IMAGINE: PRO-POOR(ER) COMPETITION LAW

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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
    - 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
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
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