Promoting Competition Reforms for the Benefit of Ordinary People in the Developing World

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"If policy is to be friendly to economic development, it must look dire poverty in the eye: it must harness market forces to keep prices competitive; It must build a ladder of mobility from the lowest rung up, to enable mobility centred entrepreneurship and stimulate innovation"[2]

Eleanor Fox

While it is not easy to determine the single most important factor leading to poverty over the globe, at least it can be said that numerous economic, political and social barriers that have blocked the access of poor to resources and opportunities are certainly contributors. Removing those barriers and connecting them to mainstream entrepreneurship need to be central goal of economic policy in developing countries. The goals of 'inclusive development' or 'inclusive growth' or 'equity' need to be inherently pursued, by developing countries. Or as SDGs[3] would require: "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all" and "Reduce inequality within and among countries".

Competition policy is part and parcel of economic policy of a country, which must take into account the level of economic development of that country and its socio-economic goals. Since economic conditions in developing countries differ from those of industrialised countries, same standard of competition policy is neither desired nor should be expected. For instance, rules based on presumptions that "markets work well" may not always fit into developing country economics. Developing countries would have to take extra effort in removing all sorts of barriers for new entrants to market, and have to deal with more vigour with dominant firms from using their power and leverage against powerless firms, particularly in the sectors important for their economy.

Prof Eleanor Fox in her contribution at the OECD Global Forum on Competition, 2013, has stated: *"What is the foundational perspective that should inform competition regime in developing countries? It should be able to: create an environment; create a competition system that is more sympathetic to people without power than to people with power and connections; more sympathetic to outsiders than to incumbents, especially incumbents upon whom privileges have long been showered. The approach is pro-poorer because the policy solutions are not addressed to a category – 'the poor'. There is no such thing as competition law for the rich (well off; enabled) and competition law for the poor".*

She further goes on to explain that competition is not only about the focus on competition law and enforcement priorities on products and services, critical to low income group. Competition is in fact *a market system with handful of sister systems and efforts, the success of each being a necessary condition for enabling the disempowered. This includes education, health care, infrastructure, job opportunities, and availability of capital for good ideas, all in a context of good governance, and that must include absence of pervasive corruption. The house of opportunity, participation, and ultimately*

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[2] Mehta Pradeep S and Taimoon Stewart (2013), "Should Competition Policy & Law be Blind to Equity? *The Great Debate*", Book, CUTS International, Jaipur, *Page 96-97*

[3] Sustainable Development Goals, as agreed by the Members of United Nations to be achieved by 2030

growth is built one small brick at a time. The entire system, if it pulls together, can improve the lot of the half of the world living in poverty. All of the efforts together can help to close the gap.

Thus competition is meant to be a part of the very fabric of various policies and legislations across sectors. It is not just limited to the competition authorities to act as the custodian of competition, ensuring 'well-functioning' competitive markets. It is the collective effort and responsibility of all branches of the government and development partners as a whole.

CUTS International has been carrying forward this baton of competition advocacy through its various initiatives and interventions, since it was established in 1983. This line of the work was intensified after the developing world adopted economic reforms in early 1990s and globalisation was hastened with the arrival of the World Trade Organisation in 1995. It was realised that liberalisation and deregulation only buttressed the need for good market regulatory institutions, without which the gains of liberalisation would not accrue to people, for whom it was designed. In due course two specialised CUTS Centres were established, first in 1996 to deal with international trade issues and second in 2003 to look into competition, investment and regulatory issues – Centre for International Trade, Economics and Environment (CITEE) and the Centre for Competition, Investment and Economic Regulation (CCIER).

CUTS has had successfully advocated need for competition policy and law in many countries, and had also been involved closely in designing some of such regimes, including India. Through various study projects CUTS has also been evaluating regulations in key sectors (having larger public interface) from the competition perspective in India and other developing countries. It has implemented various cross-country projects on competition and regulatory issues. In addition, CUTS has been closely working with key international organisations like WTO, UNCTAD, OECD etc. on trade, competition and related issues. Following section reflects CUTS experience, with few real examples, which go with the theme of this paper and Prof Fox's thinking.

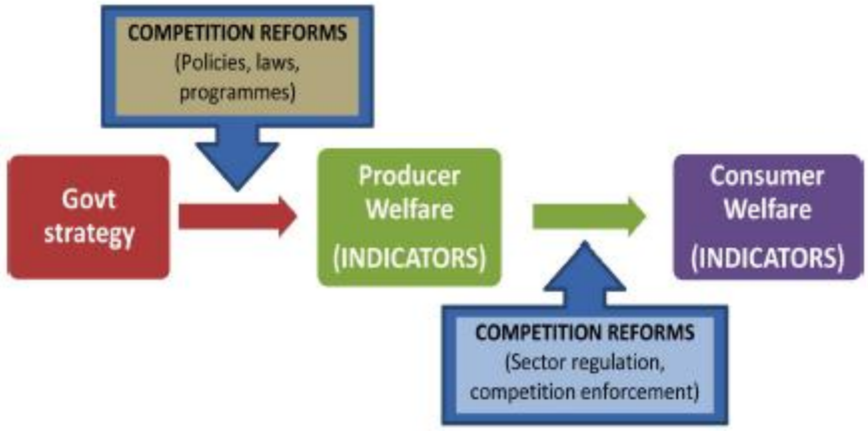
2. Competition reforms and public welfare

In most countries, competition still continues to be an abstract subject and whenever it is discussed, it is taken in the purview of the competition authorities and/or tribunals of the respective countries. It is a difficult task to get people/policy makers understand that competition has to be approached through the lens of 'competition reforms that cut across the various sectors and their policies', otherwise policies themselves can impede the growth of the market and result in imbalance. More often than not, this approach is faced with resistance from vested interests as they prefer the *status quo*.

There has been a common phenomenon in developing world – policies in key sectors are either reactionary (developed in response due to external factors) or static (archaic policies not taking into account the market dynamics). Predominant thinking in these countries had been to rely on reforms/liberalisation as most effective tool for introducing competition, with or without having a competition authority. Such an approach may not essentially lead to benefit the markets in the long run.

After decades of experience in the trenches, CUTS has now learnt to explain the given theme figuratively, as shown below. The figure essentially links competition reforms to producer and consumer welfare, establishing a relationship in the form of a continuum, which in turn has two components: (i) pro-competitive elements in government policies that help producers/businesses benefit from their engagement in a specific market; and (ii) effective regulatory actions that ensure that producers/businesses conduct in the market is consistent with consumer interests being preserved and enhanced. Governments need to look into the 'ease of doing business' (access to inputs, no entry or exit barriers, access to finance, maintaining competition neutrality etc.), simultaneously ensuring that consumer welfare goals (access, price, quality, choice etc.) are achieved.

Figure 1: Competition Reforms and Welfare Continuum



Source: CREW[4] Project Synthesis Report

The CREW project looked through the above explained lens into two key sectors – staple food and bus transport – and found that even after the allocation of resources, the commodities and/or services thus provided are either over-charged or are of sub-standard quality. The ordinary consumers, especially the poor, are disadvantaged in such a scenario as they struggle to balance their small budgets. On the other hand, the governments closely monitor these sectors creating state led monopolies to provide essential services to the consumers and assured income to the producers, virtually blocking entry of new players and innovation. A competition reform imperative would advise in such situations to gradually introduce competition in the market and levelling the playing field between State-owned Enterprises and private players, accompanied by sound and effective independent regulation.

In Zambia, for example, many sectors were liberalised in the early 1991 including the bus transport sector. The deregulation of the sector and the accompanying measures introduced by the Zambian government like tax concessions on import of buses, reduction in the time required to obtain bus licenses and improved access to infrastructure such as bus stops and stations – have had a positive impact on the entry of service providers (private sector) and thereby, competition in the sector. Even though, for the consumers (or passengers) the access to bus services is increased, deregulation of Zambia's transport sector and the resultant increase in competition has not been able to generate significant benefits in terms of intra-city bus transport quality as well as (increasing) fares. Thus there is a missing link in the continuum, somewhere between service providers and consumer welfare.

Similarly in Ghana, despite the existence of the publicly owned Metro Mass Transit (MMT) bus service (owned by the Government and run on a public-private partnership model), no barriers were

[4] Competition Reforms in Key Markets for Enhancing Social & Economic Welfare in Developing Countries; undertaken in four countries: Ghana, India, the Philippines and Zambia.

imposed by Government to protect MMT from competition. The private sector has been able to gain a lot of consumer patronage despite the higher fares they charge due to better quality of services being provided by them. Thus consumers now have improved choice – either to opt for quality and pay a higher fare or for low fare and poor quality of the MMT.

Then there is a case of millers' subsidy in Zambia as an example of how reactionary policies do not necessarily translate in consumer gains. Between January 2000 and August 2011, millers in Zambia purchased maize from the market or from the Food Reserve Agency (FRA) at competitive prices. From September 2011 to March 2012, FRA began subsidising maize grain to millers, assuming the same would be passed on to consumers. However, the mill-to-retail marketing margins (difference between the wholesale maize price and retail meal price) increased significantly by about 55percent between August and September 2011. Also, this was not accompanied by an immediate or gradual fall in the retail price for maize, indicating that millers accrued the benefits from the subsidy, and not the consumers.

Similarly, the Zambian government's Farmer Input Support Programme (FISP) was wrought with collusive practices at the time of procurement of fertilisers. FISP also faced targeting issues with large farmers being benefited more from the subsidy than the small farmers. Additionally, this resulted in the dependence of farmers on maize and crowded out other high yielding crops that could have been more economically viable.

Yet another example is from the seed sector in the state of Bihar in India, which seems to validate the continuum presented in Figure 1. Enabling state government policy and strategy in the agriculture sector helped entry and establishment of private sector seed companies in the state. The state government provided the framework for these players to operate and encouraged them to develop strong distribution networks. The Bihar state government also ensured that these players were able to operate effectively and help the farmers (as consumers) obtain good quality seeds at low price. Overall usage of good quality certified seeds by the farmers in the state led to better yields in many cases.

Furthermore, Infrastructure sector(s) is good example of overarching impacts. World Bank (2003) noted that 'improvements in infrastructure services can help promote competition in other markets, and there is evidence that infrastructure has a positive impact on growth and poverty reduction'. CUTS's experience corroborates this fact, that underdeveloped infrastructure is deterrence in private sector participation leading to issues of accessibility and high prices to both consumers and producers. For example, in the state of Bihar in India, even though the state government removed the policy barriers to allow private sector participation in the agricultural sector, including procurement of agriculture produce, the less developed infrastructure is resulting into lesser realisation of desired gains that could have accrued to farmers and consumers.

Lower income group consumers have to spend a greater part of their income on goods and services, and therefore high prices arising from anti-competitive practices will have a greater impact on them than other segments from the society. A World Bank Study (2007) found that the world's poorest countries tend to have low levels of competition in domestic markets and a high degree of market dominance. Nobel Laureate, Joseph Stiglitz also asserts that "Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies."

An important approach to poverty reduction is to empower the poor, provide them with productive employment and increase their access to land, capital and other productive resources. But this approach may not be successful unless these people are linked to the markets and markets are made to work for the benefit of the poor. This would open economic vistas for them, providing them with economic empowerment and freedom that is so crucial for their survival and well-being.

This case from Ghana shows how a liberalised procurement market has led to the emergence of private women traders (referred popularly to as market queens) involved with the procurement of various crops in the national and the regional markets. The wholesale market is dominated by the market queens who procure maize from the rural farmers using their network on the ground (village assemblers) and supply to the market. These market queens dominate the maize procurement market and procure over 95 percent of the produce from the Ghanaian farmers. There is a certain level of contestability among these market queens, since each of them are constantly working towards strengthening their own distribution networks, improving access to capital and establishing strong ties with various market participants.

Therefore, competition not only aids in addressing the market distortions, but also strives to extend the benefits of reforms to the consumers and producers who otherwise would not have availed the same.

3. Conclusion and the way forward

Competition and regulatory policy touches on a broad set of policies and measures that have significant implications on the nature of markets, and therefore impact the foundations of social and economic development, through development of well-functioning markets. These can be incorporated into national frameworks/programmes, especially in developing countries to achieve the five transformative shifts of the SDGs Agenda namely:

1. Leave no one behind
2. Put sustainable development at the core
3. Transform economies for jobs and inclusive growth
4. Build peace and effective, open and accountable institutions for all
5. Forge a new global partnership.

The following five objectives of competition (as per The UN Set on Competition) resound with these transformative shifts.

1. To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries
2. To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through (a) The creation, encouragement and protection of competition; (b) Control of the concentration of capital and/or economic power; (c) Encouragement of innovation;
3. To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;
4. To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help

to maximize benefits to international trade and particularly the trade and development of developing countries;

5. To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

The best way to achieve these transformative shifts is to have empowered citizens, the consumers. If consumers are better empowered to exercise their rights and discharge their responsibilities as per the United Nations Guidelines for Consumer Protection, 1985 and with effective laws, regulations and institutions in place then these transformative shifts are possible.

There is a need to ask as to what a pro-poor competition regime would take into account. The developing countries specifically ask themselves these questions as is also evident in their policies and their readiness to liberalise their markets. They do to ensure access to essential goods and services at a lower price to their citizens and especially the marginalised consumers.

With respect to pro-poor competition regime, Prof Fox would state '*My observations fall into three categories:*

1. *The reach and contours of the competition law, with particular regard to coverage of certain state anticompetitive acts, exemptions, and procedural vehicles to assure that the poorer/outsiders who suffer antitrust injury are beneficiaries not only in law but also in fact,*
2. *Formulation of substantive rules and principles (Is there a pro-outsider formulation?), and*
3. *Advocacy*.'

Many times the policies, especially the trade policies, are at the extreme ends of the spectrum – either they are more beneficial for international firms to operate in domestic markets or they are protectionist enough leading to inefficiencies, crowding out of competition and economic losses. A balanced approach therefore is needed not only to design policy provisions, including competition law/policy and sectorial policies. To conclude, following are the policy pointers emerging from the experience of CUTS' work, which resounds with the thought process of Prof Fox:

- Regulatory safeguards are an important factor to ensure that benefits of trade/economic liberalisation can be derived fully by the people/country. Absence of such safeguards might see the reforms being used as an opportunity by private players to exploit the market.
- The competition regulation should extend to state owned enterprises or state monopolies too. More often than not, these SOEs are economically inefficient and with no incentive to innovate (owing to state support), amass huge economic losses. Including these SOEs in the purview of competition laws may help in managing these monopolies.
- Evidence suggests that the exemptions done in some sectors like agriculture (by way of subsidies) should be minimum and well targeted. This calls for strengthening government capacity to ensure that they are able to carry-out targeted subsidy programmes, effectively.
- Proper redressal mechanism to ensure anti-competitive injustice incurred by the poor should be available. Most of the times, the poor are left at a disadvantage as justice for the poor in such scenarios is wrought with political economy issues, thereby dis-favouring the poor population.
- Last but not the least, there is a need for active advocacy against 'state interventions' and 'abuse of dominance' that lead to anti-competitive environment. Civil societies can play a major role in taking up this mantle. Additionally the civil societies can also advocate for global good practices to ensure that the domestic markets are well functioning.