

Theoretical and practical aspects of the competition policy for the example of CLP indicator

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Key words

Economic policy, competition, competition law and policy (CLP) indicators

Abstract

This article presents the new OECD competition law and policy (CLP) indicators which measure the strength and scope of competition regimes in 34 OECD and 15 non-OECD jurisdictions. Computing CLP indicators is a prerequisite for assessing the impact of competition regimes on economic performances and will allow for a better integration of competition law and policy in economic analysis based on policy indicators.

The CLP indicators will also allow for cross-country descriptions of certain basic features of the competition regime and the monitoring of change on these features over time, thereby providing valuable information for the conduct of OECD country reviews of economic performance and structural policy reforms.

The research methods applied are scientific literature analysis, comparative analysis, synthesis and generalization, graphical visualization.

Introduction

Competition is the most effective mechanism for regulating the market processes, which provides economic freedom undertakings and encourages them to increase their competitiveness. The level of competitiveness of enterprise, area, sector, country depends on the development and growth of the economy, increasing the innovation process, standard of living, the importance of the country in world markets, the level of economic security that determines the relevance of this theme. Scientific and theoretical aspects of competition were introduced and summarized in scientific works by A.Smith, D.Rikardo, J.Robinson, E.Chemberlen, A.Marshall (Marshall, 1993), J.Schumpeter, F.Hayek, and K.Makkonel, S.L.Bryu (McConnell and Bryu, 1992), M.Porter (Porter, 2005)

Theoretical aspects of competition

Nowadays, there exist a lot of number of interpretations of the word "competition". Economics includes three conceptual approaches to this term depending on the origin of the market and business entity interaction:

- behavioural,
- structural,
- functional.

as presented in the table 1.

Table 1. The approaches to understanding competition

Authors of definition	Definition of "competition"
A. Smith, M. Porter, A.Radyhina (behavioural approach)	- identifying peculiarities and strategies of the business entities' behaviour in a rivalry for financially efficient demand; - the business entities' motivating with the aim of providing competitiveness at the market. This approach lies in the consumers' capital thought the maximum satisfying of their needs; - neglecting the fact that competitive rivalry takes place not only for the most financially efficient demand but also for monopoly over the distribution markets, raw materials sources, achievements of scientific progress, qualified labour force, etc.
F. Edzhwarth, A. Cournot, J.Robinson, E.Chemberlain (structural approach)	- the impersonal market mechanism does not depend on the activities of certain individuals and business entities. Only the market structure and the conditions of its functioning are of primer importance; - competition is considered as mechanism of social production regulation which leads to interbranch migration of productive factors; - the competitive market is marked with numerous buyers of similar products. The volume of sales within such a market is so small that it is not able to influence the product price
Y. Schumpeter, F.Hayek (functional approach)	- competition is viewed as a factor of economic growth which

	<p>is the result of business entities' being oriented on the introduction of innovative development strategies; - to achieve - competition at the market, the business entities have to reduce expenses on production and to offer their consumers new products for satisfying the growing demand.</p>
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Source: Mokiy A.I. Strategy and processes of strengthening the spatial-structural competitiveness of region: Monograph / For ed. Mokiy A.I., Vasitsiv T.G. – Lviv: Liga Press, 2010.

As an economic notion, the term “competition” means economic contest or rivalry between separate producers of goods and services, and connected with their sale to the same consumer.

The present-day economists more often stick to another definition of competition: they do not consider it as a process of struggle and rivalry, but rather as a process of economic interaction between the business entities under certain conditions and in certain situation. That is why there arises some terminological confusion on the level of notional perception. Thus, there are the following definitions of competition in modern economic literature:

the process of economic interaction, interconnection and rivalry between the market enterprises which set the goal of providing better conditions for selling their products and satisfying the consumers' needs (Winiarski , 2006);

a larger amount of independent buyers and sellers at the market, which provides the opportunity to enter and to leave the market without any effort (Czaplewski, 2009);

a contest between the individuals, particularly in case of buying or selling something (Marshall, 1949);

economic process of interaction, relationship and struggle between acting on market companies in order to provide better opportunities to market their products to meet different customer needs and getting the highest possible profit (Mokiy, 2010, p.19);

the process of the business entities managing their competitive advantages for achieving their goals in the rivalry with other competitors; the process of satisfying objective and subjective demands within the law or in vivo;

a contest between producers for the most profitable investments segments, markets and raw materials;

economic rivalry and contest between private and collective producers and sellers of goods and services for the most favorable conditions of production and sale; for scoring the maximum profits. The proportions of social production are regulated spontaneously within the process (Economic encyclopedia, 2000, p.818);

product competitiveness is the bases of any competition. It is a system of economic, managerial, technical, normative, legal, distributional and ecological factors, which in their turn provide high quality of a product and demand for it at the market in the process of interaction (Kopystko, 2010, p.61).

Therefore, it is possible to come to the conclusion that there exist many approaches to defining economic competition that have various aspects and levels. One may distinguish the following features of the present-day competition:

it functions in the market medium;

it is the principle method of economy;

it is marked with the economic processes of interaction, interconnection and contest between the business entities;

it should contain a legal nature of competitive rivalry;

it may occur on different system levels (micro-, meso-, macro-, megalevels);

it is an indicator of economic growth, since it makes the business entities introduce innovative development strategies;

it appears between the business entities producing similar goods and services, or complementary goods;

it encourages the producers to look for their competitive advantages and to improve them further on;

it presupposes some mutual affect of the competitors;

it allows a few producers at a time to score the necessary results (to achieve success).

Definition of competition policy

Another part of the discussion was devoted to competition policy. The competition policy is an area of the activity of the state which main goal is to establish (build) competitive order (market), where businesses (entrepreneurs) compete for available (scarce) resources according to rules defined by the law. The law prohibits certain business practices to preserve the intensity of the process at specific desired level from the socio-economic point of view through their influence on market institutions, contractual

conditions and trade rules. It is worth reminding specific functions assigned to the market competition [Wrzosek 2001, p. 4] :

- 1.control (controlling distribution and flow of products and production services by preferences of customers which promotes optimizing process of meeting needs),
- 2.adjustment (ensuring smooth adjustment of products, production capacity and production techniques to changing structure of demand to enable investment savings),
- 3.allocation (promoting allocation of resources according to optimum Pareto, ensuring their reasonable use stimulating production growth or cost reduction),
- 4.regulatory (ensuring division of profit between market entities according to productivity and efficiency, which means that competition processes mitigate or eliminate division of profit according to economic power),
- 5.innovation (accelerating process of introducing and promoting innovation and technical and organizational advancement).

According to the above, efficient competition guarantees innovative pressure so much important for the international competitiveness of the economy and companies. From a philosophical point of view, this contributes to rational use of freedom and responsibility of individuals in their own interest and in the interest of the entire society. (Budziewicz-Guźlecka, 2012)

In the 90s, the most important goals of the competition policy included primarily de-monopolizing of the economy, in other words developing anti-competitive structures which remained after the previous centrally planned economy and promoting the development of competition on previously monopolized markets.

CLP indicator as a example of practical aspects of competition - assumptions

This part of article presents the new OECD competition law and policy (CLP) indicators which measure the strength and scope of competition regimes in 34 OECD and 15 non-OECD jurisdictions. Computing CLP indicators is a prerequisite for assessing the impact of competition regimes on economic performances and will allow for a better integration of competition law and policy in economic analysis based on policy indicators, such as Going for Growth. For instance, using several indicators summarizing key institutional and enforcement features of competition regimes, Buccirossi et al. (2013) find an empirical link between competition policy and total factor productivity growth. The CLP indicators will also allow for cross-country descriptions of certain basic features of the competition regime and the monitoring of change on these features over time, thereby providing valuable information for the conduct of OECD country reviews of economic performance and structural policy reforms.

Two overlapping sets of CLP indicators are constructed from the same database, a first (more aggregated) one that includes four indicators and a second (more disaggregated) one that covers twelve indicators. The indicators are set to assess the ability of a country's competition regime to achieve more competition while allowing efficiency gains. They cover areas for which there is a broad consensus on what constitutes a 'good' policy setting in that respect.

In the first - more aggregated - indicator set, three of the four indicators measure the effectiveness of competition regimes and cover the following areas:

- 1.Scope of action (the legal powers to investigate and impose sanctions on antitrust infringements and to investigate, remedy, or block mergers);
- 2.Policy on anticompetitive behaviours (approaches toward the assessment of horizontal and vertical agreements, exclusionary conducts and mergers as well as effective action taken against anticompetitive behaviours);
- 3.Probity of investigation (independence and accountability of the institutions enforcing the competition law as well as their procedural fairness).

4.The fourth indicator captures competition advocacy, i.e. activities promoting competition by other means than standard enforcement of the competition law, such as the review of regulation that might have an impact on competition. The second (more disaggregated) indicator set covers the same topics, but breaks them down into more specific policy areas. In both cases, the indicators capture both de jure and de facto information.

For the second (more disaggregated) indicator set, the information is regrouped into twelve indicators capturing more specific features of competition law and policy:

- competences,
- powers to investigate,
- powers to sanction and remedy,
- private enforcement,
- policy on horizontal agreements,

policy on vertical agreements,
 policy on mergers
 policy on exclusionary conducts,
 independence,
 accountability,
 procedural fairness,
 advocacy.

Each individual indicator in the two sets is constructed by aggregating raw information using equal weights (i.e. if an indicator is based on seven questions, each of the questions is given a weight of one-seventh). This means that each question has the same importance for the construction of the indicator. This aggregation method implies that the four indicators of the first set are not a simple average of the indicators of the second set. While the choice of equal weights is ultimately arbitrary, it has the virtue of simplicity and transparency.

CLP indicator as a example of practical aspects of competition - results

This part of article presents the main results for the more aggregated indicator set. The results indicate that competition regimes were broadly similar across countries in the policy areas covered by the indicators. The CLP indicators can potentially vary from 0 to 6, but most jurisdictions covered are scored between 0 and 2 (Table 2-3). This is because most competition regimes have adopted all or a large number of the 'good' policy settings captured by the indicators. One should note that the indicators do not perfectly reflect the complexity of these policy settings. They are based on a questionnaire whose format inevitably imposes a limited range of nuances. As a result, similar indicators values can hide important differences across competition regimes. Also, cross-country differences are often driven by a few data points. Nevertheless, the variability of the indicators is not particularly low compared to other OECD policy indicators. On average, the results suggest that OECD countries have competition policy regimes that are closer to best practice than non-OECD countries.

Table 2. Competition law and policy indicators - set 1

		SET 1						
		SCOPE ACTION	OF	POLICY ANTICOMPETITIVE BEHAVIOURS	ON	PROBITY INVESTIGATION	OF	ADVOCACY
Australia	AUS	0,29		0,00		0,15		0,43
Austria	AUT	0,14		0,00		0,90		0,86
Belgium	BEL	0,14		0,00		0,00		0,64
Brazil	BRA	0,00		0,00		0,30		1,29
Bulgaria	BGR	0,00		0,32		0,00		0,86
Canada	CAN	0,43		0,63		0,60		1,71
Chile	CHL	0,43		0,32		1,20		1,71
Colombia	COL	0,00		0,32		1,20		1,71
Czech Republic	CZE	0,14		0,00		0,00		0,43
Denmark	DNK	0,29		0,00		0,00		0,21
Egypt	EGY	2,29		2,21		2,57		1,71
Estonia	EST	0,14		0,00		0,90		0,64
Finland	FIN	0,29		0,16		0,15		0,64
France	FRA	0,00		0,00		0,00		0,64
Germany	DEU	0,00		0,00		0,30		0,86
Greece	GRC	0,14		0,16		0,00		0,64
Hungary	HUN	0,00		0,16		0,60		0,64
Iceland	ISL	0,07		0,16		0,15		1,61
India	IND	0,86		0,95		0,30		1,29
Indonesia	IDN	1,71		0,95		0,00		1,71
Ireland	IRL	0,29		0,32		0,15		0,43
Israel	ISR	0,00		0,32		1,05		4,29
Italy	ITA	0,14		0,16		0,00		0,64
Japan	JPN	0,57		1,58		0,00		0,86
Korea	KOR	0,57		0,00		0,00		0,43
Latvia	LVA	0,29		0,00		0,75		0,64
Lithuania	LTU	0,14		0,00		0,45		0,86

Luxembourg	LUX	1,00	0,63	0,60	1,71
Malta	MLT	0,29	0,63	0,15	1,07
Mexico	MEX	0,00	0,32	0,30	1,29
Netherlands	NLD	0,29	0,32	0,15	0,64
New Zealand	NZL	0,29	0,00	0,00	0,43
Norway	NOR	0,36	0,47	0,45	0,75
Peru	PER	0,29	0,32	1,80	0,86
Poland	POL	0,14	0,00	0,45	0,64
Portugal	PRT	0,14	0,00	0,00	0,86
Romania	ROU	0,00	0,00	0,15	0,64
Russia	RUS	0,29	0,00	0,30	0,00
Slovakia	SVK	0,00	0,32	0,45	1,07
Slovenia	SVN	0,29	0,16	0,90	0,64
South Africa	ZAF	1,14	0,32	1,50	0,86
Spain	ESP	0,00	0,00	0,08	0,43
Sweden	SWE	0,29	0,00	0,60	0,86
Switzerland	CHE	0,29	0,00	1,20	0,43
Turkey	TUR	0,29	0,00	0,00	0,86
Ukraine	UKR	0,29	0,95	1,80	0,43
United Kingdom	GBR	0,29	0,00	0,08	0,21
United States	USA	0,43	0,00	0,75	1,29
OECD	OECD	0,24	0,18	0,36	0,89

Source: OECD calculations.

Summary

The CLP indicators are by nature an imperfect reflection of complex policy settings. They do not describe all individual aspects of competition regimes, since they try to capture features that are common to all regimes, and ignore possible interactions across different dimensions of competition policy. In addition, restricting the indicators to policy dimensions for which there is a broad agreement among member countries as to what constitutes best practice has the downside that dimensions whose effects are more controversial, but that might still matter for growth, are left out from the dataset. This reduces the variability in the dataset and, to the extent that the omitted dimensions are important for growth, may make it more difficult to empirically establish a link with economic outcomes.

Finally, the indicators may be sensitive to the methodology used to aggregate detailed information. Consequently, the indicators should be seen as providing an approximate indication of the overall strength and scope of a competition policy regime, rather than a complete and detailed representation of its characteristics, and as such they should be interpreted with caution. Despite these limitations the indicators can be a useful tool for policy makers and practitioners. Simplifying and quantifying information provides comparable measures of various dimensions of competition law and policy, thereby contributing to international dialogue, transparency, accountability, and, ultimately, improvements in policy settings.

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Table 3. Competition law and policy indicators – set 2

	SET 2											
	Compe tences	powers to investi gate	powe rs to sancti on	private enforce ment	horiz ontal agree ments	vertical agree ments	mergers	Exclusion ary Conducts	indep enden ce	Accou ntabili tY	procedu ral fairness	Advo cacy
Australia	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,75	0,00	0,43
Austria	0,00	0,00	0,00	1,00	0,00	0,00	0,00	0,00	0,00	0,75	1,50	0,86
Belgium	0,00	0,00	0,00	1,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,64
Brazil	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,60	1,29
Bulgaria	0,00	0,00	0,00	0,00	0,43	0,00	1,00	0,00	0,00	0,00	0,00	0,86
Canada	0,00	0,00	0,00	3,00	0,00	3,00	0,00	0,00	0,00	0,00	1,20	1,71
Chile	0,00	0,00	0,60	1,00	0,00	1,50	0,00	0,00	0,00	0,00	2,40	1,71
Colombia	0,00	0,00	0,00	0,00	0,00	1,50	0,00	0,00	0,00	0,00	2,40	1,71
Czech Republic	0,00	0,00	0,00	1,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,43
Denmark	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,21
Egypt	0,00	2,00	3,00	2,00	2,57	0,00	6,00	1,20	0,00	0,00	5,14	1,71
Estonia	0,00	0,00	0,30	0,00	0,00	0,00	0,00	0,00	0,00	0,00	1,80	0,64
Finland	0,00	0,00	0,30	1,00	0,43	0,00	0,00	0,00	0,00	0,00	0,30	0,64
France	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,64
Germany	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,50	0,00	0,30	0,86
Greece	0,00	0,00	0,30	0,00	0,43	0,00	0,00	0,00	0,00	0,00	0,00	0,64
Hungary	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,60	0,50	0,00	0,90	0,64
Iceland	0,00	0,00	0,15	0,00	0,21	0,00	0,50	0,00	0,00	0,00	0,30	1,61
India	0,00	1,00	1,20	0,00	0,86	1,50	2,00	0,00	0,00	0,00	0,60	1,29
Indonesia	3,00	2,00	1,80	0,00	1,71	0,00	2,00	0,00	0,00	0,00	0,00	1,71
Ireland	0,00	0,00	0,30	1,00	0,43	0,00	0,00	0,60	0,00	0,00	0,30	0,43
Israel	0,00	0,00	0,00	0,00	0,00	0,00	0,00	1,20	0,00	0,75	1,80	4,29
Italy	0,00	0,00	0,30	0,00	0,00	0,75	0,00	0,00	0,00	0,00	0,00	0,64
Japan	0,00	0,00	1,20	0,00	1,71	1,50	0,00	2,40	0,00	0,00	0,00	0,86
Korea	0,00	0,00	0,60	2,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,43
Latvia	0,00	0,00	0,30	1,00	0,00	0,00	0,00	0,00	0,00	0,00	1,50	0,64
Lithuania	0,00	0,00	0,00	1,00	0,00	0,00	0,00	0,00	0,00	0,00	0,90	0,86
Luxembo urg	0,00	1,50	0,90	1,00	0,00	0,75	3,00	0,00	0,00	0,00	1,20	1,71
Malta	0,00	0,50	0,30	0,00	1,29	0,00	1,00	0,00	0,00	0,00	0,30	1,07
Mexico	0,00	0,00	0,00	0,00	0,86	0,00	0,00	0,00	0,00	0,00	0,60	1,29
Netherlan ds	0,00	0,00	0,30	1,00	0,00	0,75	0,00	0,60	0,00	0,75	0,00	0,64
New Zealand	0,00	1,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,43
Norway	0,00	0,00	0,75	0,00	0,21	0,75	0,50	0,60	0,00	0,00	0,90	0,75
Peru	0,00	0,00	0,60	0,00	0,00	0,00	2,00	0,00	0,00	0,00	3,60	0,86
Poland	0,00	0,00	0,30	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,90	0,64
Portugal	0,00	0,00	0,30	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,86
Romania	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,30	0,64
Russia	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,60	0,00
Slovakia	0,00	0,00	0,00	0,00	0,43	0,75	0,00	0,00	0,00	0,00	0,90	1,07
Slovenia	0,00	0,00	0,60	0,00	0,00	0,75	0,00	0,00	0,00	0,00	1,80	0,64

South Africa	0,00	1,00	1,80	0,00	0,86	0,00	0,00	0,00	0,00	0,00	3,00	0,86
Spain	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,25	0,00	0,00	0,43
Sweden	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,00	1,20	0,86
Switzerland	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,00	2,40	0,43
Turkey	0,00	0,00	0,60	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,86
Ukraine	0,00	0,00	0,00	2,00	1,71	0,00	0,00	1,20	0,00	3,00	2,40	0,43
United Kingdom	0,00	0,50	0,30	0,00	0,00	0,00	0,00	0,00	0,25	0,00	0,00	0,21
United States	1,50	1,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	1,50	1,29
OECD	0,04	0,12	0,31	0,38	0,14	0,31	0,12	0,18	0,04	0,09	0,65	0,89

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