

POSSIBILITIES OF ECONOMIC POLICY FOR REGULATION OF SECTOR-SPECIFIC MARKETS IN SMALL COUNTRY: THE CASE OF BALTIC COUNTRIES

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Abstract

In the article is analyzed the regulation of sector-specific industries from institutional aspects of regulation and competition policy. There is researched answer to the question what type of institutional arrangement is suitable for regulating network industries in the Baltic countries. Under the observation are three different organizational standard models: single sector-specific regulators and competition board; integrated multi-sector regulatory institution and separate competition board; and unitary competition supervisory and regulatory institution.

Keywords: economics of regulation, government policy and regulation, regulated industries, regulatory institutions

JEL Classification: L51, L10, L98, K23

Introduction

When governments regulate liberalized markets they usually do so by assigning regulatory tasks to certain institutions. These authorities may be within existing ministries or departments or they may be independent agencies. One of the concerns is why should regulatory authority be a separate institution and why should that authority be independent.

Current article analyzes the regulation of sector-specific industries (energy, gas, telecommunication, postal communication and railway sector) from institutional aspects of regulation and competition policy in Baltic countries taking into account particular developments in some other transition countries and practices, which seem to be relevant for further regulating developments in the Baltic countries.

The goal of this article is to explain, what type of institutional arrangement is suitable for regulating network industries in the Baltic countries. Under the observation are institutional and organizational aspects of regulation and competition in aforementioned sectors. For that purpose there are following research questions:

- Explain theoretical background for regulation in sector-specific spheres;

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- Make a comparative analysis of current institutional regulatory arrangements in Baltic countries considering the best practices from developed countries (for example, Germany and the Netherlands);
- Give recommendations for regulating sector-specific industries in terms of organizational arrangements in the Baltic countries.

According to these research questions the article is divided into four parts. In the first part connections between sectoral regulation and competition policy in sector-specific industries are under the observation from theoretical aspects. The second part continues with considering possibilities for regulation in network industries. Three different standard models are analyzed: single sector-specific regulators and competition board; integrated multi-sector regulatory institution and separate competition board; and unitary competition supervisory and regulatory institution. In the third part practices of regulatory institutions in transition countries are analyzed and then the fourth part focuses on the developments of regulatory and competition policy supervisory institutions for regulation of sector-specific industries in the Baltic countries.

1. Connections between sectoral regulation and competition policy in regulating sector-specific industries

The connection between competition policy and regulation is not always clear enough and is a complex problem. Some kind of rivalry between those two shows up in certain phases during the deregulation of an industry or the transformation of former state monopolies into competitive markets. As it has been pointed out, in practice, the conflict between competition policy and regulation often arises as one between competition authorities and sector-specific regulators (Kirchner 2004).

From institutional economics approach competition policy is seen as application and enforcement of competition law by competition authorities and courts. Regulation in this context is as sector-specific regulation enforced by regulatory authorities and law courts. Competition policy is public policy instrument to prevent constraints on competition. The main goal of competition policy is to keep markets free from restrictive practices in order to safeguard freedom of choice against business practices which have negative welfare effects. Some authors (Michael 2006) see that competition policy has larger list of objectives, including consumer protection aim as well, but others concentrate on efficiency goal (Posner 1976). In case of regulation, generally, main goal is efficiency.

Competition policy itself cannot create competition. It can only prevent or limit the effects of certain activities restricting freedom of competition. Of course, there are limits to the effectiveness of competition policy, and there are markets in which competition policy will lead to satisfactory results and other markets which need regulation in order to attain the efficiency goal.

Competition authorities and sector regulators have different core competencies. These core competencies influence the types of tasks best accomplished by each. Sectoral regulation is frequently overseen by sector regulators. Sector regulators typically have extensive, ongoing knowledge of the technical aspects of the products and services that are regulated. Sector regulators are more likely better suited to technical regulation than competition authorities. Competition authorities have necessary skills for delineating relevant markets, assessing likelihood of harm to competition, assessing entry conditions and assessing significant market power (The relationship between... 2005).

Nevertheless, the primary government tasks which have to be completed in regulated sectors are as follows (The relationship between... 2005):

- *Technical regulation*: setting and monitoring standards, managing licenses, implementing sanctions to assure compatibility and to address privacy, safety, reliability, financial stability and environmental protection concerns;
- *Wholesale regulation*: ensuring non-discriminatory access to necessary core facilities, especially network infrastructures;
- *Retail regulation*: measures to mitigate monopoly pricing or behavior at the retail level;
- *Public service regulation*: measures to ensure that all consumers have access to goods that are deemed of special social value, as with universal service obligations;
- *Resolution of disputes*: quasi-judicial powers may result in faster resolution of disputes than could be provided by a non-specialized court;
- *Competition oversight*: controlling anticompetitive conduct and mergers.

When explaining connections between competition policy and regulation in the sector-specific spheres, it is useful to think in the framework of structure-behavior-performance paradigm. This approach helps to show competition policy by the object of economic policy (see Figure 1).

Competition policy in strict sense includes *ex post* supervisory control over market structure and enterprises behavior in the market. Competition policy in broad sense includes also *ex ante* activities in regulating market performance. Described relations and the primary government tasks in the regulated sectors give the base for justification to merger *ex ante* and *ex post* supervisory functions into one unified institution.

Economic regulation is usually required because free markets fail to deliver desirable outcomes. Mainly, monopoly abuse in retail and wholesale markets may call for the level of prices to be regulated and discrimination across customers may lead to calls for regulation to affect the structure of prices. In the first case the regulation is undertaken to achieve efficiency and in the latter case regulation is motivated by fairness or equity considerations. In the Table 1 is explained how efficiency and equity factors impact on regulation in sector-specific industries.

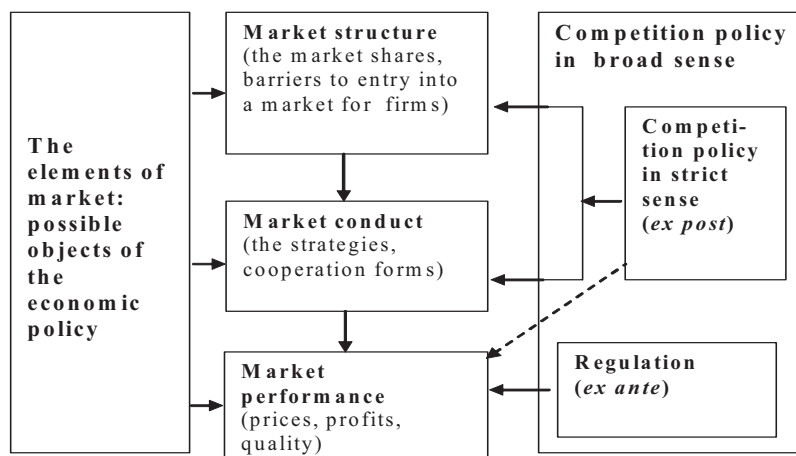


Figure 1. Relations between competition policy and regulation in the paradigm of structure-conduct-performance. (Compiled by author)

Historically, regulators have often been closely related to ministries that manage or managed incumbent firms. Perhaps as result, regulatory agencies are sometimes perceived as taking actions that appear to serve the interests of the firms being regulated. According to the theory (Bernstein 1955), the state agencies, which control monopolies tend to represent more the interests of enterprises compare to consumers interests. This hazard is particularly major concerning in state monopolies by nowadays' concept. It is because here the enterprise leaders have more connections with politicians than in case of private enterprises. Greater independence from both political power and the regulated sector are crucial for avoiding these perceptions. In many countries, for example OECD countries, regulatory institutions have increased their levels of independence (The relationship between... 2005).

From best practices of developed countries is well-known, that the structure and process of infrastructure regulation determine how effectively it supports reforms and promotes efficiency and social objectives.

Table 1. Efficiency and equity grounds for regulation in sector-specific industries

| Industry Characteristics | Equity Arguments | Efficiency Arguments |
|--|---|---|
| Electricity: non-storable. Some economies of scale. Demand slowly rising. Innovations in service provision, less in network. | Security of supply Universal service Geographic uniformity | Natural monopoly in transportation: transmission and distribution. Third party access to customers. Incumbency dominance. |
| Gas: Storable. Demand rising as an input to electric generation. Innovations minimal. | Security of supply Universal service Geographic uniformity | Natural monopoly in transportation. Third party access to customers. Incumbency dominance. |
| Postal Services: Demand rising, innovations affecting sorting and tracking processes. | Universal service Geographic uniformity | Natural monopoly local delivery network. Incumbency dominance. |
| Telecommunications: Demand growing significantly, due especially to internet. Innovations significantly affecting industry. Convergence across fixed and mobile, and horizontally with IT and media sector. | Universal service Geographic uniformity Access to information society | Natural monopoly in some elements of the local loop (depends on demand and population density) and scarce resources (eg. Radio spectrum). Incumbency dominance. |

Source: Coen *et al.* 1999.

For effective regulation of privatized utilities have crucial impact and importance those institutional requirements as coherence, independence, accountability, transparency, predictability and capacity. Mentioned requirements have important role for effective functioning of state regulatory authorities (Berg 2009) and these requirements are probably better fulfilled in case of one complete supervisory institution.

2. Possible models for state regulation in sector-specific industries

Wherever regulatory authorities are located in state hierarchy and what kind of organizational structure they have, their main responsibilities are over the following items for which they must both monitor current practice and intervene if necessary (*The role of the regulatory authorities* 2004):

- management and allocation of interconnection capacity;
- mechanisms to deal with congested capacity within the national system;
- the time taken by transmission and distribution undertakings to make connections and repairs;

- publication of appropriate information;
- the effective unbundling of accounts to avoid cross subsidies and the unbundling compliance program;
- connecting new producers;
- the access conditions to storage, linepack and to other ancillary services;
- overall compliance of transmission and distribution system operators with the Directives;
- the level of transparency and competition.

In addition to the core tasks there are number of issues that Member States may also assign to the regulatory authority. These are following:

- issuing authorizations and licenses
- monitoring of security of supply;
- organization, monitoring and control of the tendering procedure for generation;
- deciding on derogations in relation to take-or-pay commitments for gas;
- dispute-settlement arrangements for access to upstream gas pipelines.

The European Union Member States might also give additional tasks to the regulator not specially required in the Directive, such as ensuring consumer protection, monitoring levels of service or adopting measures to protect vulnerable customers (*Ibid.*).

Still state regulation in sector-specific spheres is organized differently in different countries and may also include different operation fields of the regulatory authorities (see Table 2) in the regulation process.

Table 2. Operation fields of the regulatory authorities in the sector-specific spheres in some European countries

| Country | Telecommuni- -cation (fixed network and mobile) | Post | Energy | Railway | Radio/TV | | |
|-------------------|--|------|--------|---------|-----------|-------------|----------|
| | | | | | Frequency | Competition | Contents |
| Finland | x | x | | | x | x | |
| France | x | x | | | | | |
| Germany | x | x | x | x | | | |
| Hungary | x | x | | | | | |
| Italy | x | | | | x | x | x |
| Netherlands | x | x | | | x | | |
| Spain | x | | | | | | |
| Sweden | x | x | | | | | |
| United Kingdom | x | | | | x | x | x |
| Switzerland | x | | | | x | x | x |

Source: Schedl *et al.* 2007.

In comparative analysis of national regulatory institutions in case of Great Britain, France and Germany has been concluded, that after a relatively similar starting point of industry-led regulatory institutions in the mid-1960s, these countries introduced different reforms at the sectoral level to deal with pressures on network supply in the period until the mid-1980s. Those reforms increasingly matched those expected at the macro or national level by the literature on varieties or models of capitalism (Thatcher 2007).

Britain had greatly enhanced the role of competition and private markets to coordinate the different actors, as expected in a liberal market economy model. France had taken the opposite direction, reinforcing the direct role of the state. Germany had largely retained the industry model of coordination, remaining closest to the traditional European model, due to the importance of consensus and the lack of a strong central group of policy makers to take the lead in creating new projects. From the late 1980s, the EC developed a wide-ranging regulatory framework that conflicted with, and often outlawed, regulatory institutions in France and Germany, such as monopolies, cross-subsidies or closed privileged relationships between network infrastructure suppliers and equipment manufacturers. In result national governments largely accepted the EC's regulatory framework. The period also saw major reforms that considerably reversed the increasing diversity among Britain, France and Germany. All three countries moved towards regulated competition model of formal institutional structures, with the privatization of suppliers, the ending of monopolies and the creation of independent sectoral regulatory authorities taken place. (Thatcher 2007)

During the last 15-20 years, a new standard model has taken hold of the economic framework for the operation of utilities. It is found to have as its core the utility services that will be (Stern 2000):

- provided by a set of commercialized companies;
- monopoly (network) elements are separated from potentially competitive elements;
- competition is actively introduced into the potentially competitive elements;
- private capital is introduced where possible and appropriate, particularly into the competitive elements, typically with privatization of some or all of the existing assets.

In the study about regulatory institutions in small and developing countries (Stern 2000) is found that these new elements have largely applied and the new model has replaced the traditional model of utility services being supplied by a state-owned vertically and horizontally integrated monopoly, supervised by the national government and typically operating in a non-commercial or semi-commercialized way. This change has been induced across developed and also developing countries.

Focusing more detailed on regulatory models we may recognize that in Europe only some countries have multi-sector regulators, for example Luxembourg and Germany. However, the approach is widely used in the United States and Latin

America. For example, multi-industry regulators have been successful in Costa Rica, Jamaica, and Panama and in the states of Brazil (Kessides 2004).

At first is studied particular arrangement in Germany. In Germany the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway is a separate higher federal authority within the scope of business of the Federal Ministry of Economics and Labor, and has its headquarters in Bonn. In July 2005 the Regulatory Authority for Telecommunications and Post which superseded the Federal Ministry of Post and Telecommunications (BMPT) and the Federal Office for Post and Telecommunications (BAPT), was renamed Federal Network Agency. It acts as the root certification authority as provided for by the Electronic Signatures Act.

The Federal Network Agency's task is to provide, by liberalization and deregulation, for the further development of the electricity, gas, telecommunications and postal markets and, as from January 2006, also of the railway infrastructure market. For the purpose of implementing the aims of regulation, the Agency has effective procedures and instruments at its disposal including also rights of information and investigation as well as the right to impose graded sanctions.

The Federal Network Agency's decisions in the fields of electricity, gas, telecommunications and post are made by its Ruling Chambers. The undertakings directly concerned may participate in the Ruling Chamber proceedings.

The business circles affected by the proceedings may be summoned. The Federal Network Agency's decisions are based on the Telecommunication Act, the Postal Act and the Energy Act and can be challenged before court. In case of legal dispute neither the Regulatory Authority nor the Federal Ministry of Economics and Labor (BMWA) can quash the decision made by the Ruling Chambers. In contrast to the provisions of the Act Against Restraints of Competition (GWB) a so-called ministerial decision is not foreseen.

The rulings by the Ruling Chambers on telecommunications and postal matters may be challenged directly before the Administrative Courts, and before the Civil Courts if energy matters are concerned. A procedure is not foreseen. Proceedings on the main issue do not have a staying effect.

Multi-sector regulation model has several advantages in comparison with a single model, as it is possible to:

- Implement a unified approach in all the regulated sectors, for example, to apply a unified tariff calculation method in energy, telecommunications, post and railway sectors, have a unified procedure for issuing licenses, etc.;
- Take into account the convergence of technologies and services in the regulated sectors. In the world the traditional borders between the different sectors are nowadays disappearing fast. More active co-operation is observed between enterprises working in different sectors, for instance, between railway and

telecommunications. Due to technological development, telecommunications take over a considerable part of functions earlier performed by postal offices. Energy utilities, in turn, are providing telecommunication services. Convergence of sectors creates the necessity to develop a unified system of regulation for all the sectors and to apply equal regulation principles;

- Harmonize expected tariff changes in separate sectors thus preventing simultaneous price increase for public utilities and reduction of the economy's competitiveness;
- Attract and effectively utilize the intellectual potential;
- Make rational use of financial resources.

Conclusion here in general is quite complicated to draw from the experiences of competition creation in sector-specific spheres, because as it has been recognized from the analysis, the competition creation has been developing in different ways. Besides the discussion about regulatory institution type in network industries, there has been under observation the relationship between competition authorities and sectoral regulators (Global Forum on Competition). Still one is clear, that sector-specific regulators and national competition authority have to cooperate in regulation-for-competition. How to ensure that this cooperation is successful and efficient?

One way to ensure consistency with respect to competition decisions is to unify regulator and competition authority. In this approach, towards competition law enforcement of a sector regulator and a competition authority, have to merge the regulator with the competition authority. One example of merging a regulator with a competition authority occurs in the Netherlands, where the government has created chambers within competition authority (NMa) for sector regulation. The energy regulator in the Netherlands, the Office of Energy Regulation (DTe) is placed under the oversight of the competition authority, the NMa. DTe is responsible for the implementation and supervision of the Electricity Act of 1998 and the Gas Act of 2000. In 2004, the Office of Transport Regulation was set up as another chamber in the NMa. The chamber model allows highly specialized knowledge related to sectors exist within the structure of a competition authority focused on broad issues of improving competition. (The relationship between... 2005). This structure helps in ensuring the consistency in application of competition law. If competition authorities are responsible for competition law application in some areas and sector regulators are responsible in other, then ensuring such consistency can be complicated task.

If there has been decided in favor of independent regulatory agency, then still the question stays – what is the best solution for regulatory agency. Should the government create industry-specific regulators or a single agency with a broader mandate.

Here we can conclude that it is possible to distinguish between three types of institutional model for the regulation in sector-specific markets:

- single sector regulators and competition authority;
- integrated multi-sector regulatory institution and separate competition authority;
- united competition supervisory and regulatory institution.

3. Practices of regulatory institutions in transition countries

As the transition countries began restructuring and privatizing their infrastructure in 1990s, they looked to the countries that first had taken this approach, like Canada, Great Britain, United States and Australia. But these countries have long traditions in regulating the infrastructure, dealing with monopolies and they also have long traditions of market capitalism supported by strong legal institutions. Complicated matters were caused also because state enterprises in transition economies were often organized to achieve political objectives, not to solve market failures (Guasch *et al.* 1999).

It was clear that the transition countries are not able to achieve credible, stable and effective regulation of infrastructure overnight.

The main problems in transition economies concerning the shortcomings of institutional prerequisites for effective regulation were pointed out by World Bank Policy Research Report (Kessides 2004) and included following aspects:

- Separation of powers, especially between the executive and the judiciary.
- Well-functioning, credible political and economic institutions – and an independent judiciary.
- A legal system that safeguards private property from state or regulatory seizure without fair compensation and relies on judicial review to protect against regulatory abuse of basic principles of fairness.
- Norms and laws – supported by institutions – that delegate authority to bureaucracy and enable it to act relatively independently.
- Strong contract laws and mechanisms for resolving contract disputes.
- Sound administrative procedures that provide broad access to the regulatory process and make it transparent.
- Sufficient professional staff trained in relevant economic, accounting, and legal principles.

Particular problems concerning the regulatory authorities were pointed out in some transition countries as shortly implied.

In Hungary, the energy regulator's independence was ranked as limited by a lack of autonomous revenue, fixed-term appointments for the board of directors, and well-defined criteria for appointing and dismissing directors. Also civil service salary caps made difficult to attract qualified staff. In telecommunications the head of the sector's regulatory authority reported to the minister of transport and communications (Kessides 2004).

The Czech Republic was also found to lack independent regulators for energy and telecommunications – the situation occurred according to the government's ambivalence toward specialized regulatory agencies in the early years of transition. As a result the Ministry of Finance had the final decision in regulating gas and electricity prices, while the energy regulator was part of the Ministry of Industry and Trade. Similarly, the primary regulator for telecommunications was part of the Ministry of Transport and Communications (*Ibid.*).

In Poland, energy regulator met most of the formal requirements for independence. In Romania telecommunications regulation was found to lack any semblance of independence. The minister of industry and trade appoints the chair, vice chair, and three of the gas regulator's board of directors, ensuring ministerial control over the agency. Concerning the electricity sector it is pointed out that Romania and Bulgaria have taken bold steps to create independent regulators. Romania's National Electricity and Heat Regulatory Authority is a United Kingdom style independent entity, while Bulgaria's State Commission for Energy Regulation incorporates elements of United States style independent commissions (*Ibid.*).

By now the regulatory process in transition countries has been developed in quite different ways. Let us have a look to the process of regulation in sector-specific spheres in the Baltic countries.

4. Development of regulatory and competition policy supervisory institutions for regulation of sector-specific industries in the Baltic countries

About Latvia the World Bank Policy Research Report indicated that multi-sector regulator has financial independence from state budget and has shown strong commitment to transparency and accountability. But its independence is compromised by the close affiliation between its board members and the political parties that nominate them.

In Latvia the regulation of public utilities was performed by several institutions until October 2001. Energy Regulation Council (ERC) – an institution under supervision of the Ministry of Economy was responsible for regulation of energy sector. Ministry of Transport and its supervised Telecommunication Tariffs Council (TTC) carried out regulation in telecommunications sector. The main tasks of postal sector regulation were performed by the Communication Department of the Ministry of Transport (MoT). Railway Administration (RA) supervised by the Ministry of Transport regulated the railway sector.

Practical experience showed that the regulation was rather inefficient due to fragmented institutions and limited resources available. Moreover such regulation system did not ensure an independent decision making process. The European Union reports on Latvia regularly emphasized the need to strengthen the regulatory process. Then, to change the situation and improve the regulatory system an institutional reform was implemented.

Already in January 1997 the Latvian government made the decision to set up a unified regulating institution in energy, telecommunications, postal and railway sectors. After a four year period for legislation development a new public utilities regulation institution – Public Utilities Regulation Commission (PUC) started its operation in October 2001 taking over the responsibilities of ERC, TTC, RA and MoT. The Regulator operates in compliance with the law On Regulators of Public Utilities, Regulator’s statutes, sectoral and other normative acts. The Regulator is an institution supervised by the Ministry of Economy which is independent for performing the tasks set in legislation and the Council of the Regulator is appointed by the Seima. The PUC in its operations is fully realizing the advantages of a multi-sector public utilities regulation system in Latvia and implementing uniform regulatory principles for all regulated sectors.

In Lithuania is established National Control Commission for Prices and Energy (NCC) in 1997. The NCC regulates electric and thermal energy, district heating, natural gas, water and transport sectors. The Government gradually rejected their regulation by transferring the functions of independent institutions to multi-sector regulator. Now the NCC responsibilities include tariff setting, regulation of market entry (licensing) and monitoring of supply service quality.

In Estonia, the sectoral regulatory arrangement was up to year 2008 the following:

- *Postal Board* – regulator of telecommunication and postal services markets;
- *Energy Market Inspection* – regulator of electricity and energy market;
- *Railway Inspection* – regulator of railway sector in technical aspects;
- *Technical Supervisory Inspection* – development, dissemination and supervisory activities in different technical spheres;
- *Competition Board* – supervisory activities in markets and merger control.

In the structure of competition authority (Figure 2) there were supervisory departments which had competition supervisory functions in particular specific sectors (see Table 3).

Table 3 gives the overview of Estonian Competition Authority supervisory departments and about issue how market supervisory functions were divided between departments.

Table 3. Division of industries between supervisory departments

| First supervisory department | Second supervisory department | Third supervisory department |
|-------------------------------------|--------------------------------------|-------------------------------------|
| energy sector | food industry | transport |
| industry | trade | construction |
| post | agriculture | financial services |
| water sector | services | culture |

Source: Annual Report of Estonian Competition Authority 2007.

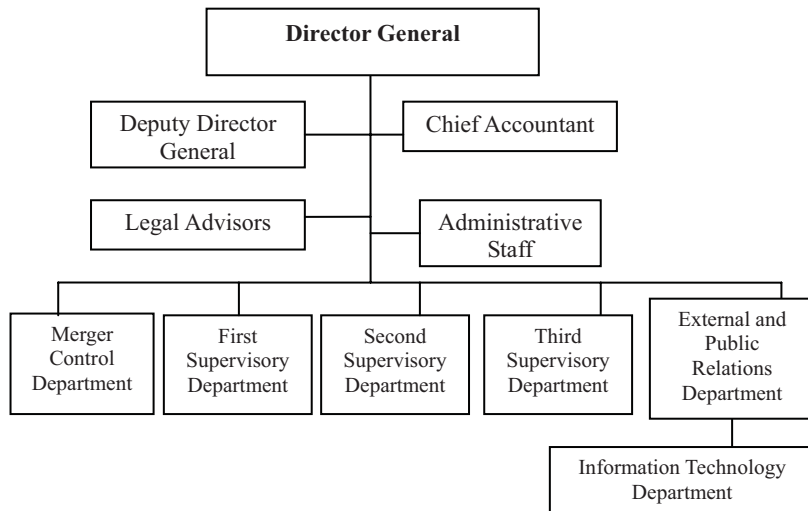


Figure 2. The Organizational Structure of the Estonian Competition Authority until year 2008. (Estonian Competition Authority)

This institutional intra-arrangement already showed positive tendency towards the unified competition supervisory and multi-sector regulatory institution model. New institutional arrangement was established in Estonia from January 2008 (see Figure 3).

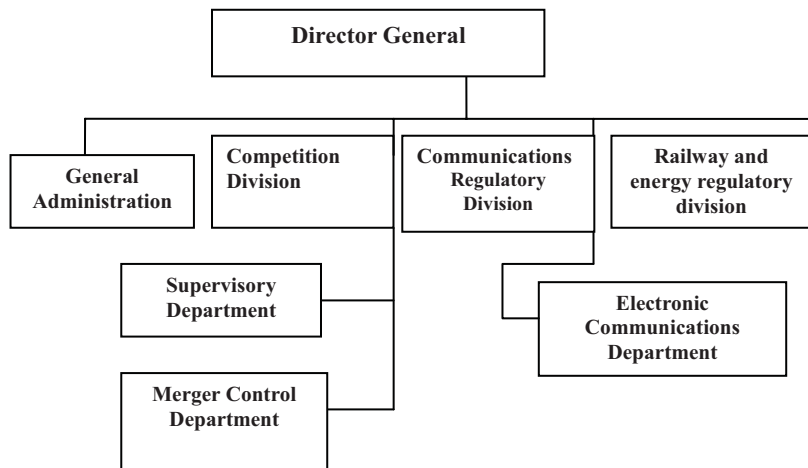


Figure 3. Structure of Estonian Competition Authority from year 2008. (Estonian Competition Authority)

There is a large variety in terms of competition policy organization in the international practice. At the same time, in theory has been stressed the partial similarity to monetary policy institution – necessity to protect the long-term economic interests from the daily political problems. Therefore has been often recommended that competition policy body should be relatively independent from executive power.

Looking at the experience of small countries we see the endeavor to separate the investigation of competition law violations from corresponding decision making. At that, the decision making body (Competition Council in Finland and Denmark, Cartel Court in Austria) is staffed by participation of parliament, king or president of the country. In Switzerland, the social cartel commission formed by parliament has important role. The competition policy authorities have an important role also in some transition countries. In Hungary, the President of Competition Board, who is appointed by the President of the country for six years, is participating in sessions of parliament and government. In Latvia, by the law from 1997, the Competition Council from legal person is the supervisory body. The members of the Council are appointed by government for five years, but one government cannot recall the council member appointed by itself. This should help consolidate the independence of decision council. The status of council member is not connected with the parliament membership. Therefore the different methods are used in order to achieve one goal – to protect the independence of competition policy from government daily policy.

In Estonia the Competition Board had rather weak position in the state structure. It is as usual state board subordinated to the Ministry of Economic Affairs and Communications. Probably is that fact reflecting most clearly the understanding that competition policy has secondary role in small open economy.

In the context of competition authority position in the state structure, there is need to point out the issue concerning the relationship with state regulators of independent branches of economy. As seen from international practices there is discussion and good practices about the expediency to combine them. Here we can find the arguments from the both sides as in favor and as against. Nevertheless, in a small country (especially in transition period) the combining should strengthen the general status of competition policy and administrative capacity. Because all the regulators have at least one common task – control over the dominant enterprise, no matter *ex ante* or *ex post*.

In terms of developments concerning the institutional structure for competition policy implementation is also useful to consider experience and practices from countries which have had success in particular spheres.

From former experience of other countries is known that establishing separate agencies for regulating gives possibilities to recognize the unique economic and technological characteristics of each infrastructure industry and enables regulators to

develop more detailed industry-specific expertise. It also reduces the risk of institutional failure and encourages innovative responses to regulatory challenges.

Implementing the model of one regulator for several industries makes possible to share fixed costs, scarce human and other resources. Also consolidation builds expertise in cross-cutting regulatory issues: administering tariff adjustment rules, introducing competition in monopolistic industries, and managing relationships with stakeholders (Kessides 2004). In addition, the broader responsibilities of a multi-industry agency reduce its dependence on any one industry and so help protect against capture and may be better able to resist political interference because its broader constituency gives to it greater independence from sector ministries.

The regulatory institution model implemented in Latvia and Germany and partly in Lithuania, where different sector regulators are aggregated into one institution, is the example of combined regulatory institution. This type of model allows ensure regulatory consistency, technological convergence and also makes possible better use of human and financial resources. Additionally, because small economies have limited human and financial resources, the particular model of regulatory institution gives an opportunity for merging regulatory responsibilities. Under the consideration should be the model of unified multi-sector regulator and competition authority institution, which has been implemented in the Netherlands as well in Estonia lately, as the next step in developments of regulating network industries in two other Baltic countries. This solution of unified institution will ensure internal consistency with respect to competition decisions and increase the authority of competition policy.

In addition, there are some other arguments for one unified regulatory and competition supervisory institution as market substitution aspect between the output of regulated industries – especially between electricity and gas, and also between modes of transportation and telecommunications. One has also take into consideration reasons arising from scarcity of expertise and vulnerability to political and industry capture in small economies.

Conclusion

There are markets in which competition policy will lead to satisfactory results and other markets which need regulation in order to attain the efficient goal. Competition authorities and sector regulations have different core competencies. In the process of applying competition laws in regulated sectors, competition authorities can benefit from the technical expertise of sector regulators and should seek to co-operate with sector regulators to benefit from this expertise.

Nevertheless, the competition replacement with public regulation is economically reasonable only in essence of natural monopolies, for example different supplying and distributional networks. There it concerns only managing the essence of monopoly – the networks.

For finding the suitable solution of regulating arrangement in network industries in the Baltic countries there were analyzed experience of regulatory institutions in some developed countries (mainly in Germany and the Netherlands) besides regulatory institutions established in Latvia, Lithuania and Estonia.

One possibly suitable model of regulatory institution for the Baltic countries seems to be a multi-sector institution where different sector regulators are aggregated. This type of combined regulatory institution reduces its dependency on any one industry, protects against capture, ensures the regulatory consistency and also makes better use of human and financial resources, which are limited especially in small economies. The next step further from the multi-sector regulatory institution is merging the sector regulators with a competition authority. Mentioned development has taken place already in Estonia and it seems reasonable solution for Latvia and Lithuania as well.

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MAJANDUSPOLIITILISED VÕIMALUSED ERANDVALDKONDADE REGULEERIMISEKS VÄIKERIIGIS BALTI RIIKIDE NÄITEL

Diana Eerma
Tartu Ülikool

Sissejuhatus

Käesoleva artikli eesmärgiks on selgitada majanduspoliitilisi võimalusi erandvaldkondade riikliku reguleerimise ja konkurentsi järelevalve korraldamiseks Balti riikides teoreetilise analüüsi ja mõnede Euroopa Liidu riikide kogemuste alusel.

Küsimus on siin eelkõige riigi rollis võrgustikega seotud loomulike monopolide puhul. Tegemist on konkurentsipoliitika seisukohalt erandvaldkondadega mitmesuguste varustus- ja jaotusvõrgustike tõttu. Küsimusele, kuidas peaks olema korraldatud konkurentsiameti ja riiklike regulaatorite (vastavalt energia-, gaasi-, side- ja raudteetranspordi turu puhul) vaheline tööjaotus on võimalik leida mitmeid lahendusi. Ühesugust lahendust ei leia selles osas ka Euroopa Liidu riikides.

Sektoraalse reguleerimise ja konkurentsipoliitika seosed erandvaldkondade riiklikul reguleerimisel

Reeglina peetakse konkurentsi asendamist riikliku regulatsiooniga majanduslikult otstarbekaks vaid erandvaldkondades ja sedagi loomulike monopolide tuumade, nt. mitmesuguste varustus- ja jaotusvõrgustike puhul. Siiski tuleb kohe rõhutada, et see puudutab vaid monopolide võrgustike haldamist, mitte aga nende kasutamist opereerimise mõttes. Lisaks on tehnoloogia areng võimeline õnestama isegi loomulike monopolide tuuma, nagu näitab mobiilside turg.

Reguleerimise ja konkurentsipoliitika institutsionaalsete vormide osas on teadlastel erinevaid arvamusi, mis tuleneb ka asjaolust, et seosed nende kahe valdkonna osas pole alati selgepiirilised. Põhjus on selles, et nimetatud institutsioonide tegevuse eesmärgid osaliselt kattuvad, kuid need pole identsed.

Mõnede autorite arvates (Michael 2006) on konkurentsipoliitika objektid järgmised: tarbijakaitse küsimused (tarbijatele edastatav informatsioon, kvaliteedi kontroll miinimumstandardite kehtestamise kaudu, salajased hinnakokkulepped ja fikseeritud jaehindade kehtestamine tarnijate või hulgimüüjate poolt), ressursside allokatsioon (aus juurdepääs turule, turule sisenemise barjäärid, erandlikud tehingud, tööjõu piirangud), turujõud (monopolid ja kartellikokkulepped, ennetav tegevus olulise turujõu koondumise osas), mikroökonomilise reformi aspekt (valitsuse majanduspoliitika mõjutamiseks teatud majandusharudes hindasid alandama) ja valitsuse tegevuse mõjud (konkurentsineutraalsus ja seadusandlik tõhusus). Kirjeldatud konkurentsipoliitika laiast tegevusspektrist saab järeldada, et eesmärkide kataloog on samuti laiaulatuslik. Richard A. Posner (1976) keskendub enam efektiivsuseesmärgile ning osad autorid kombineerivad efektiivsuseesmärgi tarbija kaitse eesmärgiga (Kirchner 2004).

Reguleerimise puhul seatakse esikohale peamiselt efektiivsus, kuid ei välistata siiski ka tarbija kaitse või laiemaid sotsiaalseid eesmärke. Seega on konkurentsipoliitika ja riiklik reguleerimine osaliselt alternatiivid, aga samas ka teineteist täiendavad tegevuse suunamise vahendid. Rivaliteet konkurentsipoliitika ja reguleerimise vahel võib ilmnedu tegevusharu dereguleerimise protsessis või endise riikliku monopoli ümberkujundamisel. Praktikast peetakse sellise situatsiooni tekkimist võimalikuks just konkurentsiameti ja sektorispetsiifiliste regulaatorite vahel (*Ibid.*).

Tuleb silmas pidada, et konkurentsiametitel ja sektorite regulaatoritel on erinevad pädevused. Esimestel neist on enam kompetentsust relevantsete turgude osas, hindamaks võimalikku konkurentsile ohtlikku turusituatsiooni ning turujõu kontsentratsiooni. Teiste puhul on olulised eelkõige teadmised reguleeritavate tegevusvaldkondade toodete ja teenuste tehnilistes aspektides (The relationship between... 2005).

Vaatamata olulisele erinevusele kompetentsi osas peaks reguleeritavates tegevusharudes siiski esmatähtsateks pidama järgmisi riiklikke ülesandeid (*Ibid.*).

- Tehniline reguleerimine, mis seisneb standardite kehtestamises ja seires, litsentside korraldamises ning sanktsioonide rakendamises nii, et see tagaks ühilduvuse privaatsuse, turvalisuse, usaldatavuse, finantsstabiilsuse ja keskkonnakaitse alaste printsiipidega.
- Hulgimüügi reguleerimine: tagamaks mitte-diskrimineerivat juurdepääsu peamistele jaotusvõrkudele.
- Jaemüügi reguleerimine: meetmed leevendamaks monopolistlikku hinnakujundust või käitumist jaetasandil.
- Avaliku teenuse reguleerimine: meetmed kindlustamaks, et tarbijad vaatamata oma sotsiaalsele staatusele, sissetulekutele ja/või geograafilisele asukohale omaksid juurdepääsu hüvistele, mida võib käsitleda spetsiifilist ühiskondlikku väärtust omavaks.
- Vaidluste lahendamine: kvaasi-juriidiline võim võib anda vaidluste lahendamisel kiiremaid tulemusi võrreldes mitte-spetsialiseeritud kohtuga.
- Konkurentsi üldjärelevalve: kontrollimaks konkurentsi kahjustavat tegevust ning ettevõtete ühinemisi.

Konkurentsipoliitika kitsamas tähenduses on *ex post* järelevalve turu struktuuri ja ettevõtete turukäitumise osas. Konkurentsipoliitika laiemas mõttes sisaldab ka *ex ante* tegevust turu tulemuste reguleerimisel. Need seosed ja kirjeldatud ühised riiklikud ülesanded annavad aluse konkurentsi järelevalve *ex ante* ja *ex post* funktsioonide koondamiseks ühte institutsiooni.

Ajalooliselt on riiklikud regulaatorid sageli olnud seotud ministeeriumitega, millised korraldasid või ka korraldavad vastavat tegevusharu. Sellest tulenevalt on teadvustatud ka probleemi, et reguleerivad ametkonnad võivad oma tegevust korraldada reguleeritavate ettevõtete huvides. Teooria (*capture theory*) kohaselt (Bernstein 1955) kalduvad monopole kontrollivad riigiorganid sageli esindama pigem ettevõtete kui tarbijate huve ning see oht on tänapäevase arusaama kohaselt

suurem just riiklike monopolide korral. Siin on ettevõtete juhtide seosed valitsusametnike ja poliitikutega tugevamad kui erafirmade puhul. Riigifirmades võivad jääda kasutamata ka eramajanduses ilmnevad täiendavad säästumotiivid ja sellega efektiivsuseelised. Suurem iseseisvus nii poliitilisest võimust kui ka reguleeritavast sektorist on oluline eeldus reguleerimisprotsessi sihipäraste tulemuste saavutamisel. Paljude OECD riikide positiivsed näited annavad tunnistust sellest, et reguleerivate institutsioonide iseseisvus on suurendanud nende tegevuse efektiivsust (The relationship between... 2005).

Riikliku reguleerimise protsessile avaldavad otsustavat mõju sellised nõuded nagu reguleerivate institutsioonide iseseisvus ja piisav pädevus, nende tegevuse läbipaistvus, sidusus, prognoositavus ning arvestuslik kohustus. Nimetatud nõuete järgimisel on leitud olevat oluline roll riiklike regulaatorite tegevuse efektiivsuse tagamiseks (Berg 2009). Neid nõudeid on ilmselt võimalik paremini täita ühes terviklikus järelevalve institutsioonis. Funktsioonide ja ülesannete killustamine mitme institutsiooni vahel võib vähendada tegevuse läbipaistvust ja prognoositavust ning samuti seada ohtu üksikute valdkondade riiklike regulaatorite sõltumatusele.

Erandvaldkondade riikliku reguleerimise võimalike arengutsenaariumite selgitamiseks Balti riikides võetakse vaatluse alla regulaatorite erinevad mudelid mõnedes arenenud Euroopa Liidu riikides, kus on olemas mitme aastakümne kogemused.

Võimalikud mudelid erandvaldkondade riiklikuks reguleerimiseks

Riiklikel regulaatoritel, olenemata nende struktuurist ja asukohast riiklikus hierarhias, on järgmised põhiülesanded (*The role of the regulatory authorities* 2004):

- ühendusvõimsuste läbilaskevõime juhtimine ja jaotamine ning vastavasisuliste kaebuste menetlemine,
- liitumistasude meetoodika kooskõlastamine ja liitumistasude kontrollimine,
- turgu valitsevat seisundit omavate energia-, võrgu- ja/või kütuseettevõtjate tegevuse kontrollimine ja nende poolt müüdava produkti hindade kooskõlastamine,
- võrguettevõtja edastamis- ja jaotamisteenuse tariifide kooskõlastamine ning kontrollimine,
- tegevuslubade väljastamine või sellest keeldumine, järelevalve teostamine ja tegevuslubade kehtetuks tunnistamine,
- asjakohase informatsiooni publitseerimine.

Sektorispetsiifiliste valdkondade riiklik reguleerimine võib riigiti olla korraldatud erinevalt.

Võrdlevas uurimuses Suurbritannia, Prantsusmaa ja Saksamaa riiklike reguleerivate institutsioonide kohta leitakse, et nimetatud riikides oli erandvaldkondade riiklikuks reguleerimiseks kasutusel põhimõtteliselt ühesugune mudel, mis toetus oluliselt konkreetse majandusharu eestvedamisele, kuni 1960ndate teise pooleni. Olulisemad

muutused toimusid erinevate reformide tulemusena 1980. aastate keskpaigaks (Thatcher 2007). Täpsema vaatluse alla on otstarbekas võtta Saksamaa ja Hollandi riiklike regulaatorite mudelid, sest nendes riikides on positiivsed kogemused ümberkorraldustest viimase kümnendi jooksul.

Saksamaal on riiklikud regulaatorid elektrienergia, gaasi, telekommunikatsiooni, posti ja raudtee osas integreeritud eraldiseisvaks föderaalseks institutsiooniks – Föderaalne Võrgustike Agentuur (*Federal Network Agency*, FNA) – mis paikneb Föderaalne Majandus- ja Tööstusministeeriumi tegevusalas ning mille peakorter asub Bonnisis. Saksamaa näitest saab järeldada, et ühendatud haruregulaatori mudeli kasutamine erandvaldkondade riiklikuks reguleerimiseks kindlustab regulatsiooni-protsesside efektiivsema toimimise. Rõhutada tuleks selle mudeli eeliseid võrreldes isoleeritud haruregulaatoritega.

Hollandis on valitsus loonud Konkurentsiameti (NMa) sees vastavad kohad sektorite reguleerimiseks. Energiasektori jaoks on Energia Reguleerimise Büroo (DTe), mis asub Hollandi Konkurentsiameti üldjärelevalve all. Nimetatud büroo vastutab Elektrienergia seaduse (1998) ja Gaasiseaduse (2000) täitmise ning järelevalve eest. 2004. aastal moodustati analoogiliselt teine koda Transpordi Reguleerimise Büroo samuti Konkurentsiameti juures (*The relationship between... 2005*).

Selline lahendus annab võimaluse ühendada sektoraalsed eriti spetsialiseeritud teadmised konkurentsiametis, kus tähelepanu on enam kontsentreerunud konkurentsi edendamise teemale laiemalt. Kirjeldatud institutsionaalne struktuur aitab kindlustada ühilduvust konkurentsiseaduse rakendamisel. Juhul kui konkurentsiamet on vastutav konkurentsiseaduse rakendamise eest osades valdkondades ja haruregulaatorid vastavates sektorites, siis on kooskõla saavutamise keerulisem ülesanne.

Seega on siin põhimõtteliselt võimalik eristada kolme institutsionaalset mudelit:

- 1) isoleeritud haruregulaatorid ja konkurentsiamet,
- 2) integreeritud haruregulaatorid ja eraldiseisev konkurentsiamet,
- 3) ühtne konkurentsi järelevalve ja reguleerimise institutsioon.

Olenemata sellest, millise mudeliga on tegemist, tuleb rõhutada ressursside parima kasutamise olulisust. Samuti on tähtis järgida põhimõtet, et riikliku reguleerimise ja järelevalve institutsioon ei muutuks sõltuvaks tegevusharust.

Siirderiikide kogemused erandvaldkondade riiklikul reguleerimisel

1990. aastatel, kui siirderiigid alustasid oma majanduste restruktureerimist ja erastamisprotsessi, võeti eeskuju riikidest, millised omasid pikaajalisi kogemusi infrastruktuuriga seotud tegevusharude ja monopoolsete sektorite reguleerimisel ning kus olid olemas ka traditsioonilised turumajandust toetavad tugevad õiguslikud institutsioonid. Nendeks riikideks olid Suurbritannia, Kanada, USA ja Austraalia. Probleemiks siirderiikide puhul oli asjaolu, et riigiettevõtete ümberkujundamine

teenis sageli kahjuks poliitilisi eesmäärke jättes tähelepanuta turutõrgete ületamise ja lahendamise eesmärgi (Guasch *et al.* 1999).

Siirderiikides on sektorispetsiifiliste valdkondade erastamise ja reguleerimise protsess kulgenud erinevalt.

Uurimuses väike- ja arenguriikide elektrienergia ning telekommunikatsiooni sektori regulatiivsete institutsioonide kohta leitakse, et viimase paarikümne aasta jooksul on kujunenud välja nii-öelda uus standardmudel nende sektorite riiklikuks reguleerimiseks. Sellesse mudelisse on oluliselt aktiivsemalt kaasatud konkurentsi elemendid, erakapital ning monopoolsed elemendid (nt võrgustik/infrastruktuur) on võetud eraldi vaatluse alla (Stern 2000).

Siirderiikidel on erandvaldkondade reguleerimise institutsioonide struktuuri ja täitevprotsesside osas veel suhteliselt palju arenguruumi.

Erandvaldkondade reguleerimise ja konkurentsipoliitika järelevalve institutsioonide areng Balti riikides

Lätis oli erandvaldkondade riiklik reguleerimine korraldatud mitmete haruregulaatorite kaudu kuni 2001. aasta oktoobrini. Energia Regulatsiooni Nõukogu oli institutsioon Majandusministeeriumi juhtimise all vastutamas energiasektori reguleerimise eest. Transpordiministeerium ja selle poolt juhitud Telekommunikatsiooni Tariifide Nõukogu teostas reguleerimist telekommunikatsiooni sektoris. Postiteenuse reguleerimist teostas Transpordiministeeriumi sideosakond. Raudtee Administratsioon juhitud Transpordiministeeriumist reguleeris raudtee sektorit.

Pärast nelja-aastast perioodi õigusliku valdkonna arendamisel loodi uus ühendatud regulatiivne institutsioon, mis võttis üle eespool nimetatud nelja eraldiseisva regulatiivse institutsiooni ülesanded. Integreeritud haruregulaator (*Public Utilities Regulation Commission*) on Majandusministeeriumi haldusalas iseseisev struktuuriüksus, mis viib ellu seaduses sätestatud ülesandeid ning millise nõukogu nimetatakse Seimi poolt.

Leedus on toimunud areng analoogiliselt Lätiga. 1997.aastal asutati Rahvuslik Hindade Kontrolli ja Energeetika Komisjon (*National Control Commission for Prices and Energy – NCC*), milline reguleerib elektri- ja termaalenergia, keskkütte ja gaasi, vee ning transpordi sektoreid. Toimus järkjärguline üleminek üksikutelt haruregulaatoritelt ühendatud multi-sektorilisele mudelile. Nimetatud riiklik regulaator tegeleb tariifide kehtestamisega, turulepääsu reguleerimisega (litsentsid tegevuseks) ja teenuse kvaliteedi järelevalvega.

Eestis olid riiklike haruregulaatorite funktsioonid kuni 2008. aastani jagatud järgmiselt:

- Sideamet tegutses tehniliselt piiratud ressursside (raadiosagedused ja telefoninumbrid) kasutuse korraldaja ja sideturu (telekommunikatsiooni ja postside) regulaatorina.
- Energiaturu Inspeksioon oli elektri- ja energiaturu regulaator.
- Tehnilise Järelevalve Inspeksiooni ülesandeks oli erinevates tehnikavaldkondades arendus-, teavitus- ning järelevalvetegevus.
- Raudteeinspeksiooni vastutusala oli raudteevalve riiklik järelevalve (tehniline kontroll, lubade ja tunnistuste väljastamine, läbilaskevõime jaotamine).

Konkurentsiameti ülesandeks oli konkurentsialane järelevalvetegevus ja koondumiskontroll. Kirjeldatud tööjaotus Eesti Konkurentsiameti ja vastavate ametitena haruregulaatorite vahel kehtis 2008. aasta alguseni. Senine Konkurentsiameti struktuur oli juba nii mõneski mõttes positiivsete eeldustega uue organisatsioonilise korralduse loomiseks, mis ühendaks konkurentsialast järelevalvet ja vastavate erandvaldkondade riiklike regulaatoreid ühendatud institutsiooni.

Rahvusvahelises kirjanduses on diskuteeritud konkurentsiameti ja riiklike haruregulaatorite ühendamise otstarbekuse üle ja nagu eelnevalt esitatud näidetest selgus, ei pea vastavaid positiivseid näiteid kaugelt otsima. Väikeriigis võiks ühendamine aidata tugevdada konkurentsipoliitika üldist staatust ja haldus-suutlikkust. Kõigil regulaatoritel on vähemalt üks ühine ülesanne – kontroll turguvalitsevate ettevõtete üle, olgu see siis kas *ex post* või *ex ante*. Teemakohase analoogia võib siin leida finantssektori osas ühendatud finantsinspeksioon kujul.

Järeldused

Sobiva institutsionaalse mudeli leidmiseks erandvaldkondade riiklikuks reguleerimiseks peaks arvesse võtma järgmisi asjaolusid. Esiteks, et isoleeritud haruregulaatorite puhul on tegemist märkimisväärse keskendumisega konkreetse sektorispetsiifilise ekspertiisi osale vastava infrastruktuuri ja tehnoloogia arendamisel. Teiseks, ühe integreeritud haruregulaatori rakendamine mitme riikliku regulaatori asemel võimaldab kulusid jagada ning kasutada efektiivsemalt napp ressursse. Kolmandaks, koondumine ühendatud reguleerimisinstitutsiooni võimaldab ühendada kattuvaid teadmisi ja kogemusi reguleerimise protsessis. Oluline on siinjuures rõhutada, et antud mudeli puhul on ilmselt lihtsam vältida olukorda, kus riiklikud regulaatorid võivad sattuda reguleeritava tegevusharu juhtide mõju alla. Seega suureneb reguleeriva institutsiooni iseseisvus.

Kokkuvõttes saab järeldada, et ühendatud institutsioonil on enam võimalust väheste ressursside ja intellektuaalse potentsiaali paremaks kasutamiseks, administratiivse suutlikkuse tõstmiseks ning sisemise kooskõla saavutamiseks regulatiivsete ja konkurentsialaste otsuste rakendamisel.

Lähtudes eeltoodud põhjustest võib järeldada, et ka Läti ja Leedu puhul oleks otstarbekas riiklike regulaatorite ühendamine konkurentsiametiga. Viimane peaks võimaldama tõsta nii konkurentsiameti üldist positsiooni majanduspoliitikas kui ka riigi kompetentsust selles keerukas ja interdistsiplinaarses valdkonnas.