

IMAGINE: PRO-POOR(ER) COMPETITION LAW

Professor Eleanor Fox
New York University School of Law
UNCTAD IGE on Competition
Geneva 8 July 2013

The views expressed are those of the author and do not necessarily reflect the views of
UNCTAD

OUTLINE

Is there a pro-poorer perspective?

- ▣ I. POVERTY
- ▣ II. UNLEASHING POTENTIALS
- ▣ III. THE ROLE OF COMPETITION LAW
 - SCOPE OF THE LAW: The State, Exemptions
 - PROCEDURE
 - SUBSTANTIVE RULES
- ▣ IV. THE ROLE OF COMPETITION POLICY
 - NATIONAL
 - INTERNATIONAL
- ▣ CONCLUSION: a new consciousness?

I. The Poverty Problem

- ▣ **A problem of humanity as well as productivity**
 - **Children starving**
 - ▣ UNICEF: “48% of children in India are stunted” 7 June 2013
- ▣ **Millennium development goals 2000**
- ▣ **The World Bank**
 - ▣ *“We have made remarkable progress in reducing the number of people living under \$1.25 a day in the developing world, but the fact that there are still 1.2 billion people in extreme poverty is a stain on our collective conscience,”* said **World Bank Group President Jim Yong Kim**. *“This figure should serve as a rallying cry to the international community to take the fight against poverty to the next level.”* 17 April 2013
- ▣ **Nearly 45% live on \$2.00 a day or less**
 - **80% in African LDCs, 72% Asian LDCs** UNCTAD May 2011

II. Tackling the Poverty Problem: Unleashing the potentials

- ▣ The multi-faceted attacks on poverty
 - ▣ and lack of shared prosperity – inequality hurts
- ▣ Interdependent policies, working together
 - Food, water, health, schools, energy, transportation, infrastructure, bank loans, economic opportunity
- ▣ UNCTAD, OECD, WORLD BANK
- ▣ The Trade-Growth-Poverty Nexus
 - ▣ Exports and jobs –UNCTAD empirical report 2013
 - “How are the Poor Affected by International Trade in India”
 - But many gains have not trickled down to the poor
- ▣ “Competition” comes late to the scene

Tackling the problems – What the competition leaders in poorer developing countries do

- ▣ The competition leaders and their allies in World Bank, USAID etc.
 - Look for where they can help the most
- ▣ Pre-ICN Forum in Warsaw
 - “Making Markets Work for Development: a reform agenda on competition”
 - Slides/materials available at
 - ▣ <https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/pre-icn-forum-making-markets-work-for-development.cfm>
 - ▣ Moving and practical examples: “Unlocking agribusiness value chains”

Examples from World Bank Forum: They all involve the State

- ▣ “Africa can help feed Africa”
 - Removing barriers to regional competition in food
 - Regional trade is crucial but it is easier to trade with rest of the world than with other African countries
 - Slides by Paul Breton
- ▣ Key Agribusiness in Kenya, Francis W. Kariuki
 - Pyrethrum sector – getting rid of monopsony/monopoly power of Pyrethrum Board
 - ▣ Empowering 40,000 small farmers
- ▣ USAID by Nicholas Klissas
 - Zambia – maize market controls
 - ▣ Farmers force to buy overpriced fertilizer sourced through exclusionary procurement
 - Papua New Guinea – narrowly escaped rice import, production and trading monopoly that would have increased prices 100%

III. Role of Competition Law

▣ A. Scope of the law

■ 1. How far does the law reach state acts?

- Note that almost all of the World Bank examples involved the state

▣ Project with Deborah Healey; 6 suggested principles:

- SOEs
- State officials
- Narrowing state and local action defenses
- Narrowing lobbying defenses
- Empowering competition authority to challenge or trigger
- Dis-applying or preempting rogue state measures

■ 2. Exemptions and non coverage

- Agriculture, banking, regulation, IP, off shore acts
- Procedure: a private right

B. Formulating principles of law

- ▣ Principles and perspectives more rather than less friendly to the poorer, outsiders
 - consistent with efficient, dynamic markets
 - 1 discounting
 - 2 market definition choices
 - 3 leveraging, foreclosure and access
 - 4 efficient foreclosures
 - 5 excessive pricing
 - 6 buyer power
 - 7 intellectual property
 - 8 in general, simpler rules

IV. Role of Competition Policy

- ▣ Insight from Mexico – broadly applies
 - In spite of liberalization, still suffering from legacy of state-led, corporatist economic policy
 - which lingers in vast pockets of anticompetitive regulation
 - ▣ Markets still have shallow roots
 - and competition is struggling to hold its own against state intervention and rent seeking. Angel Lopez Hoher
- ▣ **Restraints by and within the nation**
 - Targeting regulation, monopoly boards, trade restraints
- ▣ **Restraints in the global economy**
 - Export cartels, aid in discovery, cooperation

CONCLUSION

- ▣ Competition is a vital pro-poor, pro-poorer policy
- ▣ There **is** a pro-poorer perspective on competition *law*
- ▣ There **is** a pro-poorer perspective on competition *policy*
- ▣ Of course it is no magic bullet to reduce poverty
 - but at least we can:
 - ▣ create consciousness of the pro-poorer/outsider perspective
 - ▣ support nations with large poorer populations as they do what they can, using competition law/policy, to make their people better off