



Competition Commission of India



Impact of Cartels on the Poor

Competition Law, Poverty Reduction and India

Intergovernmental Group of Experts on Competition Law and Policy
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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

Introduction

- Economists have long extolled the virtues of competition
- Many imperfections of the competitive process
- Competition law an instrument for designing corrections to an otherwise beneficial competitive environment
- Reconciliation between development economics and competition economics
- ✓ moved away from the trite debate of state vs. markets
- ✓ micro-foundations of growth
- ✓ focus on institutions
- ✓ emphasis on empirical evidence

Introduction

- Commission on Growth and Development (2008)
 - ✓ importance of markets for development process
 - ✓ market fundamentalism vs. institutional fundamentalism
- For benefits of liberalization
 - ✓ an appropriate regulatory framework
 - ✓ private barriers may simply substitute governmental barriers to trade
 - ✓ prevent improvements in social welfare
- Socio-economic ideology (competition culture) determines to a large extent the success or failure of a competition law
 - ✓ so much can be gained if modicum of competitive neutrality in public policy (agriculture, sale of natural resources)

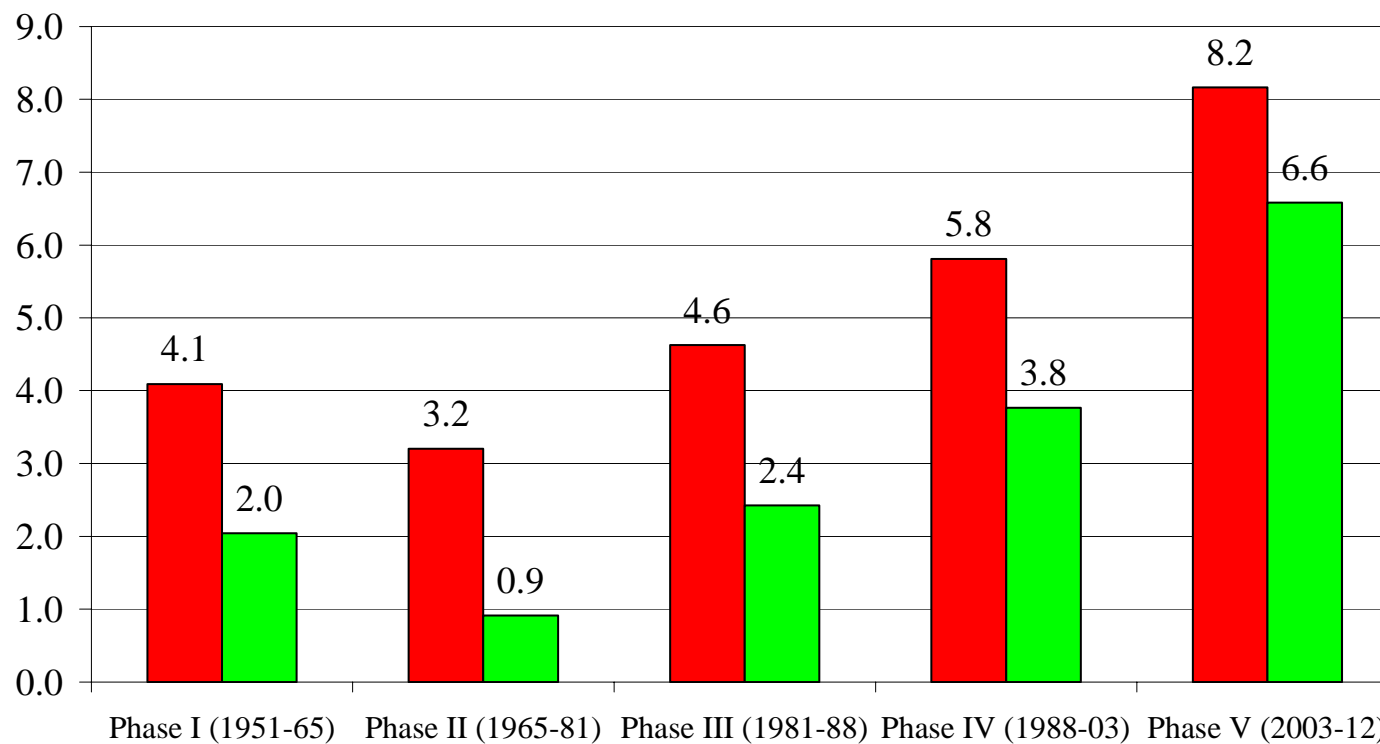
Competition Law and poverty reduction

- Standard microeconomic perspective, the effect of competition on poor consumers is straightforward (**Competition → Growth → Poverty Reduction**)
- Where can competition have direct effect on the poor?
 - ✓ agriculture markets (poor as consumers of essential goods and services)
 - ✓ petroleum products (inflationary impact)
 - ✓ poor as small business owners and workers
- Indirect effects
 - ✓ Releasing of resources for development (Opportunity cost of anti-competitive practices in procurement)
 - ✓ Ending collusion and making e contractors compete
 - ✓ lower costs, putting the savings back into the government's budget

Evidence from India

India: Following Product Market Reforms, Growth has Accelerated

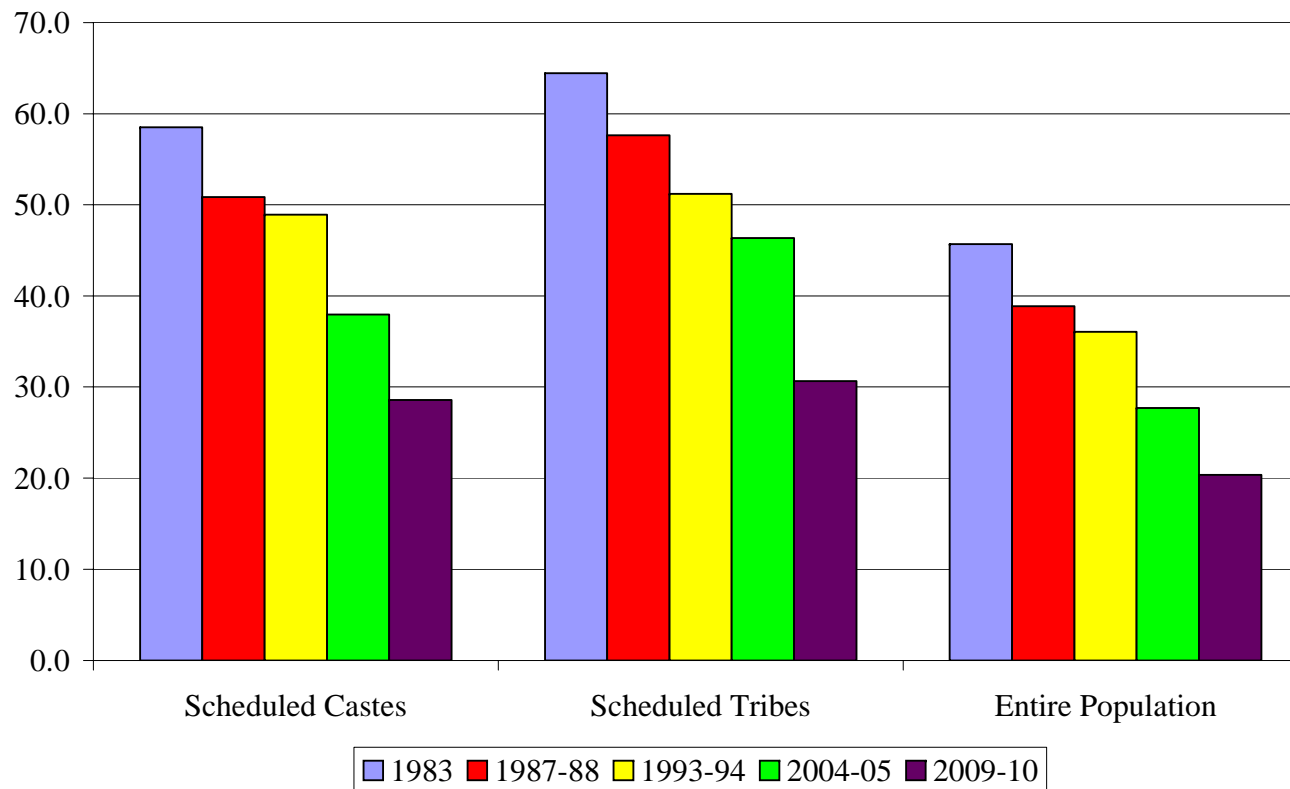
Growth in GDP and Per-capita GDP at Factor Cost



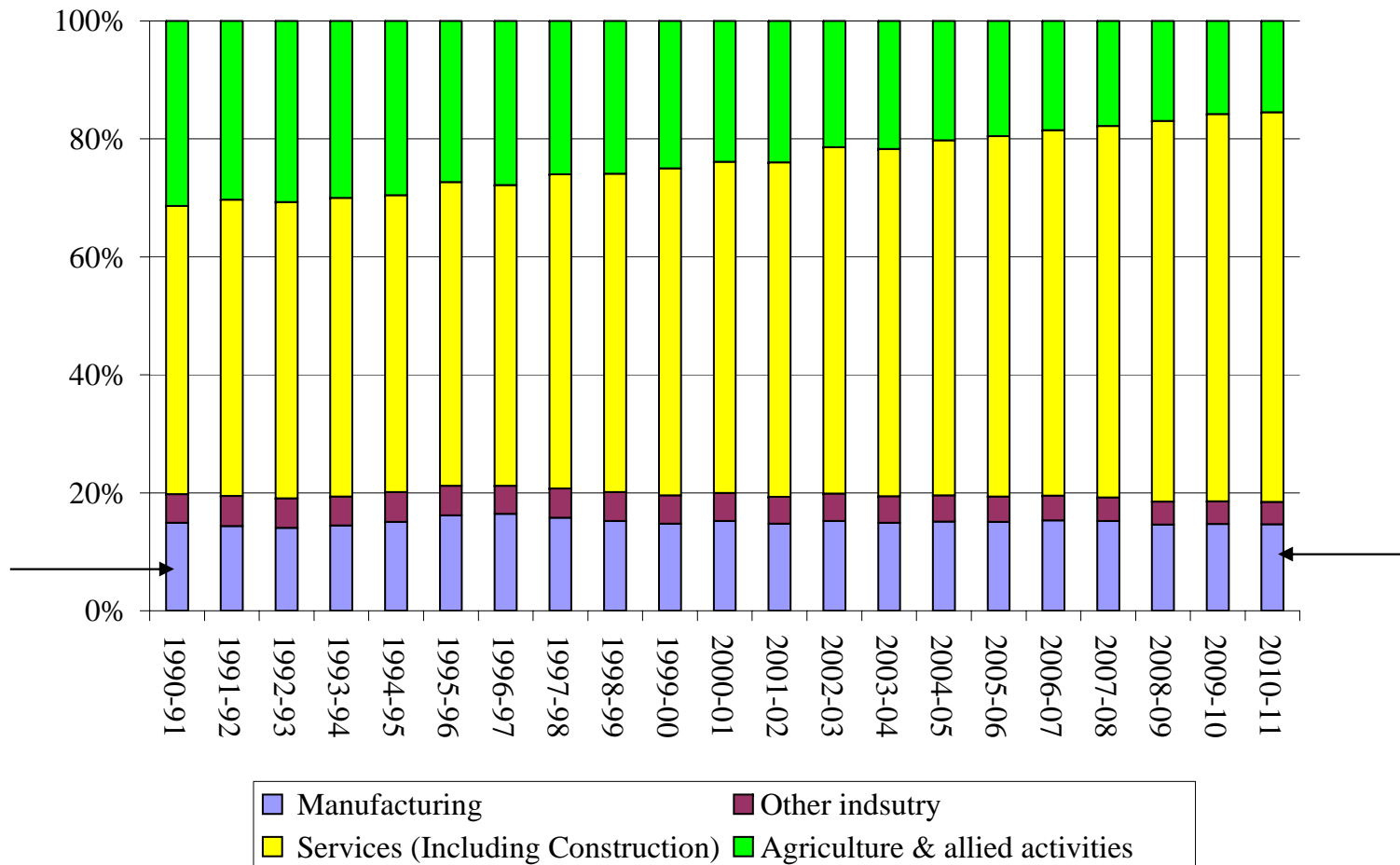
■ Annual growth in GDP at factor cost ■ Annual growth in pe-capita GDP at factor cost

Poverty has Fallen but Slowly

Declining poverty ratio for all social groups

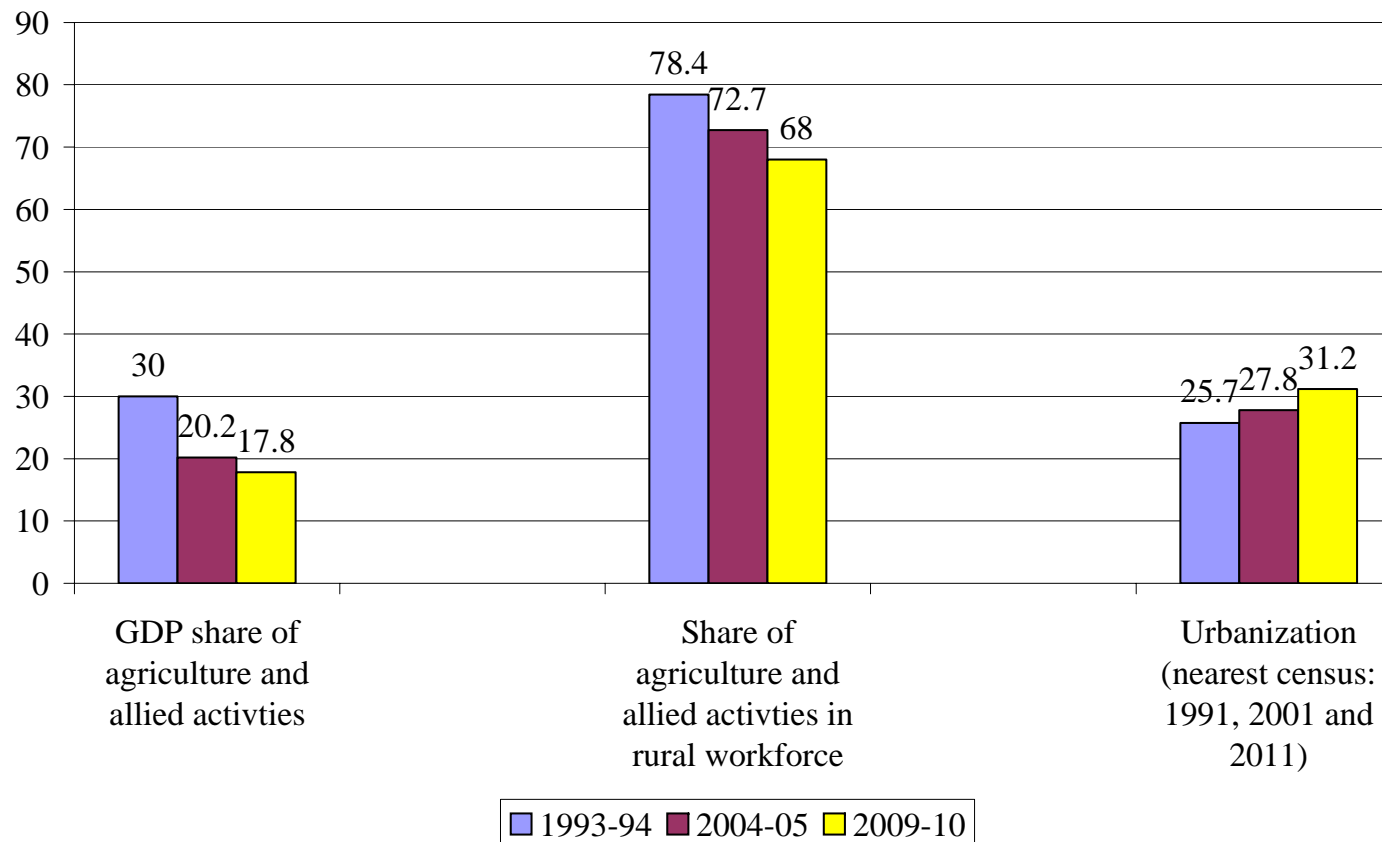


Major Anomaly: Stagnant Share of Manufacturing in the GDP



Slow Transition of Workforce out of Agriculture

Slow transition of rural agricultural workforce

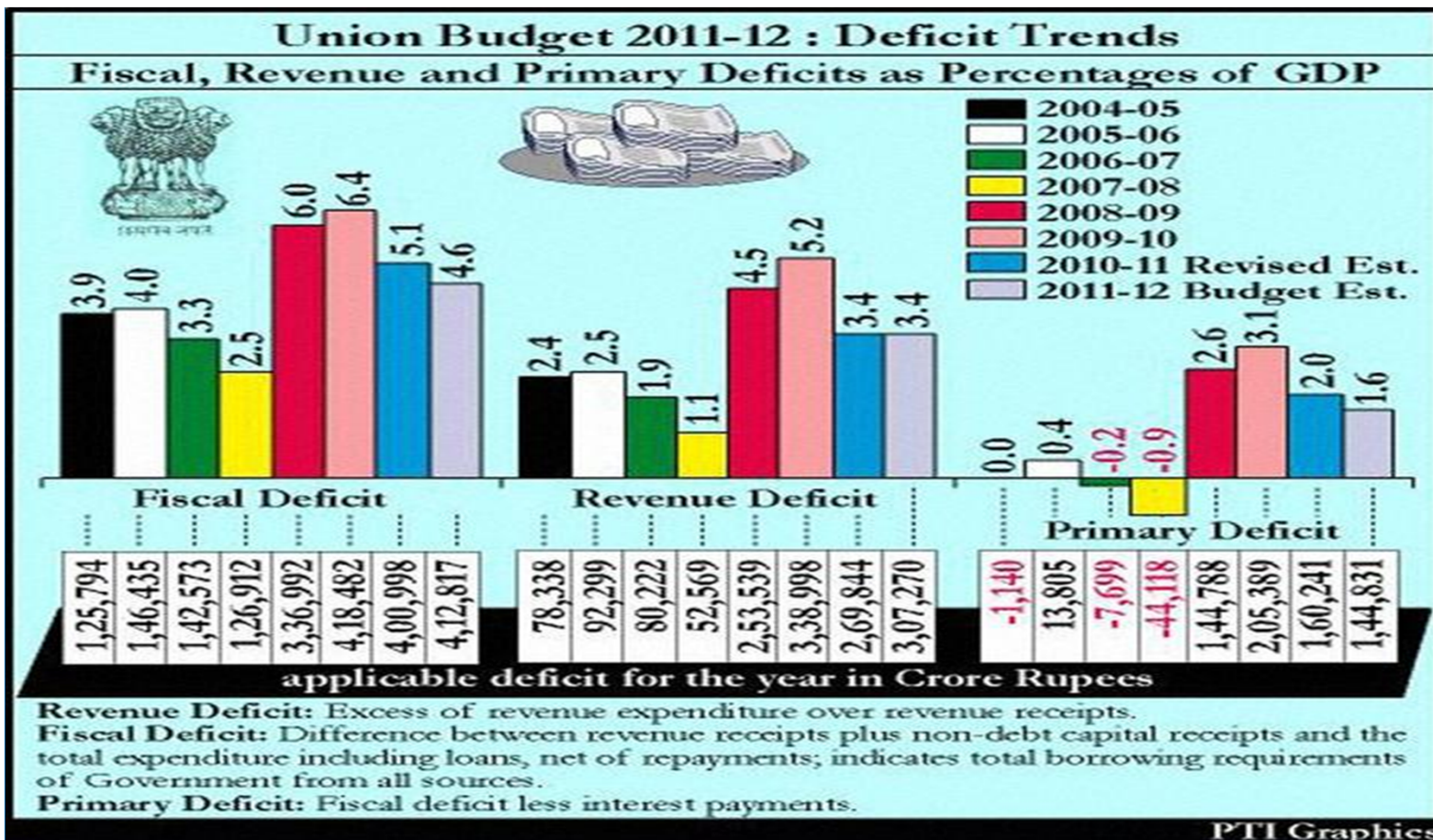


Public procurement → Cartels → Fiscal Deficit → Inflation
→ Poor

- PP accounts for 30% of GDP in India.
- Major departments like Defence, Railway, Power and Telecom, Aviation spend about 50% of their budget on procurement
- Higher than the expenditure of most of the State Governments
- Around 26% of the Union Budget allocated for health is devoted to procurement
- Fiscal Costs due to anti-competitive conduct
- Fiscal costs of PPP projects (as public is a partner and one has to limit the possibility of expropriation by the private entity- Role of competition law, off-budget, pre-empt future budgetary resources)

Fiscal Deficit over the years

	2010-11 Actuals	2011-12 BE	2011-12 RE	2012-13 BE
Fiscal Deficit	373591 (4.9)	412817 (4.6)	521980 (5.9)	513590 (5.1)



Role of CCI

- Enforcement measures Penalise Bid-rigging
- ✓ Section 3(3) of the Act
- Advocacy measures
- ✓ enable Ministries/Departments to identify manipulative bidding
- ✓ for better tender designs and tender specifications
- Under the ambit of section 2(h), government ministries and departments engaged in commercial activities in any manner are covered (exception sovereign functions of Govt. Ministries/Departments, Defence, Space, Atomic Energy, Currency).

Cartel Cases

- Suo-moto Case No. 03 of 2011 (LPG Gas Cylinder Manufactures)
 - ✓ Violation of Sec 3(3) of the Act for bid rigging against 48 bidders for colluding and quoting identical prices for supplying of **LPG Cylinders** to IOCL; penalty of USD 27.7 million @ 7% on the average turnover of these companies
- Case No. 43 of 2010 (A Foundation of Common Cause & People Awareness, ND vs PES Installations Pvt. Ltd. (PES) & Ors)
 - ✓ MDD, MPS and PED acted in concert bid for supplying of products to the Sports Injury Centre of **Safdarjung Hospital** which caused a major **loss to the government exchequer** and hence was a violation of Sec 3(3)(d) of the Act. and decided to impose a penalty on all the 3 firms @ 5% of the average turnover for 3 years

Cartel Cases

- Case no. MRTP Case No. C-127/2009/DGIR4/28 (Varca Druggist & Chemist and others vs Chemists and Druggists Association, Goa) and several other
 - ✓ limited number of stockists
 - ✓ control the supply of drugs in the markets in violation u/s 3(3)(b)
 - ✓ Not permitted to make direct supplies to doctors, nursing homes, chemists etc.
 - ✓ Pharma companies and wholesalers are restricted from supply of drugs to retailers who are not the members of association
 - ✓ Fixation of trade margins to wholesalers and retailers
 - ✓ not permitting discounts to retail consumers
 - ✓ Capping of cash discount available to retailer

Cartel Cases

- Case No. 29 of 2010 (Builders Association of India vs Cement Manufacturers Association and 10 cement manufacturers)
 - ✓ all cement manufacturer firms not utilising their full capacity
 - ✓ prices of all companies moved in the same manner and prices rose faster than the input cost in five different zones
 - ✓ price fixing
 - ✓ guilty for violation of Sec 3(3)(a) and sec 3(3)(b) of the Act
 - ✓ imposed a penalty of USD 1.1 billion

Agriculture Markets

- Suo-motu case no.01/2011 regarding the price rise of onion
- Application of competition law in agricultural markets
- ✓ credit inter-linkages between farmers and traders
- ✓ change the competitive price discovery at the mandi-level
- Social networks (and possible collusion)
- ✓ between traders and truckers
- ✓ impact the onward transmission of prices and price formation
- ✓ broader analysis of the supply chain
- ✓ possible nexus between traders and truckers in order to explain possible instances of hoarding

Conclusions

- As UNCTAD recognizes...
- ✓ competition policies are essential for development
- ✓ competition law is only one of the areas of these policies
- ✓ broad spectrum of measures and instruments
- ✓ to permeate all policies
- ✓ continuous conversation between competition scholars and development economists
- ✓ in as much as possible antitrust (competition) law and economics from the macro-economic level should converge
- An institutional infrastructure to meet this new development paradigm

Conclusions

- Limits to Competition → Growth → Poverty Reduction
- ✓ competition policies in the presence of factor market imperfections (land, labor, credit) need not improve welfare (Bardhan)
- ✓ directly effect the livelihoods
- Competition and growth can deliver
- Reforms in the governance structure
- ✓ delivery of basic social and infrastructural services for the poor in large parts of the country (in education, health, drinking water, irrigation, etc.)
- Social contract which has a package of pro- market reform and pro poor measures