

Eleventh Meeting of the UNCTAD Research Partnership Platform

17-18 December 2020

**THE ROLE OF COMPETITION POLICY IN A FAIR AND EFFICIENT
INCLUSIVE ECONOMIC RECOVERY FOR DEVELOPING COUNTRIES**

*Presentation by Professor Eleanor Fox,
New York University Law School*

This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

THE ROLE OF COMPETITION POLICY IN A FAIR AND EFFICIENT INCLUSIVE ECONOMIC RECOVERY FOR DEVELOPING COUNTRIES

ELEANOR FOX PROFESSOR, NEW YORK UNIVERSITY SCHOOL OF LAW

UNCTAD RESEARCH PARTNERSHIP PLATFORM

17 DECEMBER 2020



OUTLINE

- 1 The ravages of the pandemic
- 2 The track of fairness and inclusiveness before the pandemic
- 3 Getting back and moving ahead
 - Dominance
 - Mergers
 - Cartels and other collaborations including vertical
 - Hybrid: public/private
 - Focus: What helps the most in unleashing the talents/energies of the people?

I. THE PANDEMIC AND DEVELOPING COUNTRIES

- The pandemic has been devastating economically for developing countries
- Has affected LDCs and small island economies most disproportionately
 - ‘with potentially devastating impacts on human health, including through social and economic effects ... through the months and years to come. The lack of domestic financial resources, high debt levels and fragile health systems presents an urgent challenge. What has emerged as a health crisis in the short term may well have far reaching impacts on education, human rights, food security and economic development in the long term.’
 - -- tourism, global migration, remittances, exports
 - UN Office of High Representative for LDCs, LLDC, SIDCs: World’s most vulnerable lack capacity to respond

II. BEFORE THE PANDEMIC – PROGRESS ON GROWTH, FAIRNESS AND INCLUSION

- Period of growth
- Implementing Fairness and Inclusion; development of the concept in competition law
 - Role of South Africa, many other countries
 - **An exclusionary and excluding society is not just or efficient**
 - cf. Acemoglu and Robinson, Why Nations Fail
- What it means in substantive law to lean towards inclusion and equality

III. GETTING BACK AND MOVING AHEAD

- Set-backs and sacrifices during the pandemic
 - A huge move to the Internet
 - Everything that can be done remotely is being done remotely
 - SMEs closed; people need access to training and credit
 - Fewer than half the people in the developing world have internet access – IMF
 - 100 million people were pushed into extreme poverty in 2020 World Bank
 - Inequality rising; “Wealthy World has Failed Poor Countries” NY Times
 - Market competition got worse
 - Competition authorities gave exemptions to cure scarcities, save business

GETTING BACK, MOVING FORWARD

- Need to restore trust in competition where competition will work
- Need vigilance against exclusions and exploitations
- Areas to watch, be activist in promoting pro-poor, pro-outsider rules:
 - First, the conceptual platform for competition: the basic analytical paradigm --
 - The myth of Chicago School non-interventionist philosophy – **it is not neutral**; it favors incumbents
 - We need rules for *access* to platforms, data; competition on the merits

AREAS TO WATCH, TAKE ACTION: AN AGENDA - WHAT WILL REMOVE BARRIERS, UNLEASH ENERGIES THE MOST?

- Monopoly, dominance
 - Access to and participation in the digital market
- Mergers: louder voice against anticompetitive megamergers, which should be stopped at their source; less time on merger review
 - Buyer power restraints that hurt developing countries most; attention to labor markets
- Cartels including cross-border; closer attention to trade associations
- Other agreements for collaboration; vertical agreements; gig economy
 - Fewer exemptions to leading firms
- Procurement, hybrid restraints – getting rid of privilege

A HIGHER LEVEL VOICE?

- Regional -- makes sense but huge obstacles
- AfCFTA
 - Proposal to combine trade and competition
 - Catch the vested interests, hybrid restraints
- Priorities: what are the worst restraints that hurt your people?
Go for them

CONCLUSION

- Building capacities for digital age
- Free up markets and opportunity, and
 - focus focus focus