



**National Council of Applied Economic Research**

**Australia-India Council**

**The fourth Sir John Crawford Lecture**

***Competition Matters***

**by**

**Professor Allan Fels, AO**

Dean, Australia and New Zealand School of Government  
(formerly Chairman of the Australian Competition and Consumer  
Commission)

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## Introduction

It is an honour to give the Crawford Lecture under the auspices of the Australia-India Council and hosted by the National Council of Applied Economic Research.

Sir John Crawford was a great man who contributed to Australia and the world – and especially to India – as a public servant, an economist, a researcher, and an academic leader. He had the rare combination of vision, ability to theorise and to apply concepts productively to the real world – hence his outstanding policy contributions.

It is doubly an honour to give this lecture because this is the golden jubilee – the fiftieth year – of the National Council of Applied Economic Research, an institution which has made a substantial contribution to Indian economic policy, particularly to welfare at the household level, a subject also of concern to Sir John Crawford.

The greatest interests of Sir John Crawford were in agriculture and trade. In some respects my lecture follows on from his interests. There is often a predictable sequence to economic reform. When an economy is exposed to international competition, and when its agriculture has developed to a point where other parts of the economy become a focus of policy attention, the question of the role of competition policy comes to the fore.

It is appropriate then that the Crawford Lecture should be about competition policy because India is in the throes of adopting a modern policy.

In giving the lecture I face the usual dilemma of a foreign lecturer. Do I talk about Australia? This may not be very interesting for Indians. Or do I talk about competition policy in India when my knowledge of India is limited?

Fortunately the dilemma is not too difficult. The problems caused by anticompetitive behaviour are fairly similar in most economies. The policy solutions adopted are also similar. In addition, Australia has had one of the best competition policies in the world as acknowledged by the OECD and in international ratings e.g. by the World Competitiveness Forum. Australia has also

applied competition law in a common law setting and its legal system is more similar to that of India than the legal system of the United States. Australia is also a federation. So there must be some lessons for Indians to draw from Australia's experience. But at the end of this lecture, I will raise some questions as to why Australian experience must be viewed with some caution in India.

In this lecture I aim to explain what competition policy is about by considering three case studies and drawing out their lessons rather than by simply discussing competition policy in an abstract manner. I aim to cover three points in particular:

- Competition policy needs to be comprehensive i.e. it needs to include the application of competition or antitrust law and an attack on government laws that restrict competition.
- Machinery is needed – laws, a well resourced and educated independent regulator, well educated courts.
- A culture of general public support – and therefore political support – is needed if competition law is to have an effect.

## Competition Law

Let me begin with a typical true cartel story. For twenty years two major firms dominated the Australian freight express business – which transports parcels and packages from one city to another. They had a secret agreement that assigned customers (called pets) exclusively to one or the other. They agreed not to poach pets from one another. If customers tried to switch suppliers, the competitor would quote a high price and that would usually be the end of the matter. Occasionally, however, a customer would switch supplier but then receive very bad service: urgent overnight deliveries from Melbourne to Sydney would arrive several thousand miles away in Darwin a few days later or get lost. In the jargon of the companies they were trying to “burn” customers to induce them to switch back. If burning failed the firm would try to compensate its competitor by getting rid of one of its existing customers of like size by sharply rising prices or by reducing service quality. Occasionally financial compensation was paid instead. All this was done to avoid competition and raise prices.

The Australian Competition and Consumer Commission (ACCC) successfully broke up the arrangement and with much fanfare had the firms fined about \$AUS13m.

There were occasional attempts by new competitors to enter the profitable market. However, whenever this happened, at least one of the firms would quote prices well below that of the new entrant. They often quoted prices that were well below their costs: if the variable or marginal cost of overnight delivery between Melbourne and Sydney was \$50 then they would quote at \$30. This drove most competitors out of the market. Legal action to recover damages under the competition law was eventually taken by one of the surviving competitors.

After the cartel was broken up one of the players came to the Commission and claimed that there was only room for one firm in the market. Could they merge? If so a great deal of duplication would be eliminated, cost savings would occur and the customer ultimately would benefit from lower prices. The combined firm would also have the scale to enter into overseas markets. However, from the ACCC’s

perspective, such a merger seemed anticompetitive, and would have been likely to cause higher prices. So the ACCC opposed the suggestion.

Yet as serious competition broke out the ACCC received some information from people within one of the firms which suggested that the advertised claims that packages were transported by air from one capital city to another were incorrect. The ACCC tested this by sending some packages of its own which included altimeters. On collecting the packages the altimeters showed that at no stage had the parcel been more than 300 metres above sea level indicating either that the planes tended to fly rather low or that there was misleading and deceptive conduct in breach of the consumer protection provisions of the Trade Practices Act.

Let us draw some general conclusions.

Cartels – secret agreements between competitors not to compete, to raise prices, to restrict service – are a great temptation for business. The gains can be large. The global vitamins cartel ran for nine years, raised prices by seventy five per cent and made billions around the world for the conspirators. Cartels are also hard to detect increasing the incentive to operate them. However, they do great economic harm – to business customers and consumers –, bring no offsetting economic or social benefits and are unethical. In most OECD countries it is unlawful for competitors to agree to share a market so that they do not compete against one another. It is also unlawful for them to agree on prices or to rig bids. Anticartel laws are a core component of competition law.

To cut prices in response to a new competitor is not generally unlawful. This is competition at work. However, to cut prices persistently below variable cost to eliminate a competitor is usually unlawful or “predatory”. Predatory behaviour breaches abuse of market power (or abuse of dominance) provisions of competition law. In Australia it is unlawful for a firm with a substantial degree of power in a market to take advantage of that power in order to eliminate competitors or deter them from competing where this harms competition. There is nothing wrong with being a monopoly under competition law – monopoly may be the result of a business being more efficient than its competitors. It is, however,

unlawful in most OECD countries to engage in acts of “monopolisation” or “abuse of dominance” that is to use market power illegitimately to prevent competition

e.g.:

- by systematically pricing below variable cost to destroy small players or new entrants;
- by refusing to supply where the purpose or effect is to lessen competition;
- by engaging in a range of restrictive practices such as exclusive dealing (supplying a customer on condition that it does not purchase from a competitor) where this is anticompetitive;
- by engaging in resale price maintenance (requiring a retail purchaser not to sell below a specified minimum price).

Such anticompetitive behaviour by business harms competition, efficiency, business opportunity and innovation. Such behaviour (“monopolisation” in US jargon) has been unlawful in North America since the time of Rockefeller and is still so as Mr Gates has discovered. It is, however, a field in which difficult judgements are often required: when is pricing below cost a sign of intense competition and when it is a sign of damaging anticompetitive behaviour? Up to a point, an abuse of dominance law has a powerful pro-competitive effect. Carried too far it can chill competition.

The merger proposal incident described above highlights the fact that some mergers can be anticompetitive and that this can often be their real motivation. When Australia introduced a trade practices law in 1965 it prohibited anticompetitive agreements but not mergers. This put an end to some price-fixing arrangements between competitors but they then nearly all merged, achieving the same effect as the former anticompetitive arrangements. This is one reason why merger provisions are needed in competition law – to prevent outlawed cartels from merging to become a monopoly.

Not all mergers are anticompetitive. Moreover, unlike cartels, they can bring efficiency benefits. Indeed it is possible under Australian law if a merger is anticompetitive to have it “authorised” if the applicants can demonstrate that the benefit to the public exceeds the harm. The job of the ACCC and its appeal body - The Australian Competition Tribunal - is to distinguish between those mergers between competitors which are of benefit to the public and those the claims for which are merely trumped up excuses for reducing competition in the Australian market.

Regarding the false claims about air transport, not only was this behaviour misleading and deceptive with respect to customers, it was also unfair for others in the industry who were ethical. It was a form of unfair competition. It also did not enhance the industry’s reputation. It also meant that competition did not work well: competition only works well if consumers are informed properly or at least not wrongly informed about the nature of the products or services being offered on the market. Laws about misleading and deceptive conduct, and consumer protection more generally, are best regarded as a part of competition law, and in about half of the OECD countries, including Australia, they are administered and enforced by competition regulators.

I will now bring this together with a very brief summary of the basic elements of competition law.

Competition law applies to businesses (usually including publicly owned ones) and is designed to break up cartels, anticompetitive mergers, the abuse of market power (or dominance) and misleading and deceptive conduct. It takes the form of statutory prohibition both of:

- a) a general nature e.g. all arrangements between businesses which substantially lessen competition are prohibited by law, and
- b) a specific nature e.g. price fixing arrangements between competitors are automatically prohibited, irrespective of whether they affect competition. The reason for automatic prohibition is that the arrangements are assumed nearly always to be harmful to the

economy and rarely or ever offset by any benefits to the economy. Accordingly it is considered best to ban them automatically rather than consider the economic effects of each arrangement individually before banning them. Resale price maintenance is treated similarly.

Competition law is administered and applied by an independent regulator, which has powers to investigate behaviour it believes may be unlawful.

In North America and Australia such regulators play a prosecutorial role: they collect evidence, seek to prove their case in court, and obtain court orders. In Europe the regulator itself may have power to make orders, including fines (although appeals may usually be made to a court).

Competition law can only work effectively if there are credible, adequate sanctions. Courts can impose injunctions, fines, gaol sentences, damages and other orders.

The penalties under the Trade Practices Act take the form of fines and sometimes damages can be added on. But are fines sufficient in all situations? Recently Australia decided to join quite a number of other countries in having the possibility of jail sentences for collusion on prices, market sharing and bid rigging because fines alone were an insufficient deterrent.

An interesting feature of competition law in North America and Australia is that it is also possible for individuals including individual businesses to take action themselves. They can sue for damages and injunctions (but not fines) in a court. This is a very important and powerful backup to competition law that usually works well and is likely to be adopted in Europe before long.

Some features of competition law are:

- Most often the direct beneficiaries of enforcement action under the Trade Practices Act are businesses (especially small businesses) rather than consumers. On balance most businesses gain from competition

law.

- In some areas, there is a fine line between competitive and anticompetitive behaviour. An example is when a monopolist reduces prices in response to entry by a new competitor.
- In other areas, there may be a trade off between competition and efficiency e.g. some mergers may allow the achievement of scale economies at the expense of competition.
- The treatment of monopoly has some special features. As noted, monopoly itself is not unlawful. Monopoly may, after all, result from a firm being more efficient than any other competitor or potential competitor and thereby eliminating them.
- In Australia there is no power to break up monopolies. In the United States the law goes a step further. There is power to break up a monopoly where it has actually acted anticompetitively in breach of competition law. There is, however, no power to break up a monopoly without there having been some anticompetitive behaviour.
- In competition law, there is normally no prohibition on the prices which a monopoly charges even if they are considered excessive.
- The law applies to all or nearly all forms of business. However, the millions of small businesses are generally unaffected by the law and/or are exempt when there is some possibility that a technicality might catch them. Of greater importance, however, is the fact that there is pressure from nearly every sector to gain exemptions from the law on the grounds that their circumstances are special.
- In Australia we have an interesting way of dealing with claims for exemption. If someone believes that the law should not apply to them they may apply in public to the independent regulator who holds a

public hearing before deciding whether they should have so called “authorisation” to continue to engage in anticompetitive behaviour. This is an alarming sounding exception to the competition law but in practice the regulator has been extremely strict and does not grant many authorisations.

- Anticompetitive behaviour can occur on a global scale but there is no global competition law or regulator. When a global cartel is detected, however, it is usually possible to obtain fines and damages at national levels: this is a reason why a domestic competition law is desirable. If the US, for example, uncovers a global cartel, a local regulator can often piggyback on its actions to obtain fines and damages where local harm has occurred providing there is a local law.
- A considerable administrative and legal apparatus is needed to apply competition law. It can take years to build up.
- The law may not have much relevance to some important state-owned utilities in areas such as telecommunications, public transport, energy and water. Very often these are monopolies protected by statute from entry by competitors. Being a monopoly there is no competition to collude with, to take over or to take monopolisation action against. But having a protected monopoly can be economically harmful. To deal with it requires more than the application of competition law. I shall turn to this point in the next section of the paper.
- Competition law regulates anticompetitive behaviour by businesses. It does not apply to, nor override the many actions of governments that limit competition. We shall also consider this in the next section of the paper, and the one after as well.

### **Public Utility Monopolies**

I now wish to give you a second story. This concerns the radical reforms that the State of Victoria in Australia adopted with respect to electricity. This is a story of

how government action, not just law enforcement action by a regulator, can promote (or burden) competition.

For many years Victoria had (as is common in most parts of the world) a state owned vertically integrated electricity monopoly. Every stage of production of electricity from generation to transmission and distribution belonged to one firm. It was protected from entry by other players. It was kept separate from the gas industry which was also a monopoly. It set its own prices though it was subject to political intervention on occasions.

The absence of competitive pressure led to much inefficiency. Thus the Australian Government's independent Industry Commission in a 1991 report<sup>1</sup> concluded that poor investment decisions had led to excess capacity and overstaffing. It expressed many concerns about internal efficiency including staffing levels, management and work practices and operating efficiency in general. The industry lacked innovation and customer sensitivity. In addition, prices did not reflect accurately the cost of supply. Cross subsidies between different classes of users and between urban and country users existed throughout the nation. Also tariff structures did not take into account adequately the variations in the costs of supply over the day, the week and the year.

According to the Industry Commission these inefficiencies had cost Australia very dearly, harming the standard of living and undermining the international competitiveness of Australian business for whom electricity was a key input. The Industry Commission analysis suggested that if the industry's performance was as good as international best practice and cross subsidies were eliminated, national output would expand by about \$AUS2.2 billion annually which was something like half a per cent of gross domestic product.

Victoria adopted a radical approach to reform. This was rather similar to the UK electricity reforms. (Other Australian states and territories did not go as far.) This included:

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<sup>1</sup> Industry Commission, Energy Generation and Distribution, May 1991, Australian Government Printing Service

- Permit open entry by new players.
- The promotion of Interstate competition. There was immense scope for interstate energy competition in Australia. This can have a dramatic effect on energy prices. However, until the reforms were introduced there were major restrictions on such competition both by means of agreements between states and by a policy of not allowing connections with the power industries in other states.
- There was also a substantial restructuring of the industry both horizontally and vertically. The different vertical stages of the industry were separated including generation, transmission and distribution. The belief was that if any one firm owned some generation businesses and if it owned transmission which, in Australian circumstances, is a monopoly, as is the case in many other countries, then it would have a vested interest in acting anticompetitively to prevent other competing sources of power generation to gain access to its monopoly transmission system to sell power downstream.

Having separated the industry vertically the industry was then broken up into competitive units at each horizontal level as much as possible. Accordingly, the five sources of power generation were separated into competing companies. Likewise, distribution and retail were also disaggregated into competing units. Transmission was regarded as a monopoly and not broken up. It was judged, correctly, that the costs, in terms of foregone economies of scale and scope, from horizontal and vertical disintegration were quite small and also that the costs of vertical disintegration e.g. transaction and coordination costs were also quite small and outweighed by the benefits of competition.

- A range of other measures was adopted e.g. because pure monopoly remained in transmission then some price regulation was

applied to it.

- The competition law was applied in full. This was extremely important. As I have noted, applying competition law is of little relevance to a vertically integrated monopolist. When you have a pure monopoly and no competitors there is not much point in having a competition law to deal with collusive behaviour or even monopolisation or mergers! But when deregulation applies competition law is an extremely important complement. When firms are broken up horizontally they immediately become interested in reemerging and/or in colluding. A traditional competition law prohibits anticompetitive mergers as well as collusion and it is very important to ensure that radical deregulation or restructuring of an industry works productively. In addition, in many jurisdictions around the world the full measures have fallen rather short of the radical Victorian deregulation. What has often happened is that powerful incumbent monopolies have not been broken up or only partly broken up but instead have just been opened up and exposed to competition from new entrants. If competition is to take root effectively in such circumstances it is very important to have power to protect small entrants from predatory and other anticompetitive behaviour.
- It is useful to note at this stage that if for any reason vertical integration remains then access laws are arguably necessary. A vertically integrated industry can take steps to harm competition. For example suppose that transmission is a natural monopoly and suppose that the owner of the transmission owns substantial generation facilities. It will be inclined to discriminate against the non-integrated generators thereby harming competition. If it has distribution interests, it may also discriminate against non integrated distribution. And so on. Giving non integrated generators or distributors access on non-discriminatory terms to its transmission capacity is an appropriate policy approach in these circumstances. Access laws are a big part of Australian competition law but I will not

go into details in this lecture.

- Ownership reform. Ownership reform involves as much separation as possible from the government, ideally by privatisation as happened in Victoria. Lesser options are to distance the commercial operations of a government owned business from government by commercialisation and/or corporatisation with regulation by an independent regulator rather than Ministers. There were no restrictions on foreign acquisitions and a significant part of the industry was taken over by foreign firms. The conventional wisdom in Australia is that competition law can be applied irrespective of whether a business is publicly or privately owned. I will not pursue this issue further in this lecture.
- The outcome was that Victoria benefited from substantial improvements in pricing, reduced costs, greater efficiency, more sensible investment and some winding back of cross subsidies. The industry is more dynamic and efficient these days. The removal of the cross subsidies has been controversial because the greater benefit has been for business rather than consumers since the cross subsidies were usually in favour of consumers at the expense of business. But consumers have still made considerable gains.

We can draw some further lessons about competition policy from this survey of the Victorian electricity industry. Government action, apart from the application of competition law, is typically needed to introduce competition and great efficiency into utilities. A range of measures, usually requiring legislation, government regulation and administrative actions is needed. The measures include the removal of entry barriers to new competition, the promotion of interstate competition, the horizontal and vertical disaggregation of incumbent monopolies, the use of an access law where vertical separation does not occur, and appropriate regulation of prices in areas where monopoly remains e.g. transmission. Once these measures are taken in full or in part, the application of competition law is necessary. Measures concerning foreign investment and privatisation, and concerning privatisation may also be warranted.

However, it is also arguable that privatisation is not an essential prerequisite for competition.

The reforms taken together contain some of the elements of what I call a comprehensive competition policy which goes beyond just applying the law to anticompetitive behaviour by business.

## Anticompetitive Laws

I turn now to my third story. This concerns the professions – medicine, law, accounting, architecture and many others. This is a story about how government anticompetitive laws need to be addressed as part of a comprehensive competition policy.

I cannot resist giving you a quote from George Bernard Shaw, 1911, "The Doctors Dilemma" (1911).

*"It is not the fault of our doctors that the medical service of the community, as at present provided for, is a murderous absurdity. That any sane nation, having observed that you could provide for the supply of bread by giving bakers a pecuniary interest in baking for you, should go on to give a surgeon a pecuniary interest in cutting off your leg, is enough to make one despair of political humanity.*

*And the more appalling the mutilation, the more the mutilator is paid. Scandalised voices murmur that operations are necessary. They may be. It may be necessary to hang a man or pull down a house. But we take good care not to make the hangman and the house breaker the judges of that. If we did, no neck would be safe and no man's house stable."*

Clearly there is a case for laws about medical practice.

The term "professions" embraces a wide range of services in the modern economy including: accounting, architecture, legal, medical, paramedical, engineering, perhaps estate agents and other categories which shade into skilled occupations such as electricians, plumbers, and many others. Occupational regulation is not pursued further in this paper although the issues are similar to those of the professions.

The professions account for a significant and growing share of the production of goods and services in the modern economy. Basically professional services are

provided by market means and governed by the forces of supply and demand. But in most countries they are heavily regulated with substantial direct effects on competition. Moreover, the system of regulation itself can be conducive to private anticompetitive behaviour by the professions e.g. if entry to a profession is restricted, it may make cartel behaviour worthwhile.

There are two views of professional regulation. One is that it is necessary to protect consumers from unsafe or unscrupulous practitioners and to maintain high standards<sup>2</sup>.

There is in fact a prima facie case for regulating some activities of some professions. The imbalance of information between consumer and professionals leads to the possibility of exploitation of consumers. In addition, poor professional performance can risk serious, irreversible harm to life and limb (literally in medicine).

The other view is that most of the professional regulation is anticompetitive and intended to maximise the incomes of professionals. From a competition perspective regulation affecting the professions can be analysed as follows:

- the creation of a monopoly by the exclusive reservation of work to the profession e.g. only doctors can give injections. There may be a further subdivision of exclusive work to certain categories of that profession e.g. cosmetic surgery to be done only by “cosmetic surgeons”.
- anticompetitive restrictions on entry to a profession by a licensing or accreditation arrangement or by restrictions on entry by a foreigner or by a person from another region in that country or by a corporation as opposed to an individual;

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<sup>2</sup> “Occupational Regulation”, Allan Fels, David Parker, Blair Comley and Vishal Beri, in the *Anticompetitive Impact of Regulation*, eds Guiliano Amato, Laraine L. Laudati, Edgar Elgar, 2001, pp 104 to 115

- anticompetitive regulatory restrictions on behaviour e.g. minimum prices or restricted advertising in the name of ethics.
- anticompetitive conduct by the professions e.g. price-fixing agreements, collective boycotts. In some countries these forms of behaviour may be exempt from the competition law.
- International restrictions. There can be significant international dimensions to the regulation of professions. For example, there may be restrictions on entry by foreign professionals such that they may not be recognised even though they are qualified practitioners in their own country or state. Also, in some cases, foreign organisations may not be allowed to practice. This gives rise to an important policy agenda item – issues surrounding mutual recognition of qualifications obtained in one country (or area of a country) in another part of the world (or even in the same country).

There is some truth in each of the two views of regulation. Regulation in the public interest seems necessary. Much regulation, however, is anticompetitive, captured by professional self interest and inimical to the public interest. Such regulation inflates professional fees, may cause shortages, and often limits the quality of service as well as restricting consumer choice.

There is a third view, especially applicable to medicine, also partly true. This is that governments restrict the supply of doctors to save money on the basis of the theory that, in medicine, supply creates demand at a cost to the public purse. In so restricting supply the government may of course receive support from the profession.

Since the 1990s Australia has partially deregulated the professions and applied a competition law in order to prevent private anticompetitive behaviour. This has been done by various means. The reach of the Trade Practices Act has been extended to cover the professions. The states handed over their powers to overcome some constitutional concerns that there may not be coverage under national law but only under state law. The anticompetition provisions of the Trade Practices Act were also applied to break up price fixing agreements and also

collective boycotts, e.g. doctors getting together refusing to supply a particular hospital with their services unless they received a pay increase. None of the cases raised high level ethical considerations. It was sheer naked use of market power that was at stake.

It is not enough, however, to apply competition law. It is also important to remove statutory restrictions. In Australia a mixture of statutory restrictions and private anticompetitive practices limit entry into medicine and especially into specialisation. The ACCC has investigated the colleges of medicine such as the Royal Australasian College of Surgeons to see if their selection and training processes were really designed to prevent competition, to minimise the number of surgeons and to maximise incomes. The conclusion was that the restrictions were in a significant part motivated by anticompetitive considerations. The Commission did not propose immediately to terminate the training monopoly of the colleges. Rather as a first step it made the College of Surgeons become more transparent and to be less restrictive. Also, the ACCC saw no reason why in the longer term the surgeons should have a monopoly over training and it pressed for universities to start specialist courses. This ACCC investigation took it into some conflict with the various governments which were restricting training numbers because they thought that the more doctors there were the more would be the cost to the public purse.

We can draw a few conclusions from this. A key point is that government laws can harm competition by means of anticompetitive legislation. They may create monopolies by reserving work exclusively for a profession. They may limit entry. They may mandate or permit anticompetitive behaviour. This can be seen from this brief case study of the professions.

It is important that competition law applies universally in all markets including the services and the professions. There is nothing very special about the professions that warrants non application of the law to them.

The full participation and cooperation of state and local governments is also required in a national comprehensive competition policy.

The other need is to review legislation and government actions that shield the professions from competition to determine if the protection is justified and to determine, whether it could be done in less anticompetition fashion.

More generally a systematic comprehensive national competition policy is required. This is what Australia sought to do. Heads of government – at national and state and territory level – adopted the key principles that:

- No law that restricts competition should apply unless it can be demonstrated to be in the public interest
- If it is in the public interest, ways of achieving the public benefit in less anticompetitive manner should be considered.

On this basis a systematic, comprehensive, transparent, independent set of review was conducted of hundreds of laws that restricted competition in all sectors at all levels of government was conducted, and many laws.

## **Competition Culture**

An important requirement for the serious adoption and application of natural competition policy is the existence and continual renewal of general public, political and business support for competition policy. Competition policy will only work if there is a “pro-competition” culture.

This is not easy to achieve. Competition policy challenges powerful interest groups. It is also difficult to explain its economic and social advantages. No doubt the challenge of developing a pro-competitive culture in India is especially great.

When one comes to consider the politics of competition policy there are interesting paradoxes and contradictions. Everyone, including business, wants to be supplied competitively and to sell to competitive buying markets. On the other hand, they do not want competition policy to be applied to themselves. Also, seemingly paradoxically, competition law seeks to achieve the outcome of so-called free competitive markets by means of government intervention. As a result some pro-market economists oppose it either on the grounds that the costs of intervention exceed the benefits or on doctrinaire grounds. On the other hand, many people who are not very sympathetic at all to letting markets work, let alone work competitively, support competition intervention because of a general belief that big business should be regulated. Both of these points, especially the first, point to the potential for competition policy to receive a considerable degree of public support. After all, this is the experience of the United States, Australia, and Europe.

It is often said that one way to develop a competition culture is by public advocacy by competition regulators. This is true but I want to make three points.

First, advocacy is most effective when it is linked to effective enforcement of competition law by the regulator and to actual successful deregulation by governments. It is less effective when done in the absence of or in isolation from pro-competitive government action. To take competition law, for example, it is the story of actual court cases that wins over the public. The public does not understand the meaning or effect of competition statutes when expressed in

general terms. When there is a specific case, they – and the media – become interested. The details of the actual behaviour e.g. the sordid facts of how a secret cartel was organised; the impact on the price of the particular good or service and its effect on the pockets of individual citizens; the drama of the confrontation of a regulator and leading businesses and so on are of high interest and immense educational value to the community, including the business community. And it is in individual cases that the public can see that the application of competition policy is of real, practical value to them.

Second, advocacy is in the nature of a second best policy approach. The best solution is to ensure that competition policy matters are fully considered at the relevant political level at the time that legislation is being decided. This happens at least in principle in Europe because the Competition Commissioner is present at European Union Commission meetings where policies affecting all sectors are decided. The most important form of advocacy is that which occurs when competition authorities sit at the table when governments decide competition questions rather than when they do not so participate but are simply allowed to voice their views publicly or to the real decision makers.

Third, as I may have already made clear, competition advocacy is generally most effective when:

- a) it relates to specific matters and behaviour that can be understood. That, as a rule, has a more dramatic effect on public perceptions than general exhortation.
- b) the matters can be seen to affect the public. Thus, exposure of a cartel that raises the prices of a widely consumed commodity is of greater interest than an account of an interesting legal procedure or a piece of economic theory.

## Conclusion

This paper has described three examples of restriction on competition that seem economically harmful and not otherwise justified and concluded that they support a case for a national competition policy. This is because restrictions on competition generally reduce consumer choice, cause higher prices, reduce pressure on firms to be efficient, lead to poorer service, quality and product variety as well as threaten innovation.

A national competition policy has two main elements – the first is a competition or antitrust or trade practices law to regulate anticompetitive behaviour by businesses. The second is a broader comprehensive competition law with the following elements:

- A universally applicable competition law.
- Promotion of interstate and international competition.
- Reviews and removal of all national, state and local laws that inhibit competition unjustifiably.
- Reviews of structures of publicly owned industries to consider whether they could be structured any less anticompetitively.
- An access regime.
- Price regulation of monopoly.

For such policies are to be adapted and made effective a pro-competition culture is required. This can be promoted by successful advocacy; especially by competition regulators.

How useful is the study of the Australian experience to India? At the beginning of this lecture I gave some reasons why the Australian experience was relevant. One key reason is that Australia has enjoyed considerable economic success in the last fifteen years and the OECD and many experts attribute this to its adoption of competition law and its vigorous application. However, as I noted at the beginning of the lecture, one must also exercise some caution in drawing lessons for India. First, competition law requires a considerable legal and administrative apparatus. It takes time to develop such an apparatus and an appropriate culture

of law enforcement. Accordingly, there are limitations on what India can hope to achieve quickly through the application of competition law. Second, there are some questions about the relevance of competition law to developing countries. I myself think the law is likely to be highly relevant. Cartels really rarely bring any benefit anywhere in the world. They simply create monopoly power and the opportunity to exploit users, whether they be business or consumers and remove pressure to be efficient and adaptive to consumer needs. Dealing with mergers is always a complex matter but some mergers are quite obviously anticompetitive whilst others raise no concerns. And the same may be said of the misuse of market power and the review of anticompetitive law. Finally, there seems to be a great deal of harmful anticompetitive legislation and regulation in India at national, state and local level and policies to deal with them are needed.

India has decided to have a serious modern competition law. There are also wider policies which make up some of the ingredients of a national competition policy. The challenge accordingly in coming years is not whether to have a competition law and policy but how to make it work well. In this respect there is much to learn from the experiences of many countries including Australia.