Beggar thy neighbour approach towards international economic governance: Analyzing export cartel exemptions and extra-territorial impact of international mergers: An abstract

This paper would focus on identifying the impediments to the effective enforcement of a competition policy and ways to address spillover effects arising out of practices such as export cartels in fertilizers such as potash and soda ash .The cross border effects of export cartels arise due to the failure by home jurisdiction to act against the anti-competitive behavior of its firms in another market. When such cartels adversely impact the consumers of the importing country, they pose a global problem. This problem is further aggravated due to the conflicting incentives on the part of the exporting country vis à vis the importing country. This is also evidenced by the divergent positions that countries have taken on this issue, some arguing for a blanket ban on domestic exemption of such cartels while others arguing for a rule of reason approach to study their anticompetitive effects and some developing countries have argued for a ban on domestic exemption of such cartels only in industrialised countries under the special and differential treatment. . Several studies have revealed how these export cartels have had adverse effects on developing countries especially the ones that lacked an effective competition mechanism. Also, importing countries can invoke the effects doctrine extraterritorially when its market is suffering from such activities. However scholars have found that most developing and least developed countries lack the legal and capacity constraints to invoke such a doctrine effectively to protect themselves from the anticompetitive effects of export cartels of industrialized countries.

The paper would also cover impact of international mergers and their extra-territorial impact. Similarly, in the case of international mergers which have grown in prominence since the 1990s, significant spillover effects were experienced by developing countries. It is unclear whether mergers have anticompetitive or pro competitive effects but an important factor is determination of relevant market within which the firms compete. Even though mergers may be allowed by the competition authorities in the home market, this may not be the case in the market where the subsidiaries operate and the combined entity has a dominant position. Domestic competition régimes in developing and least developed countries are often ill equipped to ensure that international mergers do not lead to excessive market concentration as they lack the sufficient expertise to undertake such analysis and merger reviews.

The objective of this paper would be to conduct an empirical study to assess the extent of market distortions and how they impact the primary producers as well as the overall efficiency gains in such markets. It would then arrive at possible reforms at the domestic and multilateral level such as a commitment on the domestic front towards tailoring an effective competition legal régime through competition advocacy and institutional reforms. And explore the possibilities for a multilateral framework on competition which articulates the developing concerns as well.