

Preface

“Growth is extremely important because that is the basis upon which infrastructure is built, but we cannot forget equity. If we forget equity, social tensions will surface.” These were the words of Dr. C. Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India at the book launch of “Growth and Equity: Essays in honour of Pradeep Mehta” at New Delhi on April 26, 2013. Kamal Nath, Minister of Urban Development and Parliamentary Affairs, India, did the honour of releasing the volume along with Dr. Rangarajan.

Following the release of the volume, a panel discussion on Growth & Equity was organised with Nitin Desai as the chair. The panellists included Isher Ahluwalia, Chairman, ICRIER; Jean-Pierre Lehmann, Professor Emeritus, IMD; Arvind Mayaram, Secretary, Economic Affairs; and Subir Gokarn, Director Research, Brookings Institution India.

There were several dignitaries who expressed their thoughts on issues like difference between states in terms of resources, consumer rights, importance of welfare schemes, empowerment of regulators etc. Before the panel discussion, Minister Nath had voiced that multifaceted approach is required for the various Indian states as economic requirements of the states differ from each other. On the same point, Dr Mayaram said that it is very difficult for policymakers in India to address all the issues arising due to extreme disparities.

I spoke about the importance of consumer empowerment and how economic progress in the country and welfare

schemes such as the National Rural Employment Guarantee Act (NREGA) and Right to Education Act (RTE) has helped common people to raise their standard of living. Taking forward the point made by Dr. Rangarajan, I asserted that “the government should pursue the growth agenda and increase the size of the cake and simultaneously ensure that equity is fostered”.

Agreeing with this, Dr Lehmann praised the intellectual leadership in India but warned that even as India pursues high growth figures, it should make serious efforts for the equitable distribution of the generated wealth, a crucial factor for sustainable development.

The issue of Growth *and* Equity raised by C. Rangarajan, and further deliberated upon by the panel, initiated a lively debate on our internet based CompetitionOnLineForum. The e-group reaches out to a large number in the competition and trade policy community in the world. It sparked a lively debate from across the world, which ran into hundreds of pages. Most of which were quite thoughtful in terms of uneven distribution of resources in favour of rich people especially in developing nations, leaving majority of population deprived of even basic facilities and which has led to intense protest by masses in many developing nations.

Responding to the issue Devinder Chopra stated that the negative system cum governance we are caught in today in India has to be halted. He also mentioned few of the negatives that have gone up in scale in today’s India. This lack of good governance is pervasive in the majority of developing countries.

One Indian civil servant, Yaduvendra Mathur expressed his anguish by stating that he is plagued with self-doubt as to whether he is really serving the people or just benefiting from the high salary and perks of his job.

One interesting thing about the debate has been that all evidence of the impact of inequity on the poor and the resulting

backlash came from developing countries i.e. India, Thailand, Egypt, Armenia, Tunisia, China etc. and mostly from contributors who are competition practitioners, revealing their concern about focusing only on efficiency in enforcement even where outcomes could increase marginalisation of the poor.

Responding, Jeffrey Zuckerman, a US lawyer, tried to enquire that if India could devise policies that would result in a real 10 percent increase in the incomes of 99 percent of population and a real 15 percent increase in the incomes of the wealthiest one percent of population, would Dr. Rangarajan oppose the adoption of such policies because of a lack of “equity”?

On this Kenneth Davidson, also from the US, queried whether Zuckerman was using a simplistic caricature of Rawl’s Theory of Justice to justify unequal distribution of benefits of growth.

Subsequently, the debate entered the arena of competition law and its role of achieving equity. There were different opinions on the subject of the extent to which competition law and its enforcement should seek to incorporate equity.

Eleanor Fox argued that nations, especially developing nations, may not choose an aggregate efficiency standard. They may prefer inclusive growth, which may be more likely to produce a more cohesive and thus productive society. People want fairness.

She referenced the hypothetical case of a monopolist seed seller who is also a monopsonist buyer of the crop, using its power to transfer all of the risk of bad weather loss onto the farmers, who are mostly poor and represent a huge proportion of the source of livelihood in many low income countries. Policymakers in these nations may be sympathetic to a law that limits the power of the monopolist/monopsonist, even if the exploitation is efficient.

Francois Souty further argued that these nuances in the scope and coverage of competition law with respect to equity may lead to different outcomes conducing to growth and equity. Therefore, economists and competition law practitioners need to address both equity and efficiency in competition law enforcement.

Some contributors had the view that competition law should or does protect small and middle sized businesses and even re-distribute wealth from the rich to the poor and not allow acts or transactions that increase gains for all if they confer a disproportionate share of the gains on the rich and established.

Souty and Aditya Bhattacharya reminded us that two or three decades ago, it was recognised that competition law enforcement was not a matter of economic efficiency alone. Advanced countries enacted and implemented competition law at relatively late stages in their development, motivated by a variety of economic and non-economic reasons, including equity, curbing the economic and political power of big business, and preservation of small businesses, even at the cost of economic efficiency.

Adding to the debate, I cautioned that competition authorities in the developing world will have to keep in mind the public interest litmus test, somewhat wrought into South African law. I argued that disadvantaged communities' stakes need to be taken into consideration in the application of the law, which may not necessarily be the best advice for all competition regimes.

There were, however, views that strongly opposed bringing equity considerations under the ambit of competition law. Cezley Sampson argued that competition policy and law should address economic efficiency in markets, and not equity and social justice, which in his view, is very subjective and depends too much on discretion, and the culture and norms of a country.

In support of the argument that competition authorities should not take into consideration equity issues, Hicham differentiated between allocative and redistributive efficiency based on equity. He argued that the institutional culture that drives competition authorities: the promotion of competition in markets, with sanctions as their tool, and the remit to intervene only when an anticompetitive practice is committed and detected.

The debate basically revolved around the idea that all policies should be targeted at human welfare and if governments (especially developing nations) across the globe are able to meet this very objective it might lead to wide-spread dissatisfaction among poor and deprived societies. Competition authorities can play a vital role in this regard by curbing anticompetitive practices and ensuring equitable share to all the market players. It would also lead to decrease in disparities between rich and poor people.

In addition to the debate, we have annexed relevant work of Frederic Jenny, Kenneth Davidson, David Lewis and Eleanor Fox, on the issues of competition and regulation in the book. Also annexed in my own article “Equity is Good for Growth” which states that policymakers must ensure that rules of the game favour the poor, while boosting growth.

Competition policy promotes economic equity and democracy, which is a building block for political democracy. While macro reforms have to be followed, micro reforms with effective meso-level institutions are as important to ensure that markets function well. In fact, the poor suffer more when markets do not function well. Businesses benefit from competition reform, so do the poor, as it leads to more equitable growth.

Jenny’s text was drawn from his inaugural speech during 2nd Biennial Conference on Competition & Regulation organised by CUTS and CIRC in New Delhi in April 2011,

where he has tried to trace the history of deregulation and adoption of competition legislation across the globe. He mentioned that during 1990s and the early 2000s more than 50 countries adopted a competition law and many other countries upgraded their pre-existing laws.

However, market failures and scandals, such as Enron scandal (2001), the Tyco International scandal (2002), and the World Com scandal (2002) showed the importance of ensuring proper governance of firms in free and competitive markets. He also mentioned about the financial crisis in 2008 that brought attention to the disturbing reality that competitive markets can fail.

Subsequently, he spoke about the Egyptian economy that has managed to grow at the rate of seven percent between 2006 and 2008 after adoption of competition law in 2005. However, it did not prove to be enough to change the economic condition of majority of people in the country which is mostly characterised by a combination of burdensome regulations and the fact that very few property owners had a title to their properties.

Considering these facts, he raised seven questions, i.e. *Anticipating market failures; Reassessing interdependence among competition law, consumer policy and economic regulation; Balancing ex ante and ex post regulation; Globalisation demands better coordination among countries; Consistency and coherence of different policies; Improving the quality of regulation and Accountability of regulators*, which requires immediate attention in order to improve the overall situation.

Kenneth Davidson, in his book: "Reality Ignored" (review of which has been carried as annexure in this book) has traced the history and irony in the spread of the Chicago Gospel that has coincided with deregulation, the failure of the Long Term Capital Management fund, the Enron scandal, and more

significantly the world wide subprime and derivative financial debacle. The legislation making this debacle possible prohibited government agencies from regulating contract rights of large investors to trade derivative securities.

He emphasises that the legal rules and the private advice organisations are not sufficient if the society does not have cultural norms that support and reinforce formal rules of market behaviour. Those formal rules must be based on cultural norms that are internalised so that enforcement and advice are supplements that control the exceptional behaviour that defies accepted norms. The market works, but not by itself.

Further, David Lewis in his speech delivered at the OECD Global Forum on Competition in February 2013, mentioned that though there are no obvious answers to the question of how to ensure that competition law and policy supports poverty reduction, but the primary lesson to be drawn from the South African experience with incorporating public interest objectives into decisions of the competition authority is that it is wholly possible to balance non-competition and competition considerations, and that could be best done by the competition authority. He strongly advocates that the competition law must be seen to be addressing inequality and poverty to provide it with legitimacy in developing countries.

Finally, Eleanor Fox in one of her working papers, “Economic Development, Poverty, and Antitrust: The Other Path”, has argued that the efficiency standard has little resonance for the great majority of the population that is poor, and that development of antitrust law must be rooted in the context of development economics and take into account the unequal bargaining power of developing countries in international trade and competition.

Fox’s views have been elaborated at length in a paper: “The Goals of Antitrust: Other than competition and efficiency,

what else counts”¹ by Kenneth G. Elzinga, Professor of Economics at University of Virginia, US where he writes: “Whether antitrust policy promotes, or should promote, social goals other than efficiency and competitive markets deserves some thought because it lies at the root of so much controversy in antitrust. A reading of the congressional debates on the Sherman and Clayton acts reveals no single thread of efficiency weaving together the whole of the fabric.² The record does show that efficiency was to be the central goal of antitrust, but not the only one.

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Pradeep S Mehta
Secretary General

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1. <http://www.jstor.org/discover/10.2307/3311439?uid=3738256&uid=2129&uid=2&uid=70&uid=4&sid=21102856576253>
 2. Hans B. Thorelli has written the most exhaustive treatise on the events leading up to the Sherman Act. H. Thorelli, *The Federal Antitrust Policy* (1955). Unable to discover a singular congressional intent, Thorelli finally concludes that Congress had a rather untidy mind respecting the Act. Some members were more sincere than others in their desire to end combinations. Some felt the trusts were an unmitigated evil, while others argued that business combinations would have salutary economic effects. The congressional concern with the constitutionality of the proposed bills, with tariffs, and with securing political credit for the enactment, cloud the issue of intent. As Walton Hamilton has put it, “The great bother is that the bill which was arduously debated was never passed, and that the bill which was passed was never really discussed.” W. Hamilton & I. Till *Antitrust In Action* (Monograph 16, Temporary National Committee) 76th Cong., 3d Sess. 11 (1940). Thorelli’s conclusion implies that, in the absence of a single-minded legislative intent to pursue efficiency goals, anti-trust should manifest concern for other social values.