

Regulation at the olympics

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Liberalizzazioni e semplificazione normativa sembrano essere due facce della stessa medaglia di “*consumer champion*” che l’esperienza inglese riportata di seguito vorrebbe poter assegnare. Detto in altri termini, se legiferare meglio fosse considerato una disciplina sportiva ammessa alle Olimpiadi di Londra del 2012, i rappresentanti dei consumatori inglesi si sarebbero entusiasticamente presentati tutti alla linea di partenza. Il dibattito in Gran Bretagna si è al contrario concentrato sulla quantità, piuttosto che sulla qualità, delle norme, con il rischio e il legittimo dubbio che liberalizzazioni e *deregulation* fatte a ogni costo siano davvero nell’interesse del consumatore finale.

Il National Consumer Council (NCC) - associazione di consumatori inglese membro del BEUC (Bureau Européen des Unions de Consommateurs) - è a favore di interventi legislativi solo laddove strettamente necessari al mercato e realmente utili ai consumatori. Questo per almeno tre ordini di ragioni.

I consumatori sono coloro i quali sopportano i costi degli eccessi legislativi, sia come contribuenti sia perché le imprese caricano sul prezzo finale dei prodotti eventuali maggiori oneri amministrativi.

In secondo luogo, spesso i vincoli regolamentari sono voluti e utilizzati dalle imprese in posizione dominante per impedire l’ingresso di nuovi concorrenti.

Infine, l’eccesso di regolamentazione non crea in generale un clima favorevole all’innovazione, allo sviluppo e alla creatività propria delle piccole e medie imprese.

Legiferare meglio e meno significa che l’approccio del legislatore che voglia realmente tutelare il consumatore dovrebbe rispondere a due tipi di esigenze:

- a) *Lifeline regulation*, ovvero garantire il rispetto di diritti fondamentali (per esempio la sicurezza di un impianto di riscaldamento, l’accesso ai servizi universali);
- b) *Market making regulation*, ovvero assicurare che ci sia sufficiente rispetto delle regole di concorrenza perché ci sia libertà di scelta.

Vi è anche una terza ipotesi in cui la regolamentazione si rende necessaria: quando codici di condotta e autoregolamentazione hanno dato prova di essere inefficaci.¹

¹ Un esempio significativo al riguardo è rappresentato dal settore dei riparatori d’auto. In un mercato con un giro d’affari di 6 miliardi di sterline, 11 codici di con-

dotta in 30 anni non hanno ridotto la stima del danno per contenzioso con i consumatori pari a 4 miliardi di sterline l’anno.

Volendo, invece, fare alcuni esempi di settori in cui ci sarebbe bisogno di liberalizzare, il NCC cita l'esercizio della professione legale, le banche, i taxi e la tutela dei marchi.

La tutela della proprietà intellettuale attraverso marchi e brevetti è sempre più uno strumento usato a fini puramente protezionistici, per impedire importazioni parallele a prezzi più convenienti, mantenendo artificiosamente alti i prezzi dei prodotti cosiddetti "di marca", soprattutto nel settore del tessile e dei cosmetici e assicurandosi rendite sulle spalle dei consumatori a cui è di fatto impedita la possibilità di scelta di un prodotto non di marca, ma più conveniente.

La normativa antiriciclaggio è un altro esempio di normativa nata per nobili fini e di fatto efficace prevalentemente come deterrente per i consumatori che intendono aprire o trasferire il proprio conto corrente.

Sull'esercizio della professione legale al Parlamento inglese è attualmente in discussione una proposta di legge che eliminerebbe le barriere all'entrata, permettendo la creazione di nuove tipologie di assistenza legale basate su un sistema di rilascio di licenze a esercitare la professione a banche, compagnie di assicurazioni, supermercati. Potrebbe così succedere che un incidentato possa essere assistito legalmente direttamente dalla propria compagnia assicuratrice.

L'entrata in scena di nuovi soggetti verrebbe a essere così uno stimolo a migliorare il servizio reso dagli studi legali tradizionali, con riferimento in particolare all'accessibilità e alla loro capacità di comunicare con continuità con i clienti.

I taxi sono ormai considerati una componente di vitale importanza nel panorama dei servizi di trasporto locale. In Inghilterra e Galles (esclusa Londra) sono 343 le autorità locali che rilasciano licenze fissando sia le tariffe massime, sia alcuni standard minimi su qualità e sicurezza del servizio (LAs). Se è tuttavia utile regolamentare tariffe e qualità, non sono realmente indispensabili, secondo il NCC, interventi quantitativi atti a contingentare il numero di taxi in circolazione.

Un'analisi economica condotta dal NCC nel 2003 rivela che, eliminando le restrizioni quantitative, si potrebbe aumentare il numero di taxi operanti, riducendo sia i tempi di attesa dei consumatori sia il numero di taxi abusivi.²

L'esperienza suggerisce dunque che le liberalizzazioni del mercato portano benefici ai consumatori da numerosi punti di vista, quali per esempio l'innovazione del servizio, una maggior possibilità di scelta e prezzi più bassi.

Tuttavia, oltre a esortare i governi a rendere più stringenti le norme a tutela della concorrenza, le associazioni di consumatori hanno la responsabilità di sensibilizzare il legislatore affinché si abroghino norme non necessarie e si abbattano privilegi.

² Conclusioni identiche a quelle cui è giunta un'indagine condotta da Altroconsumo nel corso del 2007 svolta in 10 città italiane per verificare l'efficienza del servizio

taxi dopo un primo tentativo di liberalizzazione. Vedi Altroconsumo 202, marzo 2007, p. 12-17.

La domanda più importante da porsi oggi in UK, ma probabilmente anche altrove, non è dunque se liberalizzare, ma come. Piuttosto che dibattere sulla giusta quantità di regolamentazione sarebbe importante porre l'accento sulla qualità e sul controllo delle norme. Questo approccio presuppone, tuttavia, che ci si focalizzi davvero su cosa è utile al consumatore, spesso punto di partenza, ma non necessariamente di arrivo, della lunga e impervia corsa alle liberalizzazioni.

Introduction

If UK business leaders had their way, removing regulation would be an official event in the London 2012 Olympic Games. The Confederation of British Industry - the principle body representing big business - talks regularly about a "red tape tide". The race would likely attract an international field; a recent survey by PricewaterhouseCoopers found the world's top chief executives think over-regulation is the biggest potential threat to business growth.

The participants are already limbering up. In the UK, numerous reviews have been undertaken, a Better Regulation Executive has been established, a Legislative and Regulatory Reform Act has been passed to make it quicker and easier to tackle unnecessary or over-complicated regulation, and a website has been created which invites anyone to make suggestions about regulations which could be simplified, reduced or removed altogether. The European Commission is also pushing for less red tape, as part of the Lisbon agenda to enhance European competitiveness.

Consumer organisations are often accused of being too ready to call for more regulation as a way of tackling the market problems they identify. In fairness, this criticism is sometimes justified. However, it is equally fair comment that business groups are all too willing to keep regulations that protect them from competition.

Deregulation can benefit consumers in the right circumstances, but a head-long sprint towards less regulation would be unhelpful. Here in the UK, the debate about regulation has seemed too obsessed with the quantity - rather than purpose and quality - of regulation. If better regulation, rather than deregulation, was to become an Olympic sport, then representatives from the consumer movement would enthusiastically turn up on the starting line.

In the remainder of this article, we outline the National Consumer Council's (NCC) approach to regulation and explore two case studies - legal services and taxis - where we are actively campaigning for deregulation. However, our central argument is that a "balance sheet" approach to regulation is counterproductive. What's really needed is a fundamental change in our regulatory culture, where the consumer interest is put at the heart of regulatory decision-making.

The National Consumer Council's approach to regulation

At the NCC, our instinct is against knee-jerk calls for regulation. We are in favour of properly functioning markets, and our starting point is that competition works, with well-informed consumers exercising real choice. This is our prejudice, one that we have articulated constantly since the mid-1970s, including over many years when the benefits of competition and choice were not so widely accepted and the prevailing political philosophy was all about protectionism and national champions. We do not support regulation unless and until there is a powerful case for intervention to make markets work or provide essential safeguards for consumers.

Three reasons why unnecessary regulation harms consumers

The first reason for our caution about regulation is that consumers foot the bill. Over the last few years, we have challenged those engaged in the regulatory debate to move beyond the urban myth that regulation is a cost to business. In a competitive market, this is self-evidently not true. The true costs of regulation are charged either to consumers, as business costs are passed on, or to taxpayers, as the costs of regulation grow. What matters in regulation, we have argued, is that we should start from the consumer and public interest, rather than treat it as an afterthought. The costs of getting this wrong, in terms of economic performance and the well-being of society are considerable.

Second, we also know from years of experience that incumbent businesses often use regulation to prevent or restrict competition, for example by setting unnecessarily high entry standards. Business may talk tough when it comes to regulation, but all too many companies - and indeed entire sectors - are willing to embrace (and sometimes lobby for) rules and restrictions when they think it will help further their own position. For example, the Law Society of England and Wales persuaded the parliamentary scrutiny committee examining the draft Legal Services Bill to recommend that will-writing services are regulated - even though consumer groups point out that there is no systematic evidence of detriment to justify it. If enacted, this would mean higher barriers to entry, less competition and greater profits for lawyers.

Our third reason for caution is that regulation can inhibit business creativity and innovation. This can be a particular issue for small businesses, so often a driver of new ideas in our economy. In fact, it has been estimated that regulation has five times as much impact on them. A survey of members of the Federation of Small Businesses found that the longer someone has been in business, the more likely they are to be dissatisfied with the rules affecting companies. This is the deadening effect of regulation. Unnecessary bureaucracy like this also increases costs, and as a result consumers and taxpayers pay more.

Indeed, the reality is that consumers have benefited hugely from much deregulation over the years. In markets as diverse as opticians' services, conveyancing and air travel, consumers now have greater choice and lower prices thanks to the opening-up of markets - moves supported at the time by NCC. In each case, scare stories put around in advance were unfounded, and quality standards have been maintained.

When regulation works

This doesn't mean that all regulation is unnecessary-far from it. We consider that there are two key types of regulation. In both instances, critics are simply wrong to characterise regulation as a problem.

The first is lifeline regulation, which safeguards consumers. The rules about gas safety save lives - around 47,000 businesses employing 98,000 gas fitting operatives are now registered as a legal requirement to work in the trade, ensuring that UK households benefit from a well-trained workforce. Set up 37 years ago, these arrangements now command wide support, and no-one today seriously argues that it has been anything other than a good thing for consumers and business alike. In a similar vein, lifeline regulation ensures access to affordable energy and water for vulnerable consumers.

The second is market-making regulation, which enables proper competition and choice. These are examples where regulatory intervention is needed to make markets work. Common technical standards can help establish competitive product markets; and ensuring that advertisers are not allowed to make misleading claims helps to promote choice. Standards on food labelling can help consumers make informed decisions and promote new ranges of healthy food.

Sometimes regulation is needed when self-regulation isn't working. In a failing market, self-regulation is a privilege, not a right. Our research suggests that it works less well in fragmented markets where the range of providers is wide and diverse. The car servicing and repair sector provides a prime case study of this.

There is overwhelming evidence of massive consumer detriment - estimated to be as much as £4 billion a year in a £6 billion market. Over the last 30 years, eleven different self-regulatory schemes have been tried and all have failed, the result of a lack of will on the part of the industry and the apparent reluctance of policymakers to get to grips with the unglamorous job of enforcement. The NCC has now set the industry a route map to make self-regulation work; this is its last chance. In the absence of real action, and in the face of high and sustained levels of detriment, the only option may be some form of licensing or regulation. We would demand such action reluctantly. But we are conscious that scepticism about regulation, and support for the better regulation agenda, should not mean leaving consumers defenceless when traders are intent on ripping them off time and again.

The NCC deregulation hit-list

The NCC has identified a number of very different instances in which regulation restricts competition, limits choice and raises prices. For example, the money laundering regulations were over-enthusiastically applied and caused real harm to consumers who have been prevented from opening a bank account. There have been some moves to relax rules on the type of music and readings that can be used at civil weddings. But many rules and restrictions remain, some of which go well beyond what is needed to safeguard the institution of marriage. Trade mark rules allow manufacturers to prevent trade outside defined markets, meaning they can hike up prices in the EU for products such as clothing and toiletries, secure in the knowledge that other companies are not allowed to import cheaper supplies from elsewhere. Research by the Swedish and UK governments demonstrates that consumers would benefit from reform, but the European Commission remains complacent about this anti-competitive piece of legislation.

Below we highlight two markets - legal services and taxi regulation - where the NCC is now actively campaigning for reform.

Legal services

Consumers use legal services at critical moments in their lives, for example when buying a house, going through divorce or dealing with bereavement. These are stressful times and lawyers are not very popular among the public when compared with other professions. It is very important to have the right systems in place to regulate lawyers effectively.

A Legal Services Bill is currently being debated in Parliament. The proposals are explicitly designed to put the interests of consumers first and are widely supported by consumer groups. As well as reforming the overarching regulatory framework and creating a new, fully independent ombudsman scheme to handle complaints about lawyers, the Bill also contains proposals to remove current restrictions on offering legal services that harm competition.

The last measure has received most interest in the UK media. Currently, there are a number of restrictions on the type of business structures through which legal services may be provided. The existing rules generally prevent legally qualified individuals working for businesses or organisations not owned by solicitors (e.g. banks or building societies) from providing many legal services to consumers. External investment in law firms is also generally not allowed.

The Bill will remove these barriers to enter the market, allowing new types of business structures to provide legal services to consumers in ways that better suit their needs. A licensing regime will ensure strong safeguards for the operation of these “alternative business structures” (ABS) to protect consumers.

This could transform the legal services landscape. New types of providers, such as supermarkets or banks, could enter the market. Legal transactions like conveyancing could be revolutionised by the technology and investment available to these businesses. And legal services could be combined with related services in one-stop-shops, promising more convenience and choice for the consumer. For example, someone involved in a motor accident could in future get legal advice and pursue their insurance claim through the same company.

These measures are generally supported by the legal profession, but some have claimed, wrongly in our view, that the commercial motives of the private sector means that quality will suffer. Aside from the fact that lawyers are also concerned with making money, it is difficult to underestimate the value of a good reputation to a business. Any household name with its brand to protect has an incentive to ensure quality and value for money when providing legal services, since failure to do so could impact adversely on its principal business. Investors know the best chance of maximising the long-term return from their investment is by insisting on practices that are customer-focused, that improve the efficiency of the firm, and that abide by the rules to avoid being penalised by the industry regulator.

In fact, new entrants from the private sector should help stimulate a cultural shift in the way legal services are provided. Some solicitor firms still resemble those satirised by Charles Dickens with cold offices, creaky staircases and lost files amid a mountain of paper. Lawyers suffer low trust ratings compared to other professions and, incredibly, one in every six solicitors was the subject of a consumer complaint to the professional body last year. The most common causes of complaint include communication breakdown and delay - cornerstones of good customer service.

There are more valid concerns about the possible impact on access to justice; this is where competition needs to be balanced with public interest concerns. There are some fears these reforms could signal the end of the high-street solicitor, denying access to legal advice to rural consumers in particular. NCC shares some of these reservations, but overall we think ABS is more likely to improve rather than weaken access to justice. Organisations like banks or supermarkets have a wide geographical spread and open longer hours. Affordability is another aspect of access to justice; greater competition in the market and new methods of service delivery could mean that consumers can purchase legal services more cheaply. And, as we highlighted earlier, the customer service ethos brought in by the private sector should make legal services a more approachable and happier experience.

It is crucial to get the balance right. The NCC is supporting calls to ensure that ABS licences are only granted after the licensing authority considers the impact on access to justice. But the focus must be on ensuring the availability of services and encouraging innovation, not protecting existing institutions or the traditional way of doing things.

Taxi regulation

Taxis are a vital component of local transport services. While many consumers are willing to pay a bit extra for a convenient way to get home after a night out, others - such as older people or those on low incomes - depend on taxis to get them to doctors' surgeries, shopping centres and other key locations.

In England and Wales (outside of London) national laws concerning taxis are enforced by 343 local licensing authorities (LAs). Some regulation is necessary: since consumers cannot shop around for the best price it is sensible for LAs to set the maximum fare; and because consumers cannot judge certain standards such as the safety of the vehicle and the competence of the driver, some form of quality controls are also needed.

However, in addition to fare and quality regulation, LAs are permitted to limit the number of taxis that are allowed to operate, but only if they are satisfied there is no significant unmet demand for taxi services in their area. Quantity controls on taxis were originally introduced as a form of traffic restraint - to avoid streets becoming congested by coaches and horses - in the Town Police Clauses Act 1847. However, local transport has changed much over the last 160 years.

Fare and quality regulation is needed, but NCC considers quantity controls are an unnecessary piece of regulation which disadvantages consumers and unfairly prevents individuals from entering the taxi trade. The UK competition authorities and the Department for Transport agree. In 2003, a market study conducted by the Office of Fair Trading (OFT) concluded that quantity restrictions harm competition and should be abolished. Government guidance makes clear that deregulation of quantity restrictions would be best practice and policy should be approached «in terms of the interests of the travelling public».

Quantity controls potentially harm consumers in many ways. The economic analysis is that removing quantity restrictions would put more taxis on the road and reduce passenger waiting times. Another indication of restricted competition is the value of licence plates. Someone wanting to start a taxi business may purchase a licence from a taxi owner who wishes to leave the trade. The price of licence plates, which trade for as much as euro 120,000 in one town, acts as a barrier to entry. As well as unfairly excluding new entrants, this also impacts on consumers because it reduces the likelihood of innovation and improvements in quality of service. It also indicates the level of customer demand that isn't being met by the current amount of taxis on the road, since taxi owners will only buy licenses if they think they will see a return on their investment.

Perhaps more seriously, taxi shortages undermine the efforts of the police and others to promote public safety since they encourage the use of unlicensed taxis and make it more difficult to clear town centres at nights. One campaign group estimates there are 30,000 unlicensed cab drivers operating across the UK, and that 5,000 women are attacked by them every year. New research commissioned by NCC suggests five per cent of adults, or 2,4 million people, have used an unlicensed taxi during the last twelve months.

Many licensing authorities have lifted quantity restrictions since the OFT's market study, but a significant minority - 28% - have yet to do so. We have not seen any compelling reasons or evidence that quantity controls benefit local communities in general and the people who use taxis in particular. Rather, they are at best an unnecessary piece of red tape, and at worst inappropriate protection of some of those already employed in the taxi trade.

Conclusions

History suggests that market liberalisation generally benefits consumers in lots of ways, such as service innovation, greater choice and lower prices. The nightmare scenarios predicted by sceptics - often those with vested interests in retaining the status quo - rarely materialise.

As well as calling on government to tighten rules, organisations whose role it is to promote and protect the interests of consumers also have a responsibility to identify opportunities to reduce or remove regulation which is unnecessary or causes harm. The starting point of the consumer movement should be that competition works, with well-informed consumers exercising real choice. Regulation can provide essential safeguards for vulnerable people; and it can help make markets work. But it needs to be used sparingly and with a sense of purpose.

However, a focus on more regulation or deregulation misses the point. In the UK, and we suspect the same is true in most countries, there is a need for less regulation in some areas, more regulation in other areas, but better regulation in lots of areas. Rather than debate the appropriate quantity of regulation, the emphasis should be on improving the quality of regulation and how it is managed. Decisions about whether and how to regulate have a huge impact on consumers. This requires a consumer-focused approach to regulation, where the consumer interest, not the vested interests of business leaders and bureaucrats, is put at the heart of regulatory decision-making.