



A viable path to sound competition policy

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Mr. Matti Purasjoki, former Director General, Finnish
Competition Authority



The structure of these lectures

- ❑ The concept of competition
- ❑ The objectives of competition policy
- ❑ Supplementary objectives
- ❑ Conflicts among multiple objectives
- ❑ Interface of CP and other public policies
- ❑ Towards better regulation
- ❑ Instruments of competition policy



The structure (2)

- ❑ Simple but workable set of competition rules
- ❑ Establishing a credible Competition Authority
- ❑ A sketch for a step-by-step process for Mozambique
- ❑ Special issues



1. The concept of competition

- Competition refers to situations in which firms or sellers independently strive for buyers' patronage in order to achieve a particular business objective (sales, profits, or market share)
- Competition is rivalry between individuals, and it arises whenever two or more parties strive for something that all cannot obtain



The concept (2)

- competition can be described either in behavioral terms or as states or situations
- competition is a dynamic process, not necessarily a snapshot of a certain situation
- competition should be free from obstacles, either public or private



2. Objectives of competition policy

- fostering efficiency
 - lower prices (static efficiency)
 - better economy (dynamic efficiency)
- freedom of trade
- freedom of choice
- free access to the market
- freedom of individual action
- prevention of abuse of economic power
- maintenance of the competitive process



3. Supplementary objectives

- protection of small enterprises
- preserving the free enterprise system
- curbing inflation
- securing a balanced growth in the society



4. Conflicts among multiple objectives

- Attempts to grasp too much under the umbrella of competition policy can lead to unnecessary political compromises
 - small business vs. efficiency
 - static vs. dynamic efficiency
 - complexity of public interest
 - captivity towards political process



5. Interface of CP and other public policies (regulations)

- Governments often tend to desire for regulatory power
 - overall price regulation
 - regulation of telecom market
 - regulation of energy market
 - regulation of foreign trade
- At large, regulation can seriously harm competition



6. Towards better regulation

- If we take both static and dynamic view of a sector into account, it seems advisable to:
 - Where the need for both economic and access regulation is expected to be temporary and the main task is to introduce competition, confide both functions to the general competition agency
 - When economic regulation is expected to be permanently required (natural monopolies as example), these tasks could be confided to the sector-specific regulator



7. Instruments of competition policy

- There are two sets of ways how to organize competition law and policy
 - behavioral vs. structural instruments
 - abuse/control vs. prohibition principle
- behavioral instruments are more "demanding", structural instruments need lot of political support
- abuse principle is a good starting point in order to give guidance to the business community about goals of competition policy



8. Simple but workable set of competition rules



8.1. Cartels

- Cartels are agreements (or collusive behavior) among competitors to refrain from using certain types of competition measures or to divide markets
 - price, other terms of trade, discounts, quality etc. etc.
 - bid rigging
- There is unanimous belief that hard core cartels are nothing but harmful for the society
- The cartels can be banned bluntly or treated as abuse



8.2. Vertical restraints

- restraints in the distribution channel
- less harmful to competition than horizontal restraints
- intra vs. inter brand competition
- the point is: how to cope with foreclosure
- keep the markets open!



8.3. Abuse of market power

- control of abuse of dominant market position is the "art" of competition policy
 - the difficulty of market definition
 - product market/geographical market
 - the difficulty of assessing abuse
 - monopoly prising/predatory prising
 - bundling
 - discrimination



8.4. Merger control

- the aim is to prevent creation of dominance or strengthening of dominance
- structural type of policy
- a system of regulation based on notifications
- ban or remedies?



9. Establishing a Credible Competition Authority



9.1 The position within the public administration

- Around 100 countries in the world have set up institutions for enforcing competition laws
- Endless number of ways in which a Competition Authority (CA) can be organised
- Obviously there is not a one and right solution
- The judicial and political context is different from country to country
- However, the CA should be independent

9.2. Location within the state administration

Ministry of Trade and Industry	Ministry of Economy	Parliament or Prime Minister	Ministry of Development
Finland Ireland Sweden	Austria Belgium Denmark France Germany Luxembourg Netherlands Portugal Spain Estonia Latvia	United Kingdom Czech Republic Cyprus Hungary Lithuania Malta Poland Slovak Republic Slovenia Bulgaria Romania Italy	Greece



9.3. Possible models

- Sectoral type model
- Core restriction type model
- Matrix type model
- Project type model



9.4. Issues related to the design of a CA

The following factors are to be observed:

- Scope of application of the competition law
- Local priorities
- Specific culture
- Commercial relations
- International trade relations
- Level of the competition culture
- Stage of liberalisation of the public services
- Experience level



9.5 Dealing with other issues than anti-trust and mergers

- The CA may have a variety of other tasks
- Such additional tasks may include
 - advocacy
 - consumer protection
 - sector regulation
 - company registration
 - price control
 - state aid monitoring
 - unfair trade practices
 - misleading advertising
 - public procurement

9.6. Structure of the operational enforcement

Sectoral structure	Structure according to restrictions of competition	Matrix structure
Austria Denmark Germany Italy Netherlands Spain Cyprus Estonia Hungary Latvia Lithuania Romania	Finland Ireland Czech Republic Slovak Republic Bulgaria	Portugal Sweden United Kingdom

9.7. The CA staff dealing with anti-trust issues

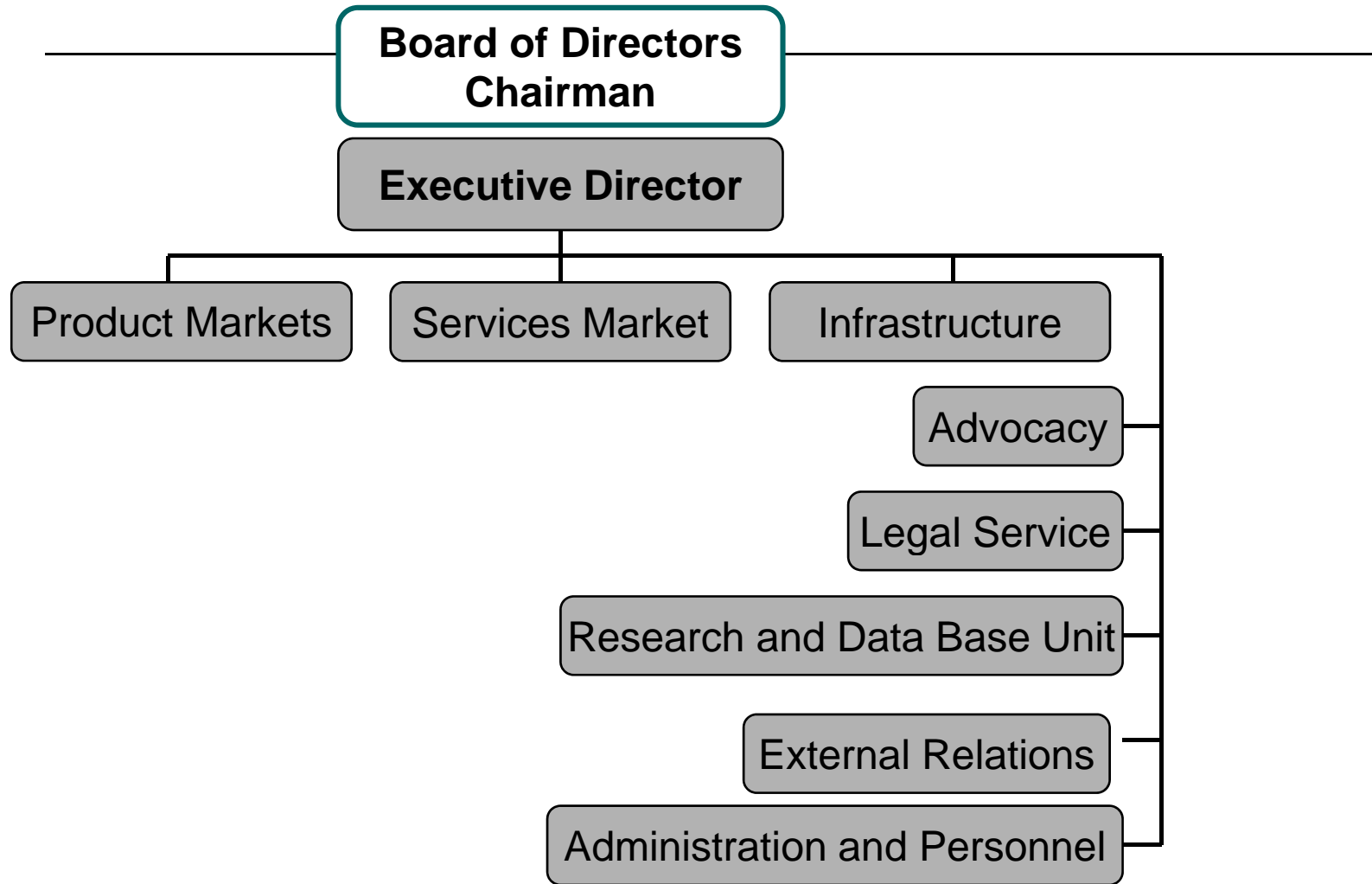
Country	Total staff	Country	Total staff
Austria	15	Estonia	39
Denmark	140	Hungary	119
Finland	70	Latvia	45
France	270 + 110	Lithuania	55
Germany	300	Malta	3
Greece	40	Poland	237
Ireland	41	Slovak Republic	63
Italy	185	Slovenia	11
Netherlands	278	Bulgaria	86
Portugal	65	Romania	250
Spain	95		
Sweden	110		
United Kingdom	201 + 52		
Czech Republic	126		
Cyprus	11		



9.8. Sectoral model

- Most popular design which is based on the industrial and commercial sectors
- **The pros**
 - + Possibility to specialise in key industries and services
 - + Knowledge on markets is emphasised
 - + Better coordination of industrial and commercial sectors
- **The cons**
 - A lot of staff is required for a good coverage of sectors
 - May lead to the excessive and complementing use of human resources
 - Less possibilities to copy procedures according to case types like cartels

Sectoral design





9.9. Core restrictions type model

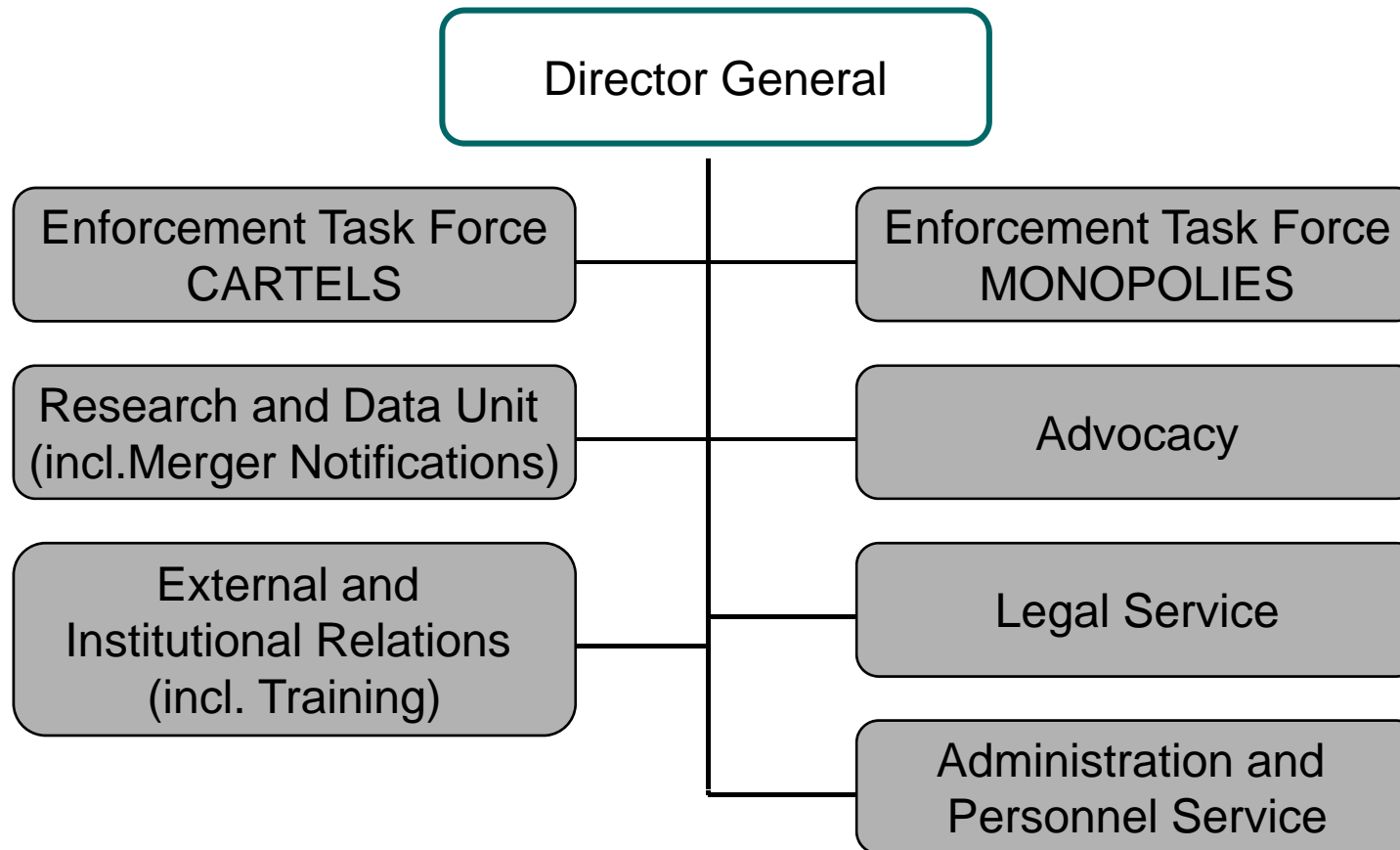
- **The pros**

- + Possibility to produce model decisions (copying)
- + Decreases excessive linkages to sectoral issues
- + Supports objective activities
- + Promotes good department spirit
- + Promotes the supportive role in relation to Executive Director and civil servants

- **The cons**

- The need of internal coordination is bigger compared to sectoral organisation
- Knowledge of markets may disappear
- Not enough sectoral awareness in individual department
- Without a good rotation system, the model could hinder expertise
- May lead to the excessive and complementing use of human resources
- Concentrated decision making

Core restrictions type design





9.10. Matrix type model

- Matrix type model is a combination of sectoral divisions, restrictions organisation and possible projects
- There is a common trend towards matrix type model
- **Pros**
 - + It is possible to collect most talented staff for a preferred purpose
- **Cons:**
 - The model is difficult to start, coordinate and manage
 - The staff will most probably work for many directors



9.11. Project type model

- A project type model is a short term solution
- Each project should have a promptly managed project organisation within the CA
- **Pros:**
 - + This model is suitable for short term activities
 - + Cost saving
 - + Quick to start with; the outcomes are easy to assess
- **Cons:**
 - This model is not sustainable in a longer term



9.12. Setting priorities

- Taking into account: local priorities, local commercial relations and level of competition culture
- Gathering information from the markets
 - key sectors of the economy
- Taking the lead in competition advocacy



9.13. Possible obstacles

- lack of competition culture
- not adequate resources
 - financial
 - personnel
- no political support
- limited investigation power
- limited sanctioning power
- procedural problems



10. A sketch for a step-by-step process

- establish a small but powerful authority
 - empowered to handle both regulation and competition
 - gradually shift emphasis from regulation towards competition
 - take good care of the independence of the authority
- create a straightforward competition law
 - ban on cartels
 - ban on exclusive rights if the distributor enjoys of a dominant position
 - ban on abuse of dominant position
 - create a follow-up-system for mergers



A sketch (2)

- create a credible sanction system
- create a credible judicial process



10.1. Sanctions

- Criminal sanctions
 - jail
 - fines
- Administrative sanctions
 - fines (infringement fees)
- Civil process
 - damage



10.2. The judicial process

- Which is the decision making body?
 - the authority?
 - a tribunal or commission?
 - a court?
- Where can the decision be appealed to?
- Is there a third level?



11. Special issues

- International co-operation
 - is needed more than anything else!
 - UNCTAD, OECD, ICN...
 - neighboring countries, Africa
- Media
 - make media your partner
 - be truthful
- Consumers
 - competition is good for consumers
 - make consumers your partner as well