

APPROACH OF IMPLEMENTATION OF COMPETITION LAW IN DEVELOPING ECONOMIES

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

Views Are Entirely Personal



- Don't Represent the Official Views
- Either of Govt. of India Or
- Indian Competition Agency i.e. CCI
- One Year Hiatus on Purpose
- Views Border on Heresy
- Only Questions
- No Answers- Looking For

Expected vs. Real Life



- Expected
 - Idealistic- Systemic
 - Rule of Law etc. etc.
 - 'Cause' and 'Effect'
- Real
 - Murphy's Law – If Things Can Go Wrong
 - Rule of Possible etc.etc.
- Meaning of 'Cause' and 'Effect' is Different

Economics: Theory & Practice-I

- Capital Flows To The Highest Return
- Entry and Exit Barriers-
Commerce/Competition
 - ▣ Intimately Connected
 - ▣ TRIPS- Interesting Negotiations-Self Strengths
 - ▣ Regional Blocks-EU-State Aid-50% Resources
- Issue Of Trade Barriers across Borders
 - ▣ Are Barriers Of Only Trade- Def Eqpmnt Pak/India ?

Economics: Theory & Practice-II

- Or Trade , Diplomacy and Show of Strength- Even Wars ?
- Trade Being Just A Part- Only Spoken Part
- Or There Are Huge Unspoken Components ?
- Is True Economics is Getting Too Complicated
 - Or is Economics Too Important To be left to Economists?
 - Yes, Politics, Foreign Policy, Military, National Champions
 - Despite This- National Champions – Favourite Whipping Boys- All Conferences
 - Ignoring Reality- Ostrich Like Attitude

Economics: Theory & Practice-III

- June 30 TOI- Queen Too Busy to Accept Credentials
 - ▣ CW Games- India replaced HC after 7 months
 - ▣ Multi-billion IAF order for combat aircraft was awarded to France and not to a consortium in which BAE of Britain had a major stake
- Microsoft Anti-Trust Violations : USA /EU
- GE-Honeywell Merger: USA /EU
- Two Airline Companies: USA /EU
- Day to Day Cases
- Beyond Economics or Economics Plus/Minus

Two Mature Regimes : US/EU

- When Two Experts Differ
 - ▣ What A Novice Will Do
 - ▣ Be More Impressed By The First Encounter
 - Yes, The Organisational Structure
 - Subsidies- Anecdote of FM
- May Be Good-The Experts in Enhancing Followers
 - ▣ What About the Novice
- Repeat Mistakes
 - ▣ To The Last Typed Comma
 - ▣ Brown Shoe(62) and later
 - ▣ Learn Afresh
 - ▣ From First Principles

Basics Question-I

- What is Competition Law and Policy(CLP) ?
Whether it is like :
 - A Plain Vanilla Ice Cream or
 - Plain Vanilla Ice Cream with different toppings or
 - Plain Vanilla Ice Cream interspersed with different ingredients/flavours
- Perhaps, the last one
- These Ingredients/Flavours , if Suitable, Render it digestible

Basics Question-II

- Some Examples: How the same prescription gave differing results
 - ▣ Giving A Free Hand
 - Resulted in world class facilities for Olympics in Los Angeles 1984 - the first Games to turn a profit (\$225 million) since 1932 in history
 - In India – Budget Spiralled- CWG Organisers cooled their heels in Jail
- Differing Socio Politico Economic Systems gave Differing results

Apparent Reasons-No Justifications

- Rule of Law- But Slow
 - ▣ If you Knew that you can delay the process and are not law abiding- you can get away
- Excessive Greed
 - ▣ Insecurity
 - Hardly any Social Security
 - ▣ Uncertainty of Tomorrow
 - ▣ Contradiction-One of the Highest Investment In
 - Gold
 - Undisclosed Swiss Accounts
- Vicious Circle- Will Take time

Benefits of Competition

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- Promotes efficiency and innovation
- Ensures abundant availability of goods and services of acceptable quality at affordable/lower prices
- Offers wider choice to consumers
- ❖ *Only in absence of market Failures*
 - ❖ *Too common to be ignored but*
 - ❖ *Often ignored*

Perfect Competition

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- Products are homogenous
- Perfect information- symmetry
- Large number of independent buyers and sellers
- Quantity of product bought/sold relatively so small as not to affect market price
- Free entry and exit
- ❖ When Are These Met

Growth of Competition Related Economic Thought

- ▣ Nash Equilibrium
- ▣ Bertrand's oligopoly
- ▣ Stackelberg's duopoly
- ▣ Cournot's duopoly
- ▣ Prisoner's Dilemma
- ▣ All involve assumptions
- ▣ Further Refinements
 - ▣ Removing Assumptions- One by one
 - ▣ More And More Complex
- ▣ Have We Reached An Assumption Less Stage
 - ▣ Not Yet
- ▣ Have we tried removing Non Economic Assumptions
 - ▣ Very Little Effort

Growth of Competition Economic Thought-II

- Not Many Have worked or Commented except
 - E Fox
 - William Kovacic
 - Phillippe Brouisic
 - Shyam Khemani
- National Champions are favourite whipping boys in all the competition law conferences without getting really a whip mark- Reason – may be –at home they are well fed

Is Some thing Missing



- Are some parameters being overlooked ?
- If Yes, What are these ?
- Frequently heard :Competition Law Can't be different in developing countries and developed countries.
- One Size fits All – Can it ?

Unstated Assumptions (Ground Realities)-I

- Robust Institutional Framework- Judiciary, Rule of Law, Certainty of Life and Life Transactions
- Are All The Countries at the same level on these parameters ?
- If the answer is no, CLP needs to be fine tuned
- Not Much Study On :
 - ▣ Human Component
 - Any Law has to be implemented by Human Beings
 - Indian Experience
 - China- Theory and Practice
 - Given a Choice – Human beings will subvert

Unstated Assumptions (Ground Realities)- II

- No Fully Altruistic Man Ever Born
- Can't Discount this
- When Altruistic Cells are also Found
- Checks and Balances
- Institutional Framework
 - Maturity
 - Robustness
 - Certainty
 - Self Sustaining Momentum

Theory and Practice



- Quality of Checks and Balances
- Form-Checks and Balances May be in Place
- Substance-The Resultant Outcome ,Despite Checks and Balances ,May Be Different in Different Settings
- The Differentiating Background Settings- A Function of Maturity of Checks and Balances In Place

Assumptions About Reality



- In Sixth UN Review Conference 2010, One Commentator stated very clearly that the competition agency is not in vacuum or on an island
- It is a part and product of political economy
- Convincing and taking along of politicians is an important component of the competition agency
- It should endeavour to ensure that the political executive sees it as its own agenda

Country Differentiators-I

- Feeling/Degree of Citizenship
- Two Way Process
 - ▣ State Cares For You
 - (You are on your own- bad or good times)
 - ▣ Will take good care, if you don't behave
 - (Can Not /Will not Do Much if you Don't Follow norms)
- The price for this feeling may be substantial
 - ▣ For State
 - Comprehensive Social Security
 - ▣ For Citizens
 - Don't Expect everything for free
 - High Taxes
 - Pay for almost everything
 - Limited-Subsidies, if any

Country Differentiators-II

- Regulatory burden- part of Existential Habit
- Great Feeling of Security
 - ▣ You Don't Feel That You have to fend for yourself
- Certainty of
 - ▣ Life Transactions
 - ▣ Health and Living
 - ▣ Law and Order
- Economy- India BPL Rs 28 per day Or approx. 50 Cents -Two Dimes a day

Country Differentiators-III



- White Collar – Blue Collar Divide
- USA/ Europe- farmer is not that helpless creature
- India – extremes
- Some computer engineer returned to claim a political legacy
- Satisfaction in what you do
- Move with your head high

Realities In Developing Democracies

- Distributing Diesel / kerosine / fertilizer/ MNREGA/ Bank Loan Waivers/ Sarees/ Rice either at or nearly free
- And we have to-for some time at least
- Having Opted for Democracy – we can not run away
- Necessary pitfalls
- Blessings as well
 - ▣ Smallest man can aspire for the highest office
 - ▣ Even prime minister is not above allegations
- Processes – and meeting of these aspirations has a cost
- From ‘cause’ based populism-Competitive Populism

Democracy – Cost Benefit

- Transparency- Has A Cost
- Otherwise autocracy- Iraq/Libya
- Revolutions in erstwhile communist countries also has a great cost in terms of human lives
- Opting for Democracy – Choice
- Compulsions
 - ▣ Most popular has to get in office
 - ▣ Office brings prosperity to the elected
 - ▣ Sharing it in advance and afterwards with the elector
 - ▣ Pretentious intellectuals may hate it
 - ▣ But it is a reality

Democracy- Differing Views



- With all my admiration and love for democracy, I am not prepared to accept the statement that the largest numbers of people are always right – *Jawaharlal Nehru*
- Ignorance reduces democracy to a Government of the cattle, by the cattle and for the cattle. – *J. B. Kriplani*

Corporate Governance- Rule of Law

- Rajat Gupta- Possible jail term of 25 years
- In India if enforced -A substantial Chunk of corporates will be in Jail. Claim that insider trading is legal in India
- Developing country- India- perjury – almost every day false affidavits are being given by witness. Already pendency is mind boggling 466 years to clear
 - ▣ Except some high profile cases , it goes unpunished
- If all perjury cases are taken – can't expect justice in this life time
- People Feel that they can get away with falsehood
 - ▣ Instances taken seriously too –but in high profile cases only

The Way Ahead



- Better We fine tune our Institutional Systems
- Societies Not being Equal- The same remedy may not work
- One man's meat is another's poison
- Institutions, Culture, Deterrence, Enforcement vary
- Resultant Impact
 - ▣ Capacity Issues
 - ▣ Will take time

Implementation Priorities



- Top Priority- Cartel and Anticompetitive Agreements-Graded Approach
- Not too Critical of AOD
- Merger Review- Comforting but Improving Standards
- Fine Tune factors, wherever given (as in India), to achieve objectives



Looking for Answers

Thanks

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