The Relationship Between Competition, Productivity, and Economic Growth: The Case of the United States[1]

Remarks of FTC Chairwoman Edith Ramirez
Peru Competition Day
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President Tassano, Dr. Jenny, thank you for inviting me to join you in celebrating competition day in Peru.[2]

Since its founding in 1991, INDECOPI has achieved a commendable record of protecting Peru's consumers from the economic harm that results from anticompetitive business practices. You have a rich history going back to the days of the famous chicken cartel case. This record has continued to the present day, as you take on cartels in the medical oxygen market and even ensuring competition in the railway market in the less-oxygenated Macchu Picchu region.

I. Competition, Productivity, and Prosperity

I think we all share an understanding of the harm that cartels and exclusionary tactics by dominant firms can cause. At the most obvious level, it costs consumers money, due to the loss of competitive pricing. The OECD in cooperation with our Mexican colleagues, documented this as well as anyone when it determined that the lack of competition in the telecommunications market alone cost the Mexican economy $129.2 billion dollars over five years (2005-2009),[3] which works out to a cost to every Mexican man, woman, and child of $1,150 over that period.

That injury, significant as it is, only scratches the surface. When competition is stunted, firms lose the incentive to innovate and become more efficient. Earlier this year, as part of his second inaugural address, President Obama said, "a free market only thrives when there are rules to ensure competition and fair play."[4] He gave voice to what we all know: competition is what makes free markets work, and that in turn is the source of productivity, innovation, competitiveness, and national prosperity.

Beginning in 1990, the McKinsey Global Institute, led by William Lewis, undertook a twelve-year study of the economic performance of thirteen nations, seeking to understand what makes some countries rich and other countries poor.[5] The study showed that levels of productivity made the difference. That, by itself, should not be surprising. But what caused the difference in productivity levels? The answer proved to be undistorted competition. Mr. Lewis says, "[m]ost

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[1] Translation of remarks delivered in Spanish.
[2] The views expressed in these remarks are my own and do not necessarily reflect the views of the Commission or any other Commissioner.
[3] ORG. OF ECON. COOPERATION & DEV., OECD REVIEW OF TELECOMMUNICATION POLICY AND REGULATION IN MEXICO 11 (2012), *available at* http://www.oecd.org/sti/broadband/50550219.pdf.
[4] Barack Obama, U.S. President, Inaugural Address (Jan. 21, 2013) (transcript available at http://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama).
[5] *See generally* WILLIAM W. LEWIS, THE POWER OF PRODUCTIVITY: WEALTH, POVERTY, AND THE THREAT OF GLOBAL STABILITY (2004).

economic analysis ends up attributing most of the differences in economic performance to differences in labor and capital markets. This conclusion is incorrect. Differences in competition in product markets are much more important."[6]

When competition is distorted, firms that are not meeting the demands of the market to produce what consumers want at competitive prices do not feel pressure to get better or get out. As a result, the entire economy becomes less competitive. Investment lags, jobs are more scarce, goods and services are more expensive, and more of what consumers spend goes to enriching monopolists instead of their own lives. You have seen many excellent examples of this here, through INDECOPI's recent attack on those who sought to cartelize the medical oxygen sector, which raises prices for the sickest.[7] This is why the guardians of our competitive system, at INDECOPI, at the Federal Trade Commission, and at over one hundred other agencies, come to work each day. Our ultimate job is to make our citizens' lives better and to reduce the footprint of want in our countries.

II. The Challenge of Anticompetitive Government Conduct

But if we focus solely on the conduct of private firms, we address only part of the problem. An easy and effective way for firms to escape the rigors of competition is to persuade governments to impose regulations that cause exactly the same effects as cartels or schemes by dominant firms to exclude competitors. Governmentally-imposed barriers to competition have proved far more durable and pernicious than private restraints. These can take several forms. Some mandate disclosure of competitively sensitive information, which can make it easier for industry rivals to collude. Regulations can also facilitate exclusion by creating barriers to entry that favor incumbent products or services, or that support one particular business model.Both kinds of regulations can lead to higher prices, less competition for non-price dimensions of competition like quality and service, and diminished incentives to innovate. They are usually beyond the reach of competition laws, and the government itself enforces the restraint.[8] This occurs in all countries, including the United States, but is particularly prevalent in countries with histories of deep state control of the economy. The ties between formerly state controlled firms and governments often remain deep.

Today, I will focus on why government inhibitions on competition are particularly troubling, why they are an attractive avenue for businesses that want protection from competition, and how we try to combat these restrictions through persuasion, when we cannot reach them through enforcement.

Let's start by looking at why firms want to persuade governments to restrict competition. Persuading the government to adopt an anticompetitive restriction is much less risky than

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[6] *Id*. at 101.
[7] INDECOPI's decision regarding the medical oxygen cartel case was issued on December 18, 2000 and is available at http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RELCLC2000/Res017-2000.pdf.
[8] *See* James C. Cooper, Paul A. Pautler & Todd J. Zywicki, *Theory and Practice of Competition Advocacy at the FTC*, 72 ANTITRUST L.J 1091, 1092, 1099–1102 (2005) (explaining, through the economic theory of regulation, why some regulations favor particular industries, and restrict competition); *see also* Susan A. Creighton, D. Bruce Hoffman, Thomas G. Krattenmaker & Ernest A. Nagata, *Cheap Exclusion*, 72 ANTITRUST L.J 975, 990–92 (arguing that abuse of governmental processes is one of the most effective ways for a firm to acquire or maintain market power).

colluding with rivals or trying to impede competition from rivals: the costs of lobbying are low; the process of lobbying is generally protected under the law; and the government even enforces the restriction. This lowers the cost of obtaining and implementing these types of restrictions and limits the ability of the competition agencies to intervene.

Now that we understand "why," I would like to spend a moment on "how" businesses may restrict competition through anticompetitive regulations. Sometimes, regulators are not fully aware of the competitive implications and consequences of their actions. In other cases, existing regulations become dated and impede entry simply because their drafters had never imagined some new product or service, such as smartphones, about which I will say more later. But the most pernicious situation occurs when regulated firms try to manipulate the regulatory process to persuade regulators to impose regulation that will hamper their rivals and entrench their own position. Some producers even cloak their requests for anticompetitive government action in terms of consumer protection when, in reality, they are trying to avoid having to compete in the market. Like INDECOPI, the FTC has responsibility for both competition and consumer protection, and our consumer protection experience helps us to appreciate the difference between a regulation that helps consumers make informed choices in a competitive marketplace and one that simply overrides or ignores their preferences.

For example, we have seen requirements that only licensed funeral directors may sell caskets to consumers. When the monks of a Benedictine monastery in Louisiana began to sell hand-made caskets directly to consumers, the board that regulates the funeral industry in Louisiana sought to shut the monks down, citing a Louisiana law that made it a crime for anyone but a state-licensed funeral director at a state-licensed funeral home to sell caskets within the state. While the state claimed the law was needed to protect consumers in times of emotional stress, which is a goal that we understand and promote through some of our own consumer protection measures, the connection between the consumer protection goal and the law was never clear. Indeed, a federal court concluded that "the sole reason for these laws is the economic protection of the funeral industry." We intervened with an amicus curiae brief when the state tried to argue that the state law was consistent with the FTC's own consumer protection measures.[9]

III. A History of Lessons Learned the Hard Way

My own country's economic history is replete with examples of anticompetitive schemes masquerading as beneficent government regulation.

The transportation industry is a good example. The railroad industry had long been regulated, at first to protect the interest of farmers, shippers, and passengers. Eventually, it seemed to be more concerned with protecting the interests of the railroads themselves. As our highway system improved and trucking emerged as a viable competitor to the railroads, the trucking industry was regulated as well, largely to protect the railroads from competition from trucks. Rates and routes were fixed, so for example, if a trucking company held a route from New York to Florida and another from Florida to Chicago, it could haul freight from New York to Chicago only via

[9] *See* Press Release, Fed. Trade Comm'n, FTC Files Amicus Brief in U.S. Court of Appeals for the Fifth Circuit in Saint Joseph Abbey v. Castille (Dec. 27, 2011), *available at* http://www.ftc.gov/opa/2011/12/amicus.shtm.

Florida. The system was grossly inefficient, and the cost, which was often a significant component of the price of the goods, was ultimately paid by the consumer.[10]

Similarly, the airline industry, which claimed to need protection from harmful competition when the industry was in its infancy and airmail was carried in biplanes, persuaded Congress to enact a pervasive regulatory scheme that fixed entry, prices, and routes. Airlines could compete on the basis of food service and schedules, but very little else.[11]

These regulatory schemes proved quite durable. They stayed in place until the 1970s. At that time, the U.S. economy was not strong, and some observers suggested that excessive government regulation was partially responsible. Among these was one of my predecessors as Chairman of the FTC, Lewis Engman. In 1974, he gave a speech in which he tied some of the country's economic problems to its competition policy, specifically to burdensome federal transportation regulations. Engman discussed how regulation raised prices for air travel by limiting the entry of new air carriers and controlling the distribution of airline routes. He also noted that the trucking regulation effectively sanctioned price fixing among trucking companies. Engman then concluded that the country's lack of sound competition policy led to higher transportation costs, which in turn hurt the U.S. economy overall.[12]

Engman’s speech suggested improving competition policy as a way to address the country’s economic woes, and, during the next decade, through speeches and formal written submissions to regulatory agencies and legislative committees, the FTC aggressively pursued competition advocacy to promote deregulation of airlines, railroads, trucking, and inter-city buses.[13] The Commission’s activity was part of a broader effort to deregulate the transportation sector. Scholars later estimated that transportation deregulation improved consumer welfare by more than $50 billion annually. Eventually both industries were deregulated. Costs came down and innovative new entrants came into the market.[14]

We learned several lessons. First, a regulatory response intended to alleviate a short-term economic crisis can take decades to undo. Second, insulating our firms from competition made them inefficient and ill-prepared to cope with more efficient domestic competitors, let alone foreign competitors. According to noted Harvard economist Michael Porter, the best way to ensure that a country’s firms can become internationally competitive is through vigorous

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[10] *See generally Trucking Deregulation in the United States: Submission by the United States to the Ibero-American Competition Forum September, 2007*, FTC.GOV, http://www.ftc.gov/bc/international/docs/ibero-trucking.pdf.

[11] *See, e.g.*, Richard H. K. Vietor, *Contrived Competition: Airline Regulation and Deregulation, 1925–1988*, 64 BUS. HIST. REV. 61, 63–68 (Spring 1990) (recounting the origins of airline regulation).

[12] Lewis A. Engman, Chairman, Fed. Trade Comm’n, Address Before the 1974 Fall Conference of the Financial Analysts Federation, Detroit, Michigan (October 7, 1974) *in* 121 CONG. REC. 1656 (Jan. 28, 1975).

[13] *See* Cooper, Pautler & Zywicki, *supra* note 8, at 1091–1099 (recounting the FTC’s new approach to competition advocacy activities since the 70’s, following Chairman Engman’s influence). A list of the FTC’s advocacy filings is available at http://www.ftc.gov/opp/advocacy_date.shtm.

[14] ROBERT CRANDALL & JERRY ELLIG, ECONOMIC DEREGULATION AND CUSTOMER CHOICE 2 (1997).

domestic competition.[15] And third, in many cases there is no institution in government with the expertise and incentives to argue for more competition other than competition agencies.

IV. The Need for Competition Advocacy

The FTC, often in cooperation with our colleagues at the Department of Justice, makes a priority of advising federal and state legislatures, other federal agencies, and courts about the likely effects of their actions on consumers and markets. Our approach centers on helping our lawmakers and regulators better understand the true costs and benefits of proposals that can restrict competition and advocating for pro-competitive policies.

Let me take a minute to explain how we go about this. We do not enjoy the formal power to weigh in on proposed legislation and regulation that restricts competition, although in some countries competition agencies do have this power. Instead, our power is the power of persuasion. Sometimes our persuasion is formal and public: when we become aware of a proposed anticompetitive law or regulation, especially at the state and local level, we consider whether participating in the regulatory or legislative process might be beneficial. In some cases, we receive an invitation to comment. We make our comments public in the hope that they will feed the debate surrounding the policy in question. Indeed, in some cases we hold public workshops to gather information and to educate the public about the regulatory issues, using our authority to study most businesses and industries in the economy and to report our findings, and suggestion legislation, to both our Congress and the public.[16]

In other cases, we work less formally. This is most effective when regulators do not fully understand the impact of competition or when regulation has become outmoded over time. In these situations, we try to build a relationship of trust in which we are seen as a credible source of expertise in harnessing the benefits of competition to help the regulator achieve its goal. Further, sometimes informal advocacy is more effective because it is less likely to lead to inter-agency political tension precisely because it is not public.

Either way, we try to pick the tool that is best suited to the problem at hand. We try to explain the impact that the regulation likely will have on competition and, ultimately, on consumer welfare. When available, we draw on our past experience and present data and studies that make the cost transparent to the decision-maker. Our strongest weapons are a strong factual record and a logical argument well supported by sound economics.

At the same time, we make no attempt to usurp the role of those who have been elected or appointed to address the regulatory problem, nor do we attempt to claim expertise that we do not have. We try to explain what the cost of the regulation will be to competition and ultimately to consumers. It is up to the responsible officials, and those to whom they are politically accountable, to decide if the policy is worth the price.

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[15] *See generally* MICHAEL E. PORTER, THE COMPETITIVE ADVANTAGE OF NATIONS (1990).

[16] *See* Tara Isa Koslov, *Competition Advocacy at the Federal Trade Commission: Recent Developments Build on Past Successes*, CPI ANTITRUST CHRONICLE, 5–8 (August 2012) (recounting the FTC's advocacy efforts in general and illustrating such efforts in the IP and health care sectors). A list of the FTC's conferences and workshops is available at http://www.ftc.gov/ftc/workshops.shtm.

Let me give you two recent examples. Technology is changing the way consumers travel around town. Traditionally, one either hailed a taxi on the street or called a dispatcher to send a vehicle. Fares and safety standards typically have been regulated to various degrees by local regulatory agencies, such as taxi commissions. These regulatory agencies are critically important to the well-being of incumbent service providers who, over the years, have frequently come to have a strong influence over them.

In recent years, both incumbent taxi firms and new entrepreneurs have introduced new smartphone applications, sometimes also called digital dispatch services, which have enabled consumers to arrange and pay for transportation in new ways. These applications make use of smartphones and related technologies, such as GPS, to allow consumers to locate nearby vehicles, request service, and track their arrival on an electronic map. This ability to "e-hail" a vehicle can help quickly match customers with transportation. Some applications allow for new pricing methods, such as demand transparent pricing, and for consumers to use more convenient ways to pay for these services. These new technologies and methods may promote new forms of competition and a more efficient allocation of resources.

All of this has proved quite popular with consumers, but was less popular with many traditional transportation providers, which in many cases are subject to only limited competition under existing regulatory frameworks. In Colorado, for example, some incumbents sought rules before the taxi regulatory commissions that would impede or possibly preclude the use of some new smartphone applications.[17] In Washington, D.C., rules were proposed to significantly limit the types of vehicles that could be arranged using smartphone applications, and to restrict the ability of drivers to work with smartphone applications.[18]

In response to these proposals, FTC staff recently issued public comments recommending that regulators be responsive to new methods of competition, that unwarranted regulatory restrictions on competition be avoided, and that any regulations regarding applications should be no broader than necessary to address legitimate public safety and consumer protection concerns. The comments emphasized that consumers benefit from competition between traditional and new methods of delivering services.[19]

Another recent example, involves the use of competition advocacy to seek to eliminate anticompetitive regulations that made it more difficult for lower-cost health care practitioners to serve low income patients. In the United States, many rural areas face primary health care shortages. Physicians may be few and far between, and some patients may have trouble seeing a doctor or paying for a doctor's services. Traditionally, nurses and doctors have worked together in many different ways, and nurses have been especially important in delivering health care to remote or underserved people.

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[17] *See* Press Release, Fed. Trade Comm'n, In Comments to the Colorado Public Utilities Commission, FTC Staff Expresses Concerns About Proposed Motor Vehicle Transportation Rules (Mar. 7, 2013), *available at* http://www.ftc.gov/opa/2013/03/colorado.shtm.

[18] *See* Press Release, Fed. Trade Comm'n, FTC Staff Submits Comments to DC Taxicab Commission on Proposed Passenger Motor Vehicle Transportation Rules (June 12, 2013), *available at* http://www.ftc.gov/opa/2013/06/dctaxis.shtm

[19] *Id*.

In recent decades, many states have allowed nurse practitioners – nurses with advanced training – to provide basic health care services more independently. Physician groups, however, have often opposed this type of independent practice, and some of our states limit the ability of these lower-cost professionals to do some of what they have been trained to do, or to practice at all without the supervision of a physician. For example, in Louisiana, state law prohibited such nurses from practicing unless they had first obtained a written "collaborative practice" agreement with a doctor.[20] This would give doctors the opportunity to block entry by nurses who they might see as competitors, or add costs to nurses' services by demanding high fees for such agreements. Our staff wrote to the Louisiana state legislature in support of a proposed law that would remove this requirement for certain nurses who practice in medically underserved areas or treat medically underserved populations. Staff asked the legislature to carefully consider expert findings to determine whether such formal regulations are in fact necessary to assure patient safety.[21]

Our track record has been largely successful, although not perfect. In the case of the Benedictine monk casket makers, the appellate court ultimately struck down the law.[22] The APRN bill we supported in Louisiana did not pass in that session of the legislature, but we are hopeful that it will be reintroduced, successfully, in another. And we are still waiting to see if our advocacy will succeed in the case of the Colorado and Washington taxis.

These kinds of advocacy comments can have an impact in particular industries and to particular consumers, such as taxicab riders, health care consumers in Louisiana, and families of the deceased. But taken together, our individual advocacies are part of a larger effort to make our economy more productive and our consumers more prosperous.

V. Conclusion

This is why the work we do is so important. While some may think of this work as being within the realm of economists and technocrats, it touches every citizen's life every day. If we do it well, we leave a richer world for our children.

I would like to congratulate INDECOPI for over 20 years of good work, and wish you even greater success in the future.

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[20] H.B. 951, 2012 Leg., Reg. Sess. (La. 2012).

[21] *See* Fed. Trade Comm'n Staff Comment Before the Louisiana House of Representatives on the Likely Competitive Impact of Louisiana House Bill 951 Concerning Advanced Practice Registered Nurses (April 20, 2012), available at http://ftc.gov/os/2012/04/120425louisianastaffcomment.pdf; *see also* Press Release, Fed. Trade Comm'n, FTC Staff: Proposed Louisiana Law Would Expand Patient Care by Advance Practice Registered Nurses (Apr. 25, 2012), http://www.ftc.gov/opa/2012/04/louisiana.shtm.

[22] *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013).