For some, the c-word evokes images of a misplaced trust in market-type mechanisms. Whether it is questions over private finance initiatives, incomprehensible contractual arrangements, highly diffused responsibility (avoidance), or the emergence of new technological giants, the world of competition and regulation is widely seen as requiring a different approach. For others, the c-word's successful dominance is under threat, putting major achievements in policy since the 1970s at risk. Accordingly, great apprehension is being expressed about the potential dangers lurking outside the competition policy community.

What can explain this change in policy mood? It is, after all, certainly the case that sophisticated and embedded transnational competition policy-mechanisms and communities exist. Processes of reasoning and appeal bear witness to its well established status.

However, once we start looking more closely at competition policy as a technology and as an overall policy programme, certain strains appear that indicate why the c-word may indeed be living in troubled times. Leaving Brexit-related questions aside, one question is what competition as a set of instruments actually intends to achieve. The institutional case-by-case approach shaping UK policy could be accused of lacking an overall 'philosophy'. Highlighting that competition policy seeks to enhance 'consumer welfare' might be an appealing economic concept, but it is not clear what the moral purpose of 'consumer welfare' is. Going back to ordo-liberal roots might offer some support. Accordingly, competition policy was about market fairness: to protect individuals from economic and political power concentrations so as to enable them to flourish socially and economically. It is not clear whether contemporary competition policy visualizes such a moral purpose, especially when 'fairness' is regarded as an inappropriate policy objective and needs to be 're-translated' into concerns about 'vulnerable consumers' so as to attract the attention of competition watchdogs.

Similarly, there are also questions about the role of institutions in competition policy. For some, strong and authoritative institutions are critical for policing markets, whereas others are less interested in state-based institutions overseeing markets.

Markets are also changing, requiring readjustment in understandings of vertical and horizontal mergers. Debates are ongoing whether competition law and policy has the appropriate tools (and interest) to deal with the rise of digital platforms and vertically integrated companies whose concentrated market power is difficult to assess in orthodox ways. The same applies to questions as to whether competition policy has taken the eye off the ball in view of debates regarding growing market concentration and industry profitability. These issues are disputed. However, they feed into much wider debates about the lack of responsiveness in both political and economic systems to the experience of the median citizen. It is arguably this wider dissatisfaction with the lack of responsiveness of political and economic systems that is fuelling the discontent with the c-word.

Focusing on competition policy as a programme highlights many of the sources of discontent. It suggests that the c-word spread widely without much reflection about the prerequisites of marketization and its limits. The health system in England with its emphasis on market-based mechanisms offers a case in point. Designed to incentivize organizations to compete against each other in (assumed) times of plenty, these supposedly market-type mechanisms fit poorly in times of resource constraint and capacity stretch and stand in the way of collaboration. Even in imagined times of plenty, demands for local autonomy and entrepreneurial 'innovation' would clash with principles of central government-based regulation and control. More fundamentally, competition-based mechanisms are largely seen as increasing transaction costs to the benefit of rent-seeking consultancies without actually incurring risks to private providers. The need to sustain services means that failure does not (and arguably cannot) mean 'exit'; leaving the taxpayer as ultimate lender of last resort. Similarly, there are also questions as to whether markets deliver – in view of declining service quality and lack of responsiveness to consumer needs. The idea of price 'comparison' also becomes increasingly problematic as algorithms maximize 'bespoke' differentiation and obfuscation. If the experience of the 'market' is inherently poor, competition policy enthusiasts cannot then side-step such criticism by pointing to 'competition' and 'consumer choice' while turning up their noses at (for them) sub-optimal ('irrational') consumer choices.

Furthermore, there are also signs of the over-extended application of the c-word. Public services are allegedly run as a 'market' where consumers are supposed to reign sovereign



through the exercise of 'choice'. Such abstract ideals might have some appeal for some, but fail to acknowledge differences when it comes to the type of goods that individuals are supposed to 'choose'. It also raises questions as to how 'goods' and 'services' are supposed to be evaluated, especially in areas where assessment of questions of 'price' and 'quality' is highly complex. There are differences in markets for a tin of baked beans, a package holiday, a heart valve replacement, toilet paper, or the 'purchase' of a specific education towards a degree qualification. A lack of sophistication and differentiation of understanding what kind of markets and goods one is talking about further undermines competition as an overarching policy principle.

Finally, competition as a programmatic idea also has a rather limited view of organizations. It assumes unitary actors that might be steered to behave in ways that enhance efficiency and innovative practices. However, organizations are usually oriented towards liability management. In other words, demands for more 'competition' and consumer 'choice' by providing information are usually met with blame-and-liability-avoiding responses. Such responses usually result in exactly the opposite outcomes than those intended by advocates of decentralized markets where 'discovery mechanisms' rule supreme.

Over five decades ago, Albert Hirschman noted that public policy usually moved in pendulum swings. Periods of market-based provision were replaced by more collective forms of provision – in view of the negative side-effects generated by such market-based mechanisms. Equally, a period of more collective forms of public service provision would inevitably give rise to calls for more individualized (market-based) forms of provision. We might be living in a period of a Hirschman-esque pendulum swing. In view of widespread concern about the rising power of certain types of corporations, criticism of the failings in market-based provision of public services, and

greater awareness of the transaction costs of 'choice', these are indeed troubled times for competition law and policy. Debates are not just about the appropriateness of existing approaches in view of the different kinds of companies, types of mergers and demands for state aid.

More fundamentally, what is at stake is a more thorough probing as to what kind of choice should be at the heart of different kinds of markets, about the kind of information that should govern 'choice' by individuals and what the limits of 'choice' and 'discovery' should be in economic and social life. It is about understanding what the c-word is supposed to achieve. Such probing cannot be conducted by raising the drawbridges to prevent the spread of 'mortally dangerous' ideas, but it requires an open engagement about more appropriate means of understanding the ways in which individual citizens can be supported in fully and confidently participating in economic and social life.

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