Impact of Cartels on the Poor
Competition Law, Poverty Reduction and India

Intergovernmental Group of Experts on Competition Law and Policy
Thirteenth session
Geneva, 8–10 July 2013

Payal Malik, Advisor (Economics)

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 \(\rightarrow\) Growth \(\rightarrow\) 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 per-capita GDP at factor cost
Poverty has Fallen but Slowly

Declining poverty ratio for all social groups

<table>
<thead>
<tr>
<th>Year</th>
<th>Scheduled Castes</th>
<th>Scheduled Tribes</th>
<th>Entire Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1987-88</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1993-94</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004-05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Legend:
- 1983
- 1987-88
- 1993-94
- 2004-05
- 2009-10
Major Anomaly: Stagnant Share of Manufacturing in the GDP
Slow Transition of Workforce out of Agriculture

Slow transition of rural agricultural workforce

- GDP share of agriculture and allied activities:
  - 1993-94: 30
  - 2004-05: 20
  - 2009-10: 17.8

- Share of agriculture and allied activities in rural workforce:
  - 1993-94: 78.4
  - 2004-05: 72.7
  - 2009-10: 68

  - 1993-94: 25.7
  - 2004-05: 27.8
  - 2009-10: 31.2
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

<table>
<thead>
<tr>
<th>Fiscal Deficit</th>
<th>2010-11 Actuals</th>
<th>2011-12 BE</th>
<th>2011-12 RE</th>
<th>2012-13 BE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>373591 (4.9)</td>
<td>412817 (4.6)</td>
<td>521980 (5.9)</td>
<td>513590 (5.1)</td>
</tr>
</tbody>
</table>

Union Budget 2011-12: Deficit Trends
Fiscal, Revenue and Primary Deficits as Percentages of GDP

Revenue Deficit: Excess of revenue expenditure over revenue receipts.
Fiscal Deficit: Difference between revenue receipts plus non-debt capital receipts and the total expenditure including loans, net of repayments; indicates total borrowing requirements of Government from all sources.
Primary Deficit: Fiscal deficit less interest payments.
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 \( \rightarrow \) Growth \( \rightarrow \) 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