



# Abuse of dominance in regulated industries

Dr Philip Marsden  
Senior Research Fellow  
Director, Competition Law Forum

# Abuse and regulation

- Objectives of sectoral regulators and competition authorities largely similar
  - Ensuring access/low barriers to entry
  - Efficiency / economic growth
  - Preventing excessive pricing
- Prerequisites for effective cooperation
  - Central government actively supports both
  - Shared principles, esp about competition across sectors
  - Instruments for communication and cooperation

# Concerns and conflicts

- Competition law does not share broader regulatory objectives – social.
- Authority can appear intolerant, inexperienced
- Regulation Expertise makes regulator 'close'
- Regulator can appear captured / act in interests of firms

# Regulated sectors – government's role

- Technical regulation
  - set and monitor standards
- Wholesale regulation
  - prevent exclusion; ensure access to essential facilities
- Retail regulation
  - prevent exploitation; mitigate monopoly pricing
- Public service regulation
  - access all areas

# Regulated sectors – government's role

- Competition law oversight
  - control anticompetitive conduct & mergers
  - ensure regulations do no harm
    - govt may be deterring entry to support USO
    - USO maybe allowing cross-subsidisation; or
    - govt may want to induce entry; sees every domco act as obstructive)
- Dispute resolution
  - specialised tribunals

# When is regulatory intervention best?

- Expertise needed to assess merits
- Ex ante action is needed because ex post too late and too uncertain
- Fast definitive solutions
- Competition law standards of proof too high
- Structurally similar problems require consistent rules

# When is competition enforcement best?

- Need to define markets
- Ex ante regulation could distort market / incentives / costly
- No ongoing oversight required
- Regulation cannot foresee how products / markets may be manipulated



# When / how to cooperate

- When markets need to be defined; market power
- When need for regulation coming to an end
- Concurrent powers
  - Senior officials on boards of the other
  - Competition authority to provide comments to regulator; require a response
  - Process for cooperation / consult / defer
  - Staff transfers
- Same appeals route → expert tribunal