



DANGER! REGULATORY ENTHUSIASM

- When the market operates under competition conditions, producers offer their products at the lowest cost and consumers have access to the goods and services they prefer.
- Building a good regulatory frame is as relevant as avoiding an excessive and inappropriate State interference in the markets, since it may end up suppressing private initiative and innovation, which can entail very harmful effects. Therefore, a constant review of the prevailing policy framework is required.
- New regulations should always be subject to regulatory impact assessments, with a rigorous cost-efficiency analysis made ideally by an independent agency.

We all know the advantages of competition, based mainly on the freedom of choice both for consumers and producers. When the market operates under competition conditions, the producer offers its products at the lowest cost (which implies an efficient allocation of resources) and the consumer has access to the goods and services he prefers (those generating greater benefits to him).

However, markets do not always reach the necessary competition levels, thus resulting in exclusion situations for efficient competitors or detrimental conditions for consumers. In order to prevent these conducts, there are laws for the defense of competition and the consumer rights' safeguard policy, as well as sectorial regulations.

Anti-monopoly laws seek to force companies to behave competitively in a market which is actually capable of having a competitive balance (for example, by pursuing and sanctioning collusive agreements). On the other hand, the regulation of specific markets is used to emulate the perfect competition, that is, to make them behave as if they were a competitive market even though they are not, as in the case of natural monopolies. Additionally, regulation is important when there are significant externalities in the consumption or production of a good or service that the market is not able to internalize. Other type of regulations deal with promoting the delivery of information, either due to the lack of it or because it is expensive to obtain it, owing to the fact that products get complex and present low-frequency consumption, or because their market potential is expensive. And finally, there are the labor regulations that seek to control the negotiation conditions for a special market.

Building the adequate institutional framework and the appropriate policy framework and legislation for these cases is a key aspect for the proper performance of the market economy.



Nevertheless, building a good regulatory frame is as relevant as avoiding an excessive and inappropriate State interference in the markets –particularly the State’s potential excesses in exercising its powers and overregulation-, since it may end up suppressing private initiative and innovation, which could entail very harmful effects. Specifically, a balance is needed between a watchful eye on the operation of the markets, which assumes the implementation of preventive measures and the establishment of sanctions for those who do not comply with the rules, and the adequate protection of the rights of the economic agents regarding the actions of the State bodies who perform these functions.

As for the exercise of the powers of State administration bodies, the design of organisms for the defense of competition and consumer protection (SERNAC, FNE, TDLC)ⁱ, as well as the regulatory agencies (CNE, Superintendence, etc.) must be subject to clear procedures, where due process of law is duly established; and the exercise of their powers must be controlled through transparency rules, accountability and counterweights.

Excessive regulation can generate conditions that are too restrictive for some actors, but in the end, the highest cost of protectionist policies are inevitably paid by the consumers themselves through higher prices or lower quality products. Furthermore, there is always the risk of falling into a vicious circle, where excessive regulation entails more costs and entry barriers, which reduce market competition and efficiency; as a result, new and greater regulations are the consequence.

Therefore, a constant review is required regarding the regulation that, while being originally formulated as the cure to a problem, ends up being worse than the disease, even when motivations may have had such laudable purposes like our safety, safeguarding our health, allowing us to live in an environment free of contamination, etc. Other times, inappropriate regulation are the result of illuminati groups who, through their government positions, think they know best what people need.

Thus, the problem lies in an excessive regulatory enthusiasm, which reveals a limited understanding of the markets’ performance, lack of creativity dealing with superior alternative solutions, a disproportionate trust in the State’s capacity to control and guide the human activity and/or a huge mistrust in the capacity of adult consumers to discern. At the end of the day, the result is often an anti-growth agenda, which introduces very high costs to the productive development, in order to comply with the imposed demands, and restrains the consumers’ possibility to choose, not to mention that this may sometimes impair the capacity of innovation, entrepreneurship and, consequently, the markets’ development.

INAPPROPRIATE REGULATIONS

There is a series of “issues” derived from an inappropriate or excessive regulation, which can be classified in four groups.



1. Regulations that affect consumers directly, thereby restricting their freedom to choose.

There are emblematic cases, as the so-called *Super 8th* Law, which aimed at forbidding the sale of certain products in the surrounding of schools by decision, not of the parents, but the State. Likewise, regulations that force to reduce salt in bread, bills that seek to impose minimum percentages of Chilean music on radio broadcasting or laws compelling to incorporate cultural programs in the digital TV signal can only entail greater costs for consumers who see how their capacity to choose is being restricted.

2. Regulations that reduce competition.

Sometimes, regulations are motivated by stakeholders of the respective market, who promote measures to safeguard their own interests, raising barriers to the participation of other actors. A specific example is the free circulation restriction of taxis in Santiago, a classic in the literature of restriction to the competition that ends up making the service more expensive. Something similar occurs with the sales restriction for medicines not requiring a prescription in stores other than pharmacies, a bill discussed at length in the Congress which was finally not approved. Something of the sort occurs with bills that are actually being proceeded at the Congress, which aim at extending the university exclusiveness, currently awarded to Surgeons and Dental Surgeons, to other health professionals such as Nursing, Obstetrics, Physical Therapy, Speech Therapy, Nutrition, Medical Technology and Occupational Therapy, limiting the Professional and Technical Institutes to teach only technical careers in the health field. Furthermore, the restrictions imposed to the professional qualification of physicians in certain specialties lead to the lack of specialists and/or high fees. This intentionality also applies to other areas, such as education. In fact, the bill currently being proceeded establishes that the creation of a subsidized educational institution will only be approved “in case there is an unsatisfied enrolment demand that cannot be covered by other educational institutions receiving State subsidy or contribution in the zone where the educational project is set to be developed”. Like these, there are many legislative initiatives and sectorial regulations that restrict competition, and directly impair the consumers.

3. Regulations that strangle the private initiative by promoting the state solution as an alternative.

A current example is what is happening today in the energy sector; in view of the difficulties imposed by the excessive red tape in the proceeding of sectorial permits and environmental approvals of electric power generation projects (in addition to the increasing citizen opposition and judicialization of the projects), the National Petroleum Company (ENAP, in Spanish) arises as a “redeemer”, encouraging the proceeding of a bill that extends the line of business of the public company to include electric power generation. Likewise, the restrictions that the bill putting an end to profit-making, selection and copayment will eventually impose upon subsidized private education, could push a substantial number of school-age students towards public education (1.1 million students attend profit-making subsidized schools), with the known deficiencies of this system. Another example refers to private health insurers (ISAPRES); a virtual price adjustment prohibition in a context of increasing costs (higher number of benefits per user and more complex



and expensive technologies), could compromise the sustainability of the business, leaving the consumers confronted with the sole and not very satisfactory public insurance service (FONASA, National Health Fund). This is enhanced by other multiple regulatory changes, which have created more risks and inhibited the entry of new competitors to the ISAPRE industry.

4. Regulations that limit the development of sectors, based on beliefs that are not supported by scientific evidence.

In this matter, we should recall that, during the proceeding of the law regarding cell phone antenas, it was argued that the installation of towers caused potential health damage, even though there were no technical studies endorsing the belief that these towers had a harmful effect on people's health and, therefore, regulation was needed. On the other hand, Chile has the peculiarity that, although the use of biotechnology is allowed, the domestic consumption of transgenic foods grown in the country is not allowed, so that, so far, the production of transgenic crops is aimed at the production of seeds for exportation. This, even though many international agencies and science academies have supported the use of transgenic crops and have questioned the subjectivity of the criticism against it.

In other cases, the technical or scientific evidence has simply been ignored. For example, in 2013, the bill promoting the extension of the energy matrix through non-conventional renewable sources, better known as the 20/25 law, was unanimously approved, even though several specialists warned that, in the future, a forced penetration of NCRE in the energy matrix could increase total supply costs of the electricity system and, therefore, final consumers would face a rate increase. Likewise, considering a possible regulation of the piped gas market, we should ask ourselves if this provision is not going to discourage a larger penetration of gas at the residential level in the country, since it has been advised that this product has substitutes in the market, a fact that has not been duly weighed by the authority to date.

CHALLENGES FOR AN INTELLIGENT REGULATION

We are not trying to ignore the merit of a good regulation in certain markets, but it is necessary to highlight, considering the examples indicated above and many others, that the regulatory excess is harmful. Markets may not be perfect, but probably, in many cases they would perform better with less state interference. Competition is best to protect consumers and it forces suppliers to provide better quality goods and services and at lower prices. Consequently, the solution is to further liberate the markets, instead of drowning them with more taxes and regulations.

A clear example of this is the number portability, which meant a significant competition stimulus in the mobile phone market.ⁱⁱⁱ The lesson of this measure is, precisely, that the best way to benefit users is to generate conditions for a healthy competition by reducing entry barriers.

It is important to point out that the regulating and legislative frenzy entails an often unnecessary accumulation of restrictions and demands that should be revised from time to time. The problem



is that there is no official body dedicated to identify excesses or the superposition of regulations, although the government has announced that it will seek to create an institutional framework for efficiency and regulatory consistency, which would be welcomed. In fact, it would be desirable to rely on a sort of Agency in charge of making market performance studies and an exhaustive review of the competition restrictions, both legal and coming from trade practices. This could enable making policy improvement proposals to the Executive and identifying measures that the industry could apply on a voluntary basis. Among other matters, this agency could establish actions tending to eliminate conditions that unjustifiably difficult the termination of contracts (as, for example, in credit cards, cell phones, etc.), with the purpose of promoting the mobility of clients that are not satisfied with the respective provider and increase the competition in these markets.

Meanwhile, new regulations should always be subject to regulatory impact assessments, with a rigorous cost-efficiency analysis ideally made by an independent agency. In turn, their conclusions should be made public before promulgating the new regulation, thereby opening a space for consultation and participation for the stakeholders. Some have even suggested that new regulations should be subject to expiration, for example, with a 10-year term as of its promulgation, unless the Congress expressly approves their renewal.

Finally, it is important to encourage self-regulation, since it fosters a better business conduct, anticipating changes that often go beyond the legal requirement. This, within a frame of freedom of action, without bureaucratic impositions outside the market's performance and with the advantage of coming from those who know each economic activity closer. We find good examples of self-regulation in practices such as product returns in department stores with deadlines that are much longer than the mandatory ones, the subscription of ethical codes in union associations (such as the Bar Association) or voluntary commitments derived from joining international organizations that lead to assume standards that are higher than those of the own country in matters concerning social and environmental sustainability. Self-regulation can and should be promoted with stimulus measures, such as the creation of effective trustmarks.

CONCLUSIONS

Although there is consensus that the best way to ensure the efficient use of resources and favor the consumers' freedom to choose is on the basis of competition in the different industries, politicians, the media and the public opinion need to be aware that the best way to achieve this is not always through greater intervention of the State, either regulatory proposals or state solutions. On the contrary, many times this ends up impairing the interests of the consumers, because it builds entry barriers for new providers, reduces competition and innovation, generates more expensive goods and services and limits the possibility of consumers to choose.

More than making new and stronger restrictions, what is really needed is to eliminate barriers, so as to favor the necessary competitive pressure in the markets and, in any case, all new regulations should require a previous impact study of their cost and benefits, taking responsibility for the



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potential failures of the regulating agency. It should not be forgotten that, in a competitive environment, the companies' mistakes (such as deficient quality or very high prices of their products) are in the end paid by the companies themselves through their own assets, since their product or service will be quickly replaced by that of their rivals. On the contrary, when the authority goes wrong and introduces bad regulations or policies, losses are socialized, with the consequent damage for all producers and consumers.

ⁱ SERNAC: National Consumer Service; FNE: National Economic Prosecutor's Office; TDLC: Tribunal for the Defense of Free Competition; CNE: National Energy Commission (T.N.).

ⁱⁱ Named after a chocolate candy bar (T.N.).

ⁱⁱⁱ The fact of users losing their telephone number when changing from one operator to another entailed a very high transaction cost that created a strong entry barrier for new operators and reduced the competitive pressure among stakeholders.