

Should Competition Policy & Law be Blind to Equity?

The Great Debate



Pradeep S Mehta
Taimoon Stewart



**Should Competition Policy &
Law be Blind to Equity?**
The Great Debate

About the Book

The role of competition authorities is quite critical in ensuring equity while carving the path of growth in an economy. This volume is an attempt to present collection of views of competition practitioners and others from across the globe on linkages between growth and equity. The methodically reasoned opinions came in the form of debate on the issue of growth and equity and role of competition authorities, which happened over an e-discussion group 'CompetitionOnlineForum' hosted by CUTS International in 2013.

Almost all the contributors to the debate agreed to the point that element of equity should not be overlooked by policy makers while chasing growth, else it would lead to protest and backlash from the society not receiving benefits from the overall development of the country. This was also the point made by C. Rangarajan which initiated the whole debate.

This publication firmly analyses the importance of competition policy & law and its role in achieving equity. However, there are different opinions on the subject of the extent to which competition law and its enforcement should seek to incorporate equity.

About CUTS

Established in 1983-84 as a rural development communication initiative, Consumer Unity & Trust Society (CUTS) is now at the cutting edge of the consumer movement in India as well as across the globe and has become a leading Southern voice on trade, regulation and governance.

Today, CUTS International, with a staff of around 150, operates out of three programme centres in Jaipur, one in Chittorgarh; an advocacy centre in New Delhi, and a Centre in Calcutta India; and five resource centres in Lusaka, Zambia; Nairobi, Kenya; Accra, Ghana; Hanoi, Vietnam, and Geneva, Switzerland.

CUTS International's vision is '*Consumer Sovereignty*' and mission is '*Consumer Sovereignty in the Framework of Social Justice and Economic Equality, Within and Across Borders*'. In all its work, it follows the method of research-based advocacy and connects the grassroots with the national and international policy making processes.

Should Competition Policy & Law be Blind to Equity? *The Great Debate*

Pradeep S Mehta
Taimoon Stewart



Should Competition Policy & Law be Blind to Equity?
The Great Debate

Published by



D-217, Bhaskar Marg, Bani Park
Jaipur 302016, India
Tel: +91.141.228 2821, Fax: +91.141.228 2485
Email: cuts@cuts.org
Web site: www.cuts-international.org

©CUTS International, 2013

Citation: Mehta, Pradeep S and Taimoon Stewart (2013), “Should Competition Policy & Law be Blind to Equity? *The Great Debate*”, Book, CUTS International, Jaipur

First published: November 2013

The material in this publication may be reproduced in whole or in part and in any form for education or non-profit uses, without special permission from the copyright holders, provided acknowledgment of the source is made. The publishers would appreciate receiving a copy of any publication, which uses this publication as a source. No use of this publication may be made for resale or other commercial purposes without prior written permission of CUTS. The views expressed here are those of the commentators/authors and can therefore in no way be taken to reflect the positions of CUTS International and the institutions with which the commentators/authors are affiliated.

ISBN: 978-81-8257-201-0

Printed in India by Jaipur Printers Private Limited, Jaipur

#1327

Contents

<i>Acknowledgement</i>	<i>ix</i>
<i>Reflections</i>	<i>xi</i>
<i>Abbreviations</i>	<i>xv</i>
<i>Foreword - I</i>	<i>xvii</i>
<i>Foreword - II</i>	<i>xxi</i>
<i>Preface</i>	<i>xxv</i>
Part I: Should Growth Policy be Blind to Equity? Should Competition Law/Policy be Blind to Equity? The Debate	
– Synopsis	3
Part II: The Debate on Growth and Equity	
– Growth Cannot be Chased at the Cost of Equity	
– Ashok Kumar/OneWorld South Asia	33
Some Reflections from the Debate	36
<i>The Problem: The Soft Underbelly of the Market Economy: Internal Sources of Exploitation</i>	36
– Devinder Chopra	36
– Yaduvendra Mathur	37
– Tounakti Khalifa	37
– Mona Yassine	38
– Davit Harutyunyan	39
– Wang Xiaoye	39

<i>The Growth/Equity/Competition Policy Nexus</i>	41
Jeffrey I. Zuckerman	41
Vijay Vir Singh	41
Eleanor Fox	42
Morten Broberg	42
Pradeep S Mehta	43
Shanker Singham	44
Elena Estavillo Flores	44
Russell Pittman	45
Vladimir Kachalin	45
Judith Wedderburn	46
Nandi Mokoena	46
Kenneth M. Davidson	47
Derek Ireland	48
Peter Behrens	48
Francois Souty	49
Shadrack Nkelebe	52
Pradeep S Mehta	53
Olatunde Oluwatola	54
Albert Foer	54
Eleanor Fox	55
Francois Souty	56
<i>The Rebuttal</i>	58
Cezley Sampson	58
Anthony Clayton	58
Tounakti Khalifa	59
Peter Behrens	61
Russell Pittman	63
M'Hamed Cherif	64
Nadeem Ul Haque	64
Shanker Singham	65
David Lewis	66
Aditya Bhattacharjea	68

<i>Should Competition Policy & Law be Blind to Equity?</i>	vii
Bouayad Mohamed Hicham	69
Cezley Sampson	70
Eleanor Fox	71
Cezley Sampson	72
Anthony Clayton	72
Bouayad Mohamed Hicham	73
Pradeep S Mehta	74
<i>Inequity in the World Economy: Structure and Processes</i>	77
Charles Cheung	77
Russell Pittman	77
Taimoon Stewart	78
Eleanor Fox	79
Taimoon Stewart	80
Thulasoni Kaira	82
Trudi Hartzenberg	83
Taimoon Stewart	84
Pradeep S Mehta	85
Annexures	
1. Competition and Poverty Reduction	89
2. Economic Development, Poverty, and Antitrust: The Other Path	95
3. Seven Questions to Guide the Future Agenda	99
4. Equity is Good for Growth	107
5. Reality Ignored: How Milton Friedman and Chicago Economics Undermined American Institutions and Endangered the Global Economy	111
References	118

Acknowledgement

Dr. C. Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India, emphatically stated the importance of ensuring equity while pursuing growth. He was speaking on the occasion of the book launch of “Growth and Equity: Essays in honour of Pradeep Mehta”. The event was covered by OneWorld South Asia and the report was posted on CompetitionOnlineForum. This triggered a very intense debate on the entire issue of growth-equity linkages. Many competition practitioners from India and abroad and others shared their views leading to a rich contribution towards understanding many important and contemporary issues of economic growth and expected role of competition authorities across the world towards ensuring equitable distribution of resources.

We express our gratitude to all eminent scholars/commentators for taking part in this debate. We also express gratitude towards Eleanor Fox and Francois Souty for providing time to time inputs for developing this book out of the entire debate.

We are also thankful towards Frederic Jenny, Kenneth Davidson, David Lewis and Eleanor Fox whose independent work on relevant issues of competition and regulation has been carried as annexures in the book.

Words alone cannot convey our gratitude to those who have contributed in every big and small way to this volume. We gratefully acknowledge the assistance of Rudra Shankar

for assembling the documents and Madhuri Vasnani and Mukesh Tyagi for editing, layout etc.

This volume contains copyrighted materials some of whose use has not been specifically authorised by the copyright owners. CUTS International is making those articles, etc. available to a wider readership in our efforts to advance understanding on this subject. We believe that this constitutes a fair use of copyrighted materials as provided for in Article 10 of the Berne Convention for the Protection of Literary and Artistic Works (the Paris Text of 1971) and in Section 107 of the US Copyright Law. If anybody wishes to use materials from this volume for purposes that go beyond fair use, s/he must obtain permission from the copyright owner. CUTS International will not draw any profit from this volume, since it is solely for informative and educational purposes. Suggested contribution has been sought from the public for printing and postage costs only.

Reflections

...issue of competition policy and concerns of equity...it is not necessary that all the instruments of economic policy must try to achieve the twin goals of efficiency and equity. Some instruments may emphasise efficiency and some others equity.

C Rangarajan

Chairman, Economic Advisory Council to the Prime Minister of India

...competition policies, including competition law enforcement, struggle to achieve legitimacy in developing countries, and for this reason, it may not be a good idea to drive a deep separation between competition law and policy on the one hand, and redistributive policies, on the other.

David Lewis

*Former Chairman, Competition Tribunal
South Africa*

There is a large area in which efficiency is unknowable, and equity can be served consistent with efficiency; also that competition law is properly applied against certain power and its exercise and not just for some notion of efficiency; and that these rules of law can be as clear and knowable as rules based on a standard that nothing is illegal if it is not.

Eleanor Fox

*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA*

...increase competition law and policy contribution to equity strengthening and poverty alleviation one needs to revive the original spirit of antitrust. Such revival would be a useful contribution to the restoration of public policies designed in favour of workers, consumers...concerned about long-term and sustainable development...

Francois Souty

Professor, University of La Rochelle, France

Economic growth is a good thing, but it is not the only good thing. Especially if we accept the great likelihood that people in general have a declining marginal utility of income, the importance of considering whether we might purchase a bit more equality at the expense of a bit more growth, becomes clear.

Russell Pittman

Director of Economic Research & International Technical Assistance Economic Analysis Group, Department of Justice, USA

An integrated approach to development is critical and should be the way forward for this century...However, while the socio-economic impact of multilateral enterprises may have far-reaching consequences on less developed economies, the integrated approach must be part and parcel of any investment and/or economic strategy of any commercial enterprise...this is a noteworthy statement: Growth cannot be chased at the cost of equity.

Thulasoni Kaira

CEO & Secretary

Competition Authority, Botswana

... we need a separate agenda for equity and growth. It is the responsibility of the government how it utilises resources generated through growth to ensure equity. We also need to change the mind-set of poor to ensure that they take proper advantage of various schemes and think in terms long-term.

Vijay Vir Singh
Professor & Senior Fellow
Indian Council of Social Science Research
International Institute for Population Sciences, Mumbai
& Head, Department of Economics, University of Rajasthan,
India

In order for economic growth to be sustainable, it has to involve equality...Competition is an essential element of sustainable growth because it promotes equal opportunity to participate in the market and it rewards productive initiative for all members of society.

Elena Estavillo Flores
Civil Partnership Applied Research Centre
Mexico

...In respect of competition, as an essential component of sustainable growth, it only works if there is equality in access to the opportunities to participate in the market, for which there must be a foundation that provides equal access to decent wages, health, education. Equal opportunity is a very scarce commodity today...

Judith Wedderburn
Caribbean Director, Friedrich Ebert Stiftung, Jamaica

The ongoing debate on growth and equity is good and needed for world prosperity. It is, however, not surprising that the age long divide on capitalism and welfarism ideologies is at the fore of the arguments again...Growth can only be sustained when equity is ensured...any growth without equity will always engender social upheaval that poison and chokes the system to death.

Olatunde Oluwatola
Former Director, Consumer Protection Council, Nigeria

If the “culture of competition” does not also include a “culture of equity,” the world’s relatively recent (and, on the whole, positive) dependence on markets will prove to be transitory. It is not capitalism or welfare, but markets and welfare.

Albert Foer

President, American Antitrust Institute, USA

...The purpose of competition law is to increase economic efficiency by encouraging competition and preventing the emergence of monopolies. It is inappropriate to use competition law to try to achieve specific redistributive goals, partly because that greatly facilitates patronage and corruption, and partly because of the high associated economic cost...

Anthony Clayton

*Professor, Institute for Sustainable Development, University of
West Indies*

Abbreviations

BRICS	Brazil, Russia, India, China and South Africa
CIRC	CUTS Institute for Regulation & Competition
CSR	Corporate Social Responsibility
CUTS	Consumer Unity & Trust Society
EU	European Union
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
OECD	Organisation for Economic Cooperation and Development
RTAs	Regional Trade Agreements
RTE	Right to Education
SAPs	Structural Adjustment Programmes
SMEs	Small and Medium-sized Enterprises
SoEs	State-owned Enterprises

SSA	Sub-Saharan Africa
TNCs	Transnational Corporations
TPP	Trans Pacific Partnership
TRIPs	Trade Related Aspects of Intellectual Property Rights
US	United States
WTO	World Trade Organisation
WTO WGTCP	WTO Working Group on the Interaction between Trade and Competition Policy

Foreword - I

The observations that I had made at the time of the launch of the book “Growth and Equity: A Collection of Essays in honour of Pradeep Mehta” have provoked a number of interesting comments which have been put together in this volume. Discussions have centred around three broad themes: (1) the relative importance of growth and equity in the development process; (2) the role of equity in competition policy; and (3) international dimensions of the growth-equity controversy.

On the fundamental issue of growth versus equity, it is not possible for either side to take an extreme position. Sustained high growth may not be possible in developing economies unless sufficient attention is also paid to equity. In the absence of attention to distribution of income and equity, social tensions will rise and this could block sustained high growth.

At the same time, at very low levels of per capita income, distribution by itself is no solution. Enhanced human development expenditures cannot be sustained over a long period unless supported by accelerated economic growth. When there is a dichotomy between human development indicators and economic growth, it can be a source of social tensions.

For example, as education spreads, the economy must have the ability to productively absorb the growing number of educated. Apart from the percolation effect, in a fast growing economy more resources are available for the government to

provide various kinds of social safety nets. Thus the emphasis must be on both growth and equity. The two have a mutually interacting beneficial impact. These are the two legs with which any country must walk. Any strategy of development which ignores any one of the two legs will make the country only limp along.

On the issue of competition policy and concerns of equity, one observation that can be made at the outset is that it is not necessary that all the instruments of economic policy must try to achieve the twin goals of efficiency and equity. Some instruments may emphasise efficiency and some others equity.

Broadly speaking, the primary function of competition policy and competition laws is to create competitive conditions in the economy which would promote efficiency. In one sense, even the pursuit of efficiency is not devoid of equity. Consumers' welfare is the core of competition policy and that by itself is an important dimension of equity.

On the international dimensions of growth and equity, it is difficult to accept that international trade is exploitative. It could have been so in the past but recent trends are not clearly in that direction. The contribution of developing economies to world trade is growing at a much faster rate. In the total world trade, the share of developing economies has increased substantially in the recent period. In fact, it is the developed economies which are now talking in terms of protection. This feature is also reflected in the composition of world output.

Taking into account the recent trends, it is estimated that by 2025 a little more than half of the world output will come from the current developing economies. Globalisation affects different countries differently. But it is hard to subscribe to the view that developing economies as a whole are losing the battle, in fact, they are winning. However, the international organisations need to play the regulatory and monitoring roles effectively.

This book is a treasure house of ideas. This rich harvest of insights must be useful not only to economists and policymakers but also to the lay public who are deeply concerned with the issue of growth and equity.

Dr C Rangarajan
Chairman
Economic Advisory Council
to the Prime Minister of India

Foreword - II

I am very pleased to introduce this book on growth policy, competition policy and equity. This lively debate orchestrated by CUTS International provides much food for thought and a wealth of insights drawn from reflection and experience by major actors worldwide.

More than often, such debate takes on ideological and sometimes theological overtones and ends up in a contest between two sharp positions: those who think that growth is the overwhelming and even unique objective and will then naturally trickle down, and that *ex-ante* social policies are at best useless and most of the time counterproductive and waste scarce resources; against those who argue that growth is an instrument towards an objective of higher standards of living for individuals, and that average growth (even beyond measurement problems) is not by itself likely to produce that result.

Have we really progressed beyond the simple ‘cake analogy’? Under a specific sharing pattern, the larger the cake is, the larger any individual share (or ‘a rising tide lifts all boats’, indeed). But this conclusion hinges on the stability of the sharing pattern, which may not be invariant to the various ways to increase the size of the cake.

The temptation to separate the three legs of the debate for analytical ease and simple policy prescriptions is likely to prove elusive. Growth policy in principle refers to the use of policy instruments along three complementary dimensions: supply

of labour (labour and labour market policies), supply of capital (investment and capital markets policies), and total factor productivity (which involves notably policies addressing education, health, innovation, structural reform, market structure, etc.).

From that simple perspective, it appears that neither competition policy, which is interested with market structure, nor the concern about equity, which also relates to the ability of the poorest to have the option of supplying their labour and to have access to basic services, are independent from growth policy.

Competition policy might seem easier to define and delineate. For some, it mainly aims at promoting economic efficiency through a proper functioning of markets. But is this ever so simple? ‘Markets’ do not exist in a vacuum and are maintained through a broad legal and institutional framework. Competition authorities have to enforce competition law, but this cannot be done without exerting judgment, simply because the letter of the law does not allow dealing with all issues at hand.

However, laws themselves reflect the overarching societal goals, including equity, so that when interpreting the law, any legal body cannot simply ignore equity considerations or pretend to believe that they are ignored.

Readers will find additional arguments in this book, notably the fact that in weak institutional contexts often characteristic of developing countries, competition authorities simply cannot rely on other institutions to promote the equity objective.

‘Equity’ itself may be the least well defined (which is one reason often advanced to argue that it should therefore not be allowed to pollute growth policies). A first approach is to argue that the equity concern should mainly relate to equality of opportunities (as opposed to equality of outcomes – or incomes). But then, competition policy is clearly about equity,

since it prevents the abuse of market power and preserves equal access to markets.

However, this is not a simple proposition, because in a dynamic setting, current outcomes also define future opportunities, so that inequality of current incomes, for example, may imply inequality of future opportunities, even when it results from the initial play of equal opportunities in the past.

For example, a successful entrepreneur does not have the same opportunities as an unsuccessful one. While it is legitimate to accept inequality of outcomes resulting from equal opportunities, how long is it legitimate to accept it without trying to correct the inequality of opportunities that result?

It thus cursorily appears that growth policy, competition policy and equity issues are inextricably interlinked. A crucial question, therefore, is how, and what policy implications are to be drawn from it. This book, which echoes many other such debates, suggests that the answer depends on local institutional and cultural specificities in various countries.

While the comments reported in this book draw on theory, they also bring concrete insights from experience: in the end, the way in which our three concerns of growth, competition and equity interact is an empirical question.

More empirical, field based and sound ‘positive’ (as opposed to normative) studies, on how markets work along whole value chains, on how various barriers and policies interact with their effectiveness, and how that interaction affects the livelihoods of people are needed. This resonates very much with what an institution like the Global Development Network (GDN) aims at doing: building the capacity of local researchers to conduct such useful studies that still are in short supply.

Once more, CUTS International has demonstrated with this book its talent in launching important debates in ways that

draw on experience and empirical knowledge and in mobilising the best commentators to animate the discussion. I trust that readers will enjoy this small book as much as I did.

Pierre Jacquet
President, Global Development Network

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.

Jaipur
November 2013

Pradeep S Mehta
Secretary General

-
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.

PART - I

**Should Growth Policy be
Blind to Equity? Should
Competition Law/Policy be
Blind to Equity? The Debate**

Synopsis

“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.”

Introduction

This remark by 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”¹ at New Delhi on April 26, 2013 elicited a thoughtful and provocative debate, with submissions by distinguished thinkers in academia, practitioners of competition law, both in the public and private sectors, and in the NGO community.

The response is not surprising because the main worry in today’s world is the increasingly skewed distribution of wealth in favour of the rich, while there is persistent impoverishment of the masses, leading to precisely the social tensions and eruptions of which Rangarajan warned.

The greatest challenge that policymakers face today is how to empower non-privileged participants to become part of a dynamic economic system, so that the majority of people could feel included in the benefits to be derived from well-functioning markets.

1. <http://southasia.oneworld.net/resources/growth-cannot-be-chased-at-the-cost-of-equity-c-rangarajan-1#.UYJNC7UziSo>

This debate was largely a competition (law and policy) debate, but there were considerations of other subjects, including growth and equity and inequity that exist both in national economies and at the level of the world economy. Submissions to the online forum provided empirical evidence of the consequences of exclusion of the masses from a fair share of the gains from growth, citing particularly the social upheavals of the Arab Spring, and warning of similar consequences elsewhere as governments continue to pursue exclusionary policies, as for instance, in China and in Tanzania.

We were also alerted to the fact that inequity spans both intra-national and international spaces, with the developing countries caught in a continuous cycle of unequal negotiating spaces in the world economy, and receiving an inequitable share of the global gains from trade and investment.

The core of the debate rested on the following basic questions:

1. Is it acceptable to have growth and an inequitable sharing of the derived benefits, so long as the poor are better off than they were before the pie was increased?
2. Should policies to stimulate growth be tailored by measures to achieve equity outcomes? How can barriers to markets be removed to prevent markets from being skewed towards the already privileged?
3. What is the role of a competition authority in the quest to achieve equity?
4. Whether, and to what extent, a principle of fairness and a value of equality of opportunity can and should be built into the competition law, or should simply be incorporated elsewhere?

Very strong and compelling arguments with diverse perspectives were put forward in response to these questions, and contributions were made on the symbiotic relationship between a well-functioning market and the role of government

in creating an enabling environment that would ensure equitable outcomes. It is precisely the gap between policies designed to advance the market economy and those required to create the enabling environment that would ensure equality of opportunity that is at the heart of this problematique.

The Problem

The worry that underpinned this debate is the global problem of increasing poverty and diminishing quality of life for the majority, while the top one percent of the world's population is controlling the 81 percent of the world's wealth. Tounakti Khalifa, Director of Price and Competition, Ministry of Tourism, Trade and Crafts, Tunisia (page no 37) pointed to the development of financial capitalism, vested in speculative investment, which has yielded super profits and rents, but created financial crises and economic contraction, with increasing job instability and growing unemployment.

Devinder Chopra, Member, Executive Committee, *Grahak Sahayak* Gurgaon (page no 36) spoke of the crying need for improving social services in India: health, education, sanitation, and other basic needs, the breakdown of the judicial system, corruption in the private sector and in government, with increasing numbers of parliamentarians facing charges.

Progress is stymied by cumbersome bureaucracy, sometimes coupled with corruption issues, by degradation of, until now, unpolluted environments, and by the persistence of unequal opportunities for social mobility in favour of the rich. The resulting high unemployment, particularly among the youth, and lack of access to vocational training further decrease the opportunities for gainful employment.

This lack of good governance is pervasive in the majority of developing countries, and, as one Indian public servant: Yaduvendra Mathur (page no 37) lamented in the discussion

at the book launch, 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.

The Soft Underbelly of the Market Economy: Internal Sources of Exploitation

Interestingly, all the submissions that provided evidence of the impact of inequity on the poor and the resulting backlash came from developing countries (India, Thailand, Egypt, Armenia, Tunisia, China), and mostly from contributors who are staff of competition authorities, revealing their concern about focusing only on efficiency even where outcomes could increase marginalisation of the poor.

The experience in Egypt, provided by Mona Yassine, Vice Chairman, Association for the Protection of Competition, Egypt (page no 38) was compelling evidence that the pursuit of growth while losing sight of equity can have catastrophic consequences for social stability and democracy. Growth in Egypt at the time of the revolution was on average six to seven percent, but the benefits of growth were not trickling down to the poor, and the gap between the rich and the poor was widening, with 90 percent of the population living in poverty.

Similarly, Tounakti Khalifa (page no 37) pointed out that resentment swelled at the injustice and unfairness of the accumulation of wealth away from the poor and in favour of the rich, in the name of the so-called market economy, leading to revolt. He warned that Tunisia is paying a very high price for not having built a society based on principles of social justice, responsibility, transparency, efficiency, and competitive capacities.

Wang Xiaoye, Director, Economic Law Development Institute, Chinese Academy of Social Sciences (page no 39) alerted us to the fact that, with very quick growth in the

economy, trends in China are also skewing wealth towards vested groups in state owned monopoly sectors and industries, thereby widening the gap between the rich and the poor. She also commented that competition policy has not played an important role in China because market access for the non-public economy is still problematic today.

The Growth/Equity/Competition Policy Nexus

To the extent that growth means more inequity, should it be welcomed or avoided?

The debate was triggered by the reflective response by Jeffrey I. Zuckerman, a US lawyer (page no 41), to Dr. Rangarajan's statement, in which he claimed that growth without equity may be justified if there is a real ten percent increase in the incomes of 99 percent of the population, even though one percent of the population's income increases by 15 percent.

Kenneth Davidson, Senior Fellow, American Antitrust Institute, USA (page no 47) queried whether Zuckerman was using a simplistic caricature of Rawl's Theory of Justice to justify unequal distribution of benefits of growth.

Shanker Singham, Competition Law Consultant, USA (page no 44) sought to define more precisely what is meant by the term 'equity', pointing to the fact that there are two kinds of inequality (as it relates to competition policy) and anchored in the distribution between producer and consumer surplus. Growth that is achieved through monopolistic rent-seeking activities by rent-seeking elites is clearly harmful to the notion of consumer welfare enhancement. But if growth comes from maximisation of these two surpluses (and the resultant minimisation of dead weight loss), the critical point is that whatever is happening in respect to inequality, the poor are being lifted out of poverty at a maximal rate.

Vijay Vir Singh, Indian Council of Social Science Research, International Institute for Population Sciences, Mumbai & Head, Department of Economics, University of Rajasthan, India (page no 41) asserted that higher economic growth is needed to attain resources that can then be used in schemes for development to help people who are not part of the mainstream. He supported the view that growth and equity should be separate agendas, and asserted that it is the responsibility of the government how it utilises resources generated through growth to ensure equity. He also advised that the mindset of the poor needs to be changed, to take advantage of schemes developed for their betterment.

Objections to this view came fast and furiously, and from an overwhelming majority of respondents. Davidson (page no 47) argued that large inequalities of income cannot be justified by logic or economic theory, and that such inequality in the market economy may ultimately pose significant threats to the sustainability of market systems.

He referred to Adair Turner's *Economics after the Crisis*, in which the author argued that unequal incomes are both likely and desirable in market economies as a means of creating incentives for creative innovations that may be broadly shared globally or locally, but that income differences may also result from economic activities that merely distribute income in zero sum transactions. Such distribution of income to those who are already wealthy has no social justification.

Therefore, Davidson asserted, factual circumstance upon which unequal distribution is based needs to be examined to ensure equitable distribution, rather than applying the theory to all circumstances, (or as Francois Souty, Professor, University of La Rochelle, France warned, it should not be applied as mantra or sutra).

Should efficiency be the sole objective of competition law?

The discourse entered the arena of competition law and its role of achieving equity. There were alternative perspectives on the subject of the extent to which competition law and its enforcement should seek to incorporate equity. Eleanor Fox, Walter J. Derenberg Professor of Trade Regulation, New York University School of Law USA (page no 42) 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.

Peter Behrens, Professor of Law Emeritus, University of Hamburg, Germany (page no 48) pointed out that not all competition laws pursue aggregate efficiency. He stated that under EU competition rules, enforcers are normatively obliged to focus on consumer welfare rather than total welfare. Others asserted that notions of equity are embedded in some countries' competition law.

Derek Ireland, Director and Chief Economist, Chreod Ltd, Canada & Former Practitioner, Competition Bureau, Canada (page no 48) explained that Canada's competition law, in its mission statement, presumes that fairness/equity were complements, not substitutes, and both Canada and South Africa, among other countries, have fairness and equity considerations in the objectives statements. Francois Souty, Professor, University of La Rochelle, France (page no 49)

argued that the concept of equity is rooted in the French Roman Civil Code; there is reference to principles of non-discrimination which is applicable to competition law. He argued that there are definitely strong linkages between the concepts of competition and fairness in the French Law.

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 policy and law enforcement. Current trends in pursuit of efficiency could lead to inequitable outcomes, as for instance, the trend in the EU to apply “equal treatment” to public and private ownership, which overturns the principles of administrative law that applied differential treatment to public enterprises over the last 150 odd years. In the process, universal subsidised service to many segments of the population that made costs bearable is now being removed, resulting in rising costs to consumers, all in the pursuit of efficiency. Indeed, Albert Foer, President, American Antitrust Institute, USA (page no 52) asserted that notions of equity are built into virtually every society’s laws.

Eleanor Fox (page no 55) proposed that a question the group should address is whether and to what extent a principle of fairness and a value of equality of opportunity can and should be built into the competition law, or should they simply be incorporated elsewhere. She anticipated the arguments that such inclusion in competition law would compromise efficiency benefits for all, and that it would enhance discretionary space for corruptible officials. Her view is that competition should help all market players to participate in the market in a pro-competitive, pro-efficient way. It should not, unless very good reasons are shown, handicap efficiency.

Fox posited that there is a large area in which how to reach **efficiency is unknowable**, and argued that certain equity values such as the right of outsiders to contest markets in the face of dominant firm strategies can coincide with efficiency. She further argued that competition law is properly applied against certain market power and its exercise, and not just on the basis of some notion of efficiency; that application of competition law should, in general, lean towards the marginalised in society; and that rules of law protecting outsiders more than incumbents can be as clear and knowable as rules based on a standard that nothing is illegal if it is efficient.

Souty (page no 49), however, took issue with the theory of contestable markets and its application. He recalled that the contestable markets theory is an invention of very conservative scholars systematically promoting deregulation and market access (Baumol and Panzar-Willig), in support of the Chicago School's undermining of the classical structuralist industrial organisation approach to barriers to entry.

His concern is that the theory of contestable markets has become a vehicle to spur deregulation and privatisation programmes in developed and developing countries. And, where foreign investment cannot be attracted in developing countries, this has led to monopolistic private practices often associated with cronyism of a few ruling families (hence the Arab Spring), where market power is not simply seized by major TNCs seeking only profit maximisation (itself harmful, as in the case of Cable and Wireless' operations in the Caribbean).

Therefore, deregulation deriving from contestable markets theories did not improve fairness, nor equality of opportunities, nor social order. Fox (page no 55), in response, agreed with Souty that the theory of contestable markets can work in theory, but almost never does in fact.

Eschew an ahistorical approach

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 (page no 56) and Aditya Bhattacharjea, Professor of Economics, Delhi School of Economics (page no 68) 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. This orientation provided vital political traction to competition laws and legitimised the market economy by appearing to control some of its unpalatable features.

Both Souty and Bhattacharjea, alerted us to the shifting values and objectives of competition law over historical time and pointed to values of equity and support of small businesses in the original antitrust laws.

According to Souty, the evolution of competition law over the last three or four decades has shifted to an almost exclusive focus on cartels and away from prosecution of abuse of dominance, in tandem with the “economic efficiency alone” conception of competition advanced by the Chicago School. Even the language has shifted away from words like, “abuses”, and “monopolisation” to a milder “unilateral conduct”, thus rendering the acts more benign.

Indeed, Souty argued, the very interventionist and political nature of current competition law development currently, runs counter to the fact that abuse of dominance was more important to developed countries when their economies were at the stage of evolution more in keeping with the conditions found in developing countries today. It demonstrates how much market fundamentalism has suffused international trade theory and national and international competition theory.

Souty called for a revival of the original Spirit of Antitrust, based on the philosophy of the Progressives, rather than follow that espoused by the Conservative Revolution in the 1980s, and supported by sponsorship of academics by wealthy elites. In his view, such revival would be a useful contribution to the restoration of public policies designed in favour of workers, consumers, and harmonious societies more concerned about long term and sustainable development, rather than short term financial profits and multiplication of a handful of billionaires while poverty increases in each of our countries.

According to Davidson, who supports Souty's call for a return to the Progressives, the origins of competition/antitrust law during the Progressive Era at the dawn of the 20th century were based on a fear of new Big Businesses that were dominating the economic landscape.

The progressives combined the American middle class "gentry" of the Roosevelt and Wilsonian wings of both the Republican and Democratic parties with small debt burdened farmers and emerging labour unions that were fighting dangerous underpaid working conditions. Those constituencies have been marginalised since the 1970s by Chicago economics and their artificial and narrow definition of efficiency.

In his view, those who passed the American Antitrust laws did not see an inevitable conflict between efficiency and equity, but if a choice was required, would have leaned towards equity.

Davidson cautions that this perspective should not be ignored or lost in the swamp of economic analysis that overcomplicates competition law.

Shadrack Nkelebe, Head, Advocacy Department, Fair Competition Commission, Tanzania (page no 52) stated emphatically that poverty alleviation is the core imperative in developing countries, and all policies should contribute to that end, while supporting a well-functioning market. He pointed to the unsustainability of current practice in Tanzania, because of growing discontent of the majority with government policies.

Pradeep S Mehta, Secretary General, CUTS International (page no 53) 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. He 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.

In the case of Tanzania, according to Nkelebe, the objective of the competition law is to enhance the welfare of the people, and in the view of the respondent, this should transcend consumer welfare.

The Rebuttal

There were, however, views that strongly opposed bringing equity considerations under the ambit of competition authorities. Cezley Sampson, Consultant, Competition Policy and Law (page no 58) 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 depend too much on discretion and the culture and norms of a country. He further argued that using competition law and policy to address redistributive issues which involve invoking ethical consideration, provide opportunity for political

opportunism, elitism, corruption, as well as leading to dysfunctional markets.

Anthony Clayton, Professor, Institute for Sustainable Development, University of the West Indies (page no 58) agreed that using competition law to achieve redistributive goals would facilitate patronage and corruption and inflict a high associated economic cost.

While agreeing that competition law should be limited and not include instruments of social justice or fighting against poverty, Tounakti Khalifa (page no 59) argued that a competition policy has meaning/justification only if it contributes to the fulfilling of objectives that have been determined by the nation within the framework of its social and economic choices.

In his view, protecting competition and thereby ensuring better products and cheaper prices contributes to equity and social justice. It is therefore important to maintain a coherent environment for, and rigorous enforcement of, competition law, and the State must be guardian of public interest, providing well-functioning institutions, the social safety net, the guarantee of minimal rights, legal security (due process of law) all of which would shape an enabling environment for competition policy and law.

In support of the argument that competition authorities should not take into consideration equity issues, Hicham, Head, Advocacy Debt, Investigations Directorate, Competition Council, Morocco (page no 69) differentiated between allocative efficiency (static and dynamic) 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 (unless engaging in advocacy work or conducting merger investigations).

They are limited to fighting against anti-competitive practices and evaluating the potential effects of proposed mergers. But, equity-seeking entails a redistributive efficiency policy that aims to restore balance in the market, requiring interventionist policies which are outside the boundaries of the work of a competition authority.

By contrast, sectoral regulators have a responsibility to restore balance between historical operators and challengers on the one hand, and consumers on the other. Their tools to achieve equity include price fixing or asymmetric regulation favourable to new comers to the market. Competition authorities cannot engage in such equity measures because they could become vulnerable to “political capture”.

This provoked a response from David Lewis (page no 66) that competition policies, including competition law enforcement, struggle to achieve legitimacy in developing countries (and even developed countries), and for this reason, it may not be a good idea to drive a deep separation between (efficiency enhancing) competition law and policy on the one hand, and (equity sensitive) redistributive policies, on the other.

Competition law enforcement has to be seen to be addressing the consequences for EQUITY of its enforcement and regulatory functions. He proffered that the public interest considerations built into the South African Competition Act, plus the fact that the competition authorities are responsible for their interpretation and enforcement, have worked well to underpin popular support for competition law enforcement.

Lewis argued for the need to recognise that markets and competition also can have a positive impact on democratisation, opportunity, and the incomes and wealth of the poor, and where competition law makes a clear contribution to one or the other of these objectives, it has to have a well-honed advocacy strategy that “claims” it. In support of these views, Lewis (page no 66) pointed to the advantages of the South

African approach: it forces the competition authority to be more transparent about whether, how, why, and the extent to which broader public interest objectives are influencing specific case investigations, analysis, decisions, and broader enforcement priorities and administration of the Act.

In response to Sampson and Clayton, Fox (page no 71) sought to clarify that a role for equity was being proposed based on rules of law, and not on subjective and idiosyncratic notions of equity.

Fox argued that even if achieving efficiency is confined to allocative and dynamic efficiency, it is not a self-defining term, and non-efficiency values get imported. Fox objected to the framing of the debate as efficiency (assumed to be pure and scientific) versus efficiency and equity, with equity assumed to impair efficiency and applications assumed to be unknowable and unpredictable. She identified three perspectives:

- 1) A general principle of *laissez faire* with minimal antitrust intervention (except perhaps a strong rule on cartels).
- 2) A principle that leans towards inclusiveness: contestability of markets by outsiders – thereby achieving some measure of equity consistent with efficiency; indeed, perhaps this is the way to achieve efficiency in some societies. No society that has systematically marginalised a critical mass of its citizens can ever achieve its potential for efficiency without including the masses of people in the economic pipeline.
- 3) Preserving small and medium-sized enterprises (SMEs). Applying the law to achieve this objective may handicap efficiency as the term is used in Western cultures. Others may not regard support of SMEs as in principle handicapping efficiency, although they must acknowledge that at some point there will be trade-offs (Eleanor Fox).

A final issue raised by Shanker Singham (page no 65) was the need for competition authorities to intervene to curb anticompetitive government distortions that generally favour the vested interest groups or domestic incumbents. Such government distortions result in wealth destruction by reducing consumer and producer surplus, shrinking the economic pie, and pushing millions into poverty. Competition authorities should not restrain themselves from action because the conduct is a public restraint.

David Lewis (page no 66) supported this view, asserting that there are many reasons for believing that state actions WILL support incumbent elites, and this is partly because of state capture by the elites, but also because of information asymmetries between weak states and the interests they are attempting to regulate.

Competition authorities may be best placed to tackle public restraints and elite dominance of competition policy. It was asserted that MARKET ENQUIRIES have the potential to become very important weapons in the armoury of competition enforcers – it grants them formal powers that extend beyond the traditional concerns of enforcement [a point that was missed by those who clearly limited the powers of intervention of competition authorities to disciplining anticompetitive conduct through sanctions, and engaging in advocacy and merger investigations].

Equity Enhancing Conditions: The Role of the State

Early in the debate, we were alerted by Morten Broberg, Professor, Faculty of Law, Copenhagen, Denmark (page no 42) to the fact that a strong democracy normally presupposes a large middle class. And, a large middle class presupposes a fair amount of equity. More clarity on how to achieve “a fair

amount of equity” was brought to our understanding by those who alerted us to the fact that policies pursuing growth objectives in a market economy would only achieve equity inclusive outcomes if they are introduced in an appropriate enabling environment. The lack of such a supportive environment for growth policies, in developing countries in particular, result in gross inequities.

Albert Foer, President, American Antitrust Institute, USA (page no 54) proponent of this view, pointed to the fact that a market system is unlikely to flourish without a state-based welfare net to ensure at least some minimal degree of economic equity.

The argument is that growth induces change in economies and yields both winners and losers, with growing anxiety and discontent among losers. The state can only sustain political support of institutions that sustain dynamism by reducing the downside of risk for its members through a promise that its members will be protected from worse outcomes.

He asserted that “It is not capitalism OR welfare, but markets AND welfare.” Indeed, Tounakti Khalifa, (page no 59) speaking from the heartland of the Arab Spring, warned that competition alone cannot solve all our problems of today. Justice and equality of chances (i.e., fairness) must be at the centre of an economic policy of which competition policy is only a component. He asserted that *social stability is priceless*.

Tounakti’s warnings from the Arab Spring experience provoked a response from Peter Behrens that sought to clarify the links in institutional design of a society that seek growth with efficiency while at the same time limiting the degree of inequality so as to guarantee a fair share for everybody.

He argued that economic activities and redistributive systems must be kept separate (as did Sampson, Clayton and Singh, among others) and pointed to the disastrous results in East Germany of pursuing an integrated policy of growth and

equity. However, he advanced proposals on how equity can be achieved through government intervention.

According to Behrens, Professor of Law Emeritus, University of Hamburg, Germany (page no 61) competition should govern the economic system, and this implies some fairness in equal opportunity to everyone to do business. However, this will not lead to just redistribution.

Governments should provide social benefit payment to those unable to work, or who suffer unemployment, until they find jobs. They are also responsible for providing adequate education and training of people in order to prepare them for jobs. So too, they must provide a proper healthcare system, a proper functioning administrative and judicial system, infrastructure, and other public goods which are accessible for everyone, irrespective of their wealth.

Most important is a well-functioning taxation system, which provides progressive taxation so that those who benefit most from the market will contribute most to government's budget.

The conclusion, then, is that most of today's problems can be explained by the failure of governments to provide for an equitable system of social redistribution. Behren asserted that "social justice" should complement "market competition" and not replace it. Competition law is designed to fight against rent seeking.

This argument for the institutional design of society to ensure equity is clearly valid, but spawned new questions. What we do when the political system is not taking your good advice, Russell Pitman asked.

Pitman argued that if we acknowledge that a huge majority of corporate assets are owned by the very wealthiest citizens, and if we assume, reasonably enough, a declining marginal utility of income, it becomes quite compelling to give a greater weight to consumer surplus than to producer surplus when forced to make a choice.

For instance, in the context of competition law enforcement, does it make sense to consider labour savings from a merger on pure welfare benefit in a poor country with a permanently large group of unemployed or underemployed?

Stewart pointed out that while the institutional framework proposed is theoretically valid, the means for providing such social safety net and wider enabling environment are not present in most developing countries. Moreover, the World Bank and International Monetary Fund (IMF) Structural Adjustment Programmes (SAPs) forced developing countries to reduce social programmes and benefits so that capital could be accumulated and directed towards repayment of external debts (extortionate and usurious in its escalation of interest rates and penalties).

Many contributors (Chopra, Clayton, Sampson, Yassine, Wang) pointed to the high level of corruption and political patronage to vested interests that exist in developing countries. Others alerted us to the fact that governments and private sector players are paying lip service to the important issue of putting economic, social, and environmental policies on the path of sustainable and inclusive development.

Wedderburn, Caribbean Director, Friedrich Ebert Stiftung, Jamaica (page no 46) warned that growth can only be sustainable if there is equal access to decent wages. And, finally, and profoundly, it was observed by Nadeem Ul Haque that we continue to debate the market versus government theme, but little attention was being paid to *how this caring, knowledgeable government will be built*. He also pointed out that the debate omitted to focus attention on newer issues of entrepreneurship and innovation in fluid markets in cities, and the issue of social capital and community development as part of the growth process.

Another omission, raised by Souty, was the silence in the competition debate and the competition world on the

interaction between competition policy and environmental issues that may require political choices counter to competition law principles, while at the same time promoting equity between peoples of developed and developing countries, as, for example, water provision and use issues, environmental protection issues, and pollution prohibition norms.

Indeed, mainstream economics now incorporate methods for internalising environmental costs and have developed this discipline and its application to economic analysis. Competition experts need to follow suit and address this issue.

Inequity in the World-Economy: Structure and Processes

Stewart, Associate Senior Fellow, University of the West Indies (page no 78) alerted us to the fact that exploitation through leakage of capital from the impoverished majority to the few rich, occurs not only at the national level, but is a feature of international economics.

Recent globalisation processes have accelerated the integration of peripheral economies into the world economy through specialisation in components of the product chain, usually at the lowest value added level and placing large sectors of these economies in a state of dependency and vulnerability, and through externally propelled growth based on cheap labour, poor standards and deprivation of human rights.

Despite all the hype in the general literature of developing countries “ascending the ladder” through an increase in manufacturing, in the majority of cases, it is merely a shift in the processes in the international division of labour, but with the continuing effect of limiting their role to the lowest value added components in the product chain.

The case of the factory workers in Bangladesh was cited by Stewart whereby consumers in the UK benefitted from

cheap clothing but the workers in Bangladesh paid a heavy price, including loss of life, because of poor safety standards and work conditions, and exploitative pay.

Stewart explained that this exploitation of developing countries is rooted at the structural level through their role in the international division of labour, their place in the hierarchy of control of international institutions, and the design of the rules of trade and investment, all of which favour the rich countries and their transnational corporations (TNCs). Stewart argued that inequity is bolstered through the imbibing of the dominating liberal ideology that informs theory and praxis.

Eleanor Fox (page no 79) added that insidious processes: “free trade rhetoric and restrained trade-when-it-suits the developed world” and unequal bargaining power preserve the power and control by rich countries.

However, Stewart pointed out that while these structures and processes at the world-economy level maintain the *status quo* of inequity in the world-economy, internal sources also support the system. Technocrats and academics imbibe the rhetoric of unselective open market economy development, and this is supported by the very education system of unquestioned neo-liberal economics taught to leaders and policy makers in the developing world.

And, the business elite insert themselves into the world economy where the greatest opportunity for capital accumulation resides, thus complying with the needs of international capital. Indeed, the elites of the South have more in common with the elites of the North, than they do with the marginalised masses of the South, as pointed out by Johan Galtung in his seminal work on structural imperialism. Hence, while the big TNCs profited by the cheap labour in Bangladesh and turned a blind eye to standards, it was a local proprietor who was responsible for the poor standards of building that

resulted in the collapse of the factory and the death and injury of many.

The consequences of this inequitable international division of labour in the context of foreign direct investment were brought to our attention through experiences in Thailand, Nigeria, and Zambia. Charles Chueng, Chairman, Competition Committee, Board of Trade, Thailand (page no 77) alerted us to the fact that hundreds of thousands of small retailers were displaced when “box retailers” the big TNCs, were allowed to enter Thailand.

Thulasoni Kaira, CEO & Secretary, Competition Authority, Botswana (page no 82) cited an uprising against Shell in Nigeria because of the negative impact on the community and the environment, as an example that economic growth (and the enterprise’s long-term profitability) risks a serious derailment where it creates a distortion in equity.

He also referred to the small scale contract farmers in sugar, tobacco, and cotton industries in Zambia, who were being exploited by TNCs which flourished exponentially while the farmers continued to be in the poverty bracket for decades. In each of these, growth increased, but equity was reduced.

Another example provided by Kaira was the case of East Asian women (and children) who labour for prosperous and notable brands while they that labour on the ground never seem to move up the next social ladder. With these examples, he supported the statement that “growth cannot be chased at the cost of equity”.

In response to the question posed on the role of competition authorities in dealing with entry of “big box retailers”, Russell Pitman’s view (page no 77) was that while entry is a matter of broader policy question, competition authorities have a critical role to play in monitoring market power *vis-a-vis* local and regional suppliers and potential abuse of dominance in local retail markets, either downstream or upstream.

The review of Dani Rodrik's *The Globalization Paradox* in the Washington Post, was referenced by Pitman, and merits an elaboration here, for he points precisely to the dogma of open markets and free trade that drive globalisation in the interest of members of the global elite, and favoured by the corporate community and academic economists. He points to the fact that countries that have most benefitted from free-market globalisation are not those that have embraced it wholeheartedly, but those that have adopted parts of it selectively.

He argues that globalisation, by its very nature, is disruptive, rearranging where and how work is done, and where and how profits are made, destabilising economies and creating large pools of winners and losers. He warned that any society, particularly democratic societies, will tolerate such disruption only if there is confidence that the process is fair and broadly beneficial. And, he proffered that globalisation will work for everyone only if all countries abide by the same set of rules, hammered out and enforced by some form of technocratic global government. He recommends, for developing countries, selective incorporation into the international division of labour dictated by globalisation.

The vexing question of how to agree to legally binding rules applied internationally to TNCs was raised by Fox and Stewart. Trudi Hartzenberg, Executive Director, Trade Law Centre for Southern Africa (TRALAC), South Africa (page no 83) pointed to the fact that the WTO is not where the development of this agenda is taking place, but was hopeful that a trend towards inclusion of a new generation of trade issues in regional trade agreements (RTAs) would augur well for developing countries. One example provided was the inclusion of standards in the Trans Pacific Partnership (TPP).

Souty referred to the upcoming Transatlantic Trade and Investment Partnership between the US and the EU, which

incorporates competition policy, and this augurs well for advances in international norms on competition policy, particularly in the light of the failure of the WTO Working Group on the Interaction between Trade and Competition Policy (WTO WGTCP) in 2004. The hope, therefore, was that rather than striving for a coherent global regime, governance of TNCs could be gradually included in RTAs, to the benefit of developing countries.

This proposition was countered by Stewart who pointed to the asymmetrical bargaining position of developing countries *vis-a-vis* industrialised countries and their TNCs, and suggested that such rules would only appear in RTAs where negotiations were shaped by equally balanced interests and negotiating strength. A perusal of current RTAs between developed and developing countries bears out this argument, with exceptions found only with north south RTAs involving the more advanced developing countries, such as South Korea or Brazil.

Others have very weak competition provisions in RTAs (e.g., CARIFORUM-EU EPA), and none, as is the case between the US/Central American/Dominican Republic RTA. While the governance rules embedded in the OECD Guidelines for Multilateral Enterprises were raised by Thulasoni Kaira as an example of the way forward, this also is a plurilateral agreement between equals, i.e. members of the OECD, and is not binding, making it a toothless tiger.

Stewart critiqued this unbalanced approach, whereby the powerful protect their own, but take little responsibility for the conduct of their TNCs outside of their national borders, and drew a parallel to domestic rules to deal with cross border anticompetitive conduct: the fact that legally, competition authorities' remit is to address conduct only if domestic consumers are affected, with no responsibility for the conduct of their TNCs where consumers in other jurisdictions are affected. The issues and debate on the effects of cross border

anticompetitive conduct and the constraints experienced by developing countries in trying to discipline anticompetitive conduct of TNCs is a topic deserving of a separate discussion, but demonstrates the lack of enforceable global rules of governance for TNCs.

It is important here to remind ourselves that even as paradigms change, so does law; it is not cast in stone. However, it is the forces that are most powerful that can influence change. This brings us back to the only attempt at building enforceable competition policy standards at a global level which was conducted at the WTO WGTCP between 1998 and 2004. It may be time to revisit this effort at developing enforceable international norms and standards on competition policy.

Summary of Key Points in the Debate

The following key pointers for influencing current practice and for shaping future work can be drawn from the main arguments put forward in this debate:

- The critical mass of discussants expressed the view that economic theory should not control all cases. A nuanced approach to interpretation and application of competition law should prevail, taking into account the specific circumstance.
- A possible alternative: members of the discussion group observed the inclination in many jurisdictions to apply an efficiency-only model to competition cases and often to apply what has become known as the Chicago School model which assumes that the market works well, that antitrust enforcement frequently protects inefficiencies, and that applying equity will protect inefficient firms and hurt society.

Moreover, the assumptions of theory and convenience often migrate into assumptions about

reality. The critical mass of this group of discussants disagreed, and thought that the Chicago assumptions were more likely to protect dominant firms and vested interests, especially in developing countries where markets are deeply impaired and vested interests are pervasively favoured.

- The problem of inequity span both national and international economies, more so with increasing globalisation, and freer trade and freer movement can increase the gap between those who are rich or enabled and those who are poor and without the skills demanded in the global economy. While globalisation has pulled millions of people from below the poverty line, it has also put additional costs on some of the poorest, for example, as a result of greater demand for and higher price of food.
- Those that strongly opposed including other criteria for enforcement but efficiency argue that opening enforcement to equity considerations would not only shrink the pie and chill innovation, but create large pockets of discretion of enforcers and thereby lead to corruption, cronyism, and political capture by elites. Indeed, these practices are rampant in developing countries.

Others countered that failure to recognise and nurture the dynamism of fenced out entrepreneurs can shrink the pie, and policy space for decision making can be structured to keep wayward enforcers honest.

Should we not be seeking ways to fashion the “good governance” that is needed, along with the “good” government that would provide the social safety net and enabling environment for a market economy to function efficiently, but allow for equity?

- Finally, for a critical mass of debaters, there seemed to be an overwhelming perception that at the heart of policy should be human development outcomes. But policy derives from theory, and theory is (should be) forged from a society's vision of a better future for all of its citizens, given the conditions that prevail at a given juncture, and it should point to the path to achieving that end.

One needs, therefore, to question theory and policy in the context of circumstance, and measure success or failure of policy by the extent to which there is an umbilical cord connecting societal reality and vision to theory, and to policy, and to praxis, and measured outcomes.

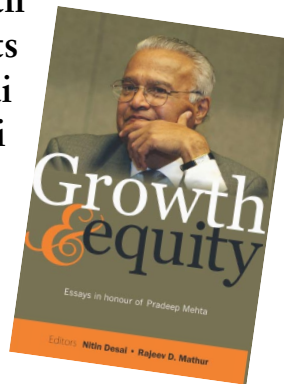
PART – II

The Debate on Growth and Equity

Growth Cannot be Chased at the Cost of Equity

– Ashok Kumar/OneWorld South Asia

At the book launch of ‘Growth and Equity’, which has experts like Kamal Nath, Nitin Desai and Jagdish Bhagwati contributing essays, the talk turned to the policy issues India faces and how consumers in India have now become more aware and are fighting for their rights.



“Growth is extremely important because that is the basis on which infrastructure is build, but we cannot forget equity. If we forget equity, social tensions will surface,” said C Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India, Manmohan Singh.

Rangarajan was speaking at the launch of *Growth and Equity*. The book is a collection of essays written in the honour of Pradeep S Mehta, Secretary General of the Jaipur-based Consumer Unity & Trust Society (CUTS International). The

book includes essays and commentaries by Jagdish Bhagwati, Nitin Desai, Frederic Jenny, Vijay Kelkar, Pascal Lamy, Arun Maira, Arvind Mayaram, Shiv Shankar Menon, Kamal Nath, C Rangarajan, Rubens Ricupero, Martin Wolf and others.

India's Parliamentary Affairs Minister, Kamal Nath, said a multifaceted approach is required for various Indian states as economic requirements of the states differ from each other. Keeping in with this difference between states, Arvind Mayaram, Secretary, Department of Economic Affairs, Government of India, said that the extreme disparities in a huge country like India make the job of policy-making extremely difficult.

Mehta has been an outspoken activist on the issue of consumer rights and he went on to say how the Indian consumer is now much more empowered through laws and hence has become more vocal than ever before. According to him the overall economic progress in the country has helped consumers to raise their standard of living.

Mehta asserted that measures of equity, such as Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and Right to Education (RTE) Act, have also helped people raise their standard of living and contributed to overall upliftment of consumers.

Subir Gokarn, Director-Research, Brookings Institution, India, said that there should not be too much worry about the regulatory independence as it can be regularly scrutinised by institutions like media and the civil society.

Though Mehta, on his part, had a different take on this. According to him regulators instead of being under the control of the line ministry, should report to some other ministry. "The bigger problem is that most of our regulators report to a line ministry and therefore they are not independent. Regulators should be removed from the control of their line ministry. Alternate structure should be created to place the

regulators directly under the control of Parliament through the standing committees,” he said.

Mehta stressed that there is no conflict between growth and equity. “The government should pursue the growth agenda and increase the size of the cake and then ensure that equity is fostered,” he said. Agreeing with this, Dr Jean-Pierre Lehmann, former Professor, International Political Economy, IMD, praised the intellectual leadership of the country 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 launch saw people from the government, media and civil society organisations who avidly participated by sharing their views on issues related to consumer rights.

http://southasia.oneworld.net/resources/growth-cannot-be-chased-at-the-cost-of-equity-c-rangarajan-1#.Ud5iE_k3AaB

Some Reflections from the Debate

The Problem: The Soft Underbelly of the Market Economy: Internal Sources of Exploitation

Devinder Chopra

Pradeep S Mehta and CUTS have pioneered a process that, unfortunately, does not carry far, considering the massive needs of 1.2 billion beings. By my saying that, hopefully, one is not misunderstood. Inspiration from the thinking and propositions of the likes of Pradeep and CUTS is best recognised if development does not end up in rich getting richer, unaccounted money continues to undermine the honest.

Millions upon millions of our youth remain unemployed. Education, healthcare and the other basic services remain beyond their reach. Anglicised and very high cost education, in cities, is on a rise, while free or low cost education keeps millions of our girls and boys, unemployed and frustrated in the rural and urban slums.

Policymakers, administrators, and younger politicians have to be inspired and trained to do what is best and honest. And all that they plan and ought to be people centred – not to line their pockets and that of their ‘parties’. Service of India under a democratic set up is and will be the best, eventually. We

have to learn from all – including China, but remain true to the current and the long term needs of India.

*Member, Executive Committee
Grahak Sahayak, Gurgaon, India
(May 03, 2013)*

Yaduvendra Mathur

I could not agree more to what Devinder Chopra has said...we need action on the ground...starting now...and on so many fronts...As a serving IAS officer I too am plagued with the doubt of whether...if at all... I am really serving the people/customers... with administration as a service...or am I just another member of a 'service'...with perks and privileges!! These questions persist...and the key...as Chopra points out is to take note that negatives do not take to scale...

*IAS
Chairman and Managing Director
Rajasthan Finance Corporation, India
(May 04, 2013)*

Tounakti Khalifa

This is a most timely and interesting debate: indeed equity and social justice are increasingly rising in all countries including in developed countries. With the development of financial capitalism, vested on speculation and rents and super profits, financial crises have widened – jobs instability and unemployment growth.

As it is agreed by a majority of experts taking part in this forum, a competition policy must take into account the social impact of market practices dictated by aggressive competition and it is a duty of the government to keep a degree of equilibrium between a competitive and efficient economy, on

the one hand, and a minimum of social justice which guarantee the social and political stability of a country on the other. It is the role of regulatory policy which often allows to correct excesses of a cutthroat competition or antisocial practices that are blessing/affecting/harming a number of people.

I want to say that competition alone cannot solve all of our problems of today. Indeed, justice and equality of chances (i.e. fairness) must be at the centre of an economic policy of which competition policy is only a component.

Social stability is priceless: a country that falls into protests and grievances may very well lose its growth trend/capacity and even some rewards of that growth because it has lost or neglected the social component of its economic policy.

*Director of Price and Competition
Ministry of Tourism, Trade and Crafts, Tunisia
(May 15, 2013)*

Mona Yassine

I agree that for economic growth to be sustainable has to adopt inclusive growth. The revolution in Egypt came at a time where economic growth was average six and seven percent respectively but the growth was not trickling down to the poor. Even when average income grew substantially, the gap between the poor and the wealthy widened and the middle class was divided but 90 percent was skewed to the poor level.

While competition policy and law implementation tackles equal opportunities, the government has a role through inclusive economic policies and setting independent fair regulatory bodies in human development and provision of basic human.

For corporates, corporate social responsibility (CSR) was the fashion but it was never enough. For government it used

subsidies in principle to keep prices affordable to the poor but in reality it was exploited by the rich. The corruption and bureaucracy created an informal economy that was harmful to development of resources and efficiencies, but provided jobs and made the government look the other way.

If I were the government I should not be happy with a growth of 15 percent to the wealthy and 10 percent to the poor, this is fuel for future troubles as gaps widen.

*Vice Chairman
Association for the Protection of Competition, Egypt
(May 08, 2013)*

Davit Harutyunyan

Within the frame of very interesting discussion, I would like to recall the famous research done by McKinsey Institute and published in 2004, where authors based on empirical evidences have emphasised that the key for sustainable and ‘qualitative’ growth is competition.

Also I would strongly recommend to be familiar with fundamental research of two world leading economists Daron Acemoglu and James A. Robinson “Why Nations Fail: The Origin of Power, Prosperity and Poverty”. This is really a brilliant book which bears considerable food for thought for politicians and global academic society.

*Former Chairman, Competition Commission, Armenia
(May 09, 2013)*

Wang Xiaoye

I agree with such kind of opinion that economic growth must balance with equity, and must be beneficial to the poor people. In China, with the very quick growth of economy, the

gap between rich and poor also extended because of the vested groups.

In my view, competition policy has not played an important role in China, because the market access for the non-public economy is still problematic today, therefore the people working in the state-owned monopoly sectors and industries are normally richer than the ordinary people.

Of course, corruption also plays an important role for the imbalance between growth and equity, but in China, to a certain degree, the corruption is because of the un-separated functioning between government and the state-owned enterprises (SoEs).

*Director, Economic Law Development Institute
Chinese Academy of Social Sciences, China
(May 10, 2013)*

The Growth/Equity/Competition Policy Nexus

Jeffrey I. Zuckerman

This is a very curious position. Supposing India could devise policies that would result in a real 10 percent increase in the incomes of 99 percent of her population, and a real 15 percent increase in the incomes of the wealthiest one percent of her population. Would C Rangarajan oppose the adoption of such policies because of a lack of “equity”?

*Partner, Curtis, Mallett-Prevost, Colt Mosle LLP, USA
(May 04, 2013)*

Vijay Vir Singh

The concerns of Chopra may be genuine but growth cannot be held responsible for these concerns. The simple logic is that if we need the development of people who are not the part of the main stream we need resources which can be ensured only through higher economic growth.

The schemes of inclusion like MNREGS and RTE could be implemented because India achieved higher growth and government had sufficient resources to spend on such schemes.

Mehta has rightly mentioned that we need a separate agenda for equity and growth. It is the responsibility of the government how it utilises resources generated through growth to ensure equity. We also need to change the mind-set of poor to ensure that they take proper advantage of various schemes and think in long-term.

*Professor & Senior Fellow
Indian Council of Social Science Research
International Institute for Population Sciences, Mumbai
& Head, Department of Economics,
University of Rajasthan, India
(May 06, 2013)*

Eleanor Fox

This is not a curious position at all. Indeed it has growing acceptance. It has become standard thinking that developing countries should adopt policies not just of aggregate growth but inclusive growth.

Refer to The World Bank Growth Report, Michael Spence, Chair, Commission on Growth and Development. It would mean, for example, that policymakers may be sympathetic to a rule that limits the power of a monopolist seed seller who is also a monopsonist buyer of the crops to put all of the risks of bad weather loss on farmers (mostly very poor and representing a huge proportion of the source of livelihood in many low-income countries) even if the exploitation is 'efficient.' It does not mean that trade-offs are not considered.

*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA
(May 05, 2013)*

Morten Broberg

Thanks to Eleanor for this well-founded observation. When the previous comment came in, I was precisely thinking of the World Bank's acceptance of the equity aspect. Moreover, a strong democracy normally presupposes a large middle class. And a large middle class presupposes a fair amount of equity.

So in my view there is much more to this than the purely economic aspects that we generally focus on as part of competition policy.

*Professor, Faculty of Law
Copenhagen, Denmark
(May 06, 2013)*

Pradeep S Mehta

Let me respond to Devinder Chopra's views. I have always held that growth *with* equity is not sufficient, but need growth *and* equity as a parallel track process. Please see my article (see Annexure 4 on page 107): www.cuts-ccier.org/Article-Equity_is_Good_for_Growth.htm. The current buzz word is *inclusive* growth which is meant to capture both growth and equity, but once again we need a separate agenda for equity and all round prosperity, which is not limited to a handful.

It is the job of the country's managers to ensure a targeted approach on both tracks. Increasing inequality is certainly there, in and between all countries, and I am not proposing reverting to socialism. The path of socialism followed for many years too has not succeeded, and therefore nearly all countries have shifted to a market-based economy.

When the Planning Commission conducted a wide survey before formulating the 12th Five Year Plan majority opinion was to support market-based measures to create quality jobs. We need a new paradigm of conscious and caring capitalism, which is underpinned by well-functioning markets with good competition and regulatory regimes, which does not allow concentration of power.

Alas, our recent history shows that managers have not really been able to evolve the model of economic democracy which is a strong corollary of political democracy because of various scams. Yaduvendra Mathur shares his angst about how crucial the civil service is in delivering the solutions and whether it has succeeded or not.

*Secretary General, CUTS International
(May 06, 2013)*

Shanker Singham

I think it depends on precisely what we mean by this term equity. If we mean a more equal society, then I think we need to explore the fact that there are really two kinds of inequality.

First, if growth is achieved by short-term monopolistic, rent-seeking activity by elites, then the type of inequality that results from that is clearly harmful to the notion of consumer welfare enhancement. It operates directly against producer and consumer surplus.

On the other hand, if growth comes from the maximisation of these two surpluses the critical point is that whatever is happening with respect to inequality, the poor are being lifted out of poverty at a maximal rate. However in both cases, simple gini coefficient calculations might show the same perceived inequalities.

*Competition Law Consultant, USA
(May 06, 2013)*

Elena Estavillo Flores

I believe the heart of the discussion is the concept of sustainable growth. In order for economic growth to be sustainable, it has to involve equality.

Societies where only a small part of their members receive the products of economic growth, are in constant tension to improve productivity, since there is a large portion of their members who are limited to increase their human capital.

Competition is an essential element of sustainable growth because it promotes equal opportunity to participate in the market and it rewards productive initiative for all members of the society.

*Civil Partnership Applied Research Centre
Mexico
(May 07, 2013)*

Russell Pittman

Economic growth is a good thing, but it is not the only good thing. Especially if we accept the great likelihood that people in general have a declining marginal utility of income, the importance of considering whether we might purchase a bit more equality at the expense of a bit more growth, becomes clear.

Professor Fox cites Michael Spence; I would cite also to just about anything by Dani Rodrik.

*Director of Economic Research & International
Technical Assistance
Economic Analysis Group, Department of Justice, USA
(May 07, 2013)*

Vladimir Kachalin

It was really exciting to know Pittman's thoughts on the economic growth role. I believe socially efficient growth should be characterised by two major parameters: inclusiveness and human development because, indeed, as Shanker fairly mentioned growth in some countries may be mostly elite oriented.

What is really interesting to me as to a competition professional is what can be a relationship between competition, on one hand, and inclusiveness of growth and human development, on the other?

Although in purely competitive markets this relationship may seem more or less obvious, in more sophisticated, e.g. oligopolistic markets it might not be so clear.

*Adviser, Head, Federal Antimonopoly Service, Russia
(May 07, 2013)*

Judith Wedderburn

Thanks to Eleanor for reminding us that sustainable growth, but more importantly, for economic growth to be sustainable, I agree that it has to involve equality, and certainly human development is not possible without both economic growth and equality.

In respect of competition, as an essential component of sustainable growth, it only works if there is equality in access to the opportunities to participate in the market, for which there must be a foundation that provides equal access to decent wages, health, education. Equal opportunity is a very scarce commodity today...

*Caribbean Director, Friedrich Ebert Stiftung, Jamaica
(May 07, 2013)*

Nandi Mokoena

I think Vladimir might find his answer in a speech delivered by David Lewis, former Chair, South African Competition Tribunal at the OECD in February 2013. He spoke about the role of competition enforcement in alleviating poverty and had some helpful suggestions for how competition agencies in developing nations can support this goal meaningfully. (see annexure 1 page 89) It should be available on the OECD website.

*PR Consultant, South African Competition Tribunal
South Africa
(May 07, 2013)*

Kenneth M. Davidson

Eleanor Fox is correct as usual. The path breaking report of the Commission on Growth and Development chaired by Nobel Laureate Michael Spence even includes the notion of distributional fairness in its title of *The Growth Report: Strategies for Sustained Growth and Inclusive Development*. Zuckerman uses a simplistic caricature of Rawls *Theory of Justice* to justify unequal distributions of benefits of growth.

Inequalities of income may be likely to occur in both developing and developed countries, but large inequalities in income are not justified by logic or economic theory; inequalities in market economy are justified as a result of particular circumstance and may ultimately pose significant threats to the sustainability of market systems.

Adair Turner asserts in his recent book, *Economics After the Crisis*, that unequal incomes are both likely and desirable in market economies as a means of creating incentives for creative innovations that may be broadly shared globally or locally, but that income differences may also result from economic activities that merely redistribute income in zero sum transactions.

Activities that merely redistribute income to those who are already wealthy have no social justification by a commitment to a market economy. Consequently, we need to examine the factual circumstances of the income distribution that Zuckerman suggests would be both fair and beneficial before accepting that his hypothetical income differences are justified. Indeed,

Eleanor's example illustrates the central theme of the Spence Commission's report: fact and circumstances matter. There is no single path to economic growth, sustainability and social welfare.

*Senior Fellow, American Antitrust Institute, USA
(May 08, 2013)*

Derek Ireland

Pittman, thank you for your contribution. I am in full agreement. When I was the Director of Economics in the Canadian Competition Bureau in the early 1990s, the Bureau was part of the (since disbanded) Department of Consumer and Corporate Affairs which had the mission of *promoting fair and efficient markets*.

I was more comfortable with this mission statement compared with many of my economists' colleagues.

*Director and Chief Economist, Chreod Ltd, Canada
& Former Practitioner, Competition Bureau, Canada
(May 21, 2013)*

Peter Behrens

Pittman: Under EU competition rules we are anyway normatively obliged to focus on consumer welfare rather than total welfare!

Ireland: As a lawyer, I would like to tell you that in many European legal systems we distinguish very clearly between competition laws against restraints of competition and laws against unfair competition. This distinction is important, because there is a tension between free and fair competition that needs to be appreciated.

Many trade associations recommend 'fair competition rules' which are nothing but disguised cartels. So as always: different purposes require different instruments.

*Professor of Law Emeritus, University of Hamburg
Germany
(May 22, 2013)*

Francois Souty

This discussion is extremely welcome. Most interestingly, it escapes the conventional wisdom and mind-sets that have often been swarming over international fora in the last decade. From my standpoint, three major issues emerge from this discussion and I very much concur with C Rangarajan, Eleanor Fox, Kenneth Davidson, Bert Foer and Taimoon Stewart (to name only a few):

- For sure, there should be a major consideration for an international trade perspective in Rangarajan's view that the growth cannot go at the cost of equity. As Taimoon and Dani Rodrik's book review remark, there is a high risk for democracy in the current process of unlimited unregulated globalisation ('hyperglobalisation' as designed by 'free-trade fundamentalist'); I subscribe to Dani Rodrik's views. Thanks to Bert Foer for sending us the Washington Post link.

Indeed this brings us to an idea that is less heard now-a-days than it was 20 or 30 years ago: competition law enforcement is not a matter of economic efficiency alone. It is also a matter of market integration promotion. The last two or three decades have resulted in a global discount of the 'integration' or institutional side of markets functioning. The strong attack on the 'barriers to entry' approach by the Chicago school can be largely held for responsible of that forgiving. Now-a-days, even the Europeans do pay attention almost exclusively to so-called 'economic efficiencies' and 'effects-based' analyses.

- For sure also, competition law and policy may be an efficient tool for poverty alleviation as debates have shown at the OECD Global Forum in February 2013. But competition law and policy should not be reduced

as a *mantra* or *sura* necessarily bringing about growth. Indeed there are different blends of competition law and policy just as the scope and coverage of competition law may be telling a lot about equity. Hence, there may be different outcomes conducing to growth and equity.

In the area of competition under that same Roman code perspective, mentioning ‘equality’ refers to principles of non-discrimination. For sure, French Courts do emphasise the connexion between non-discrimination and the competition regulation. There are also definitely strong linkages between the concepts of competition and fairness.

The ‘fairness’ concept may also be transformed to reach objectives for which it was not designed. To take only one example, although in principle competition policy in the EU is supposed to be neutral about the public or private nature of ownership, actual competition law enforcement and case law have been levelling down the differential treatment that had been applied to state-owned operators as a result of administrative law developments.

Actual competition law enforcement over the last decade has implied ‘equal treatment’ for both private- and public-owned operators. But, as such, competition law has nothing to do with social equity as it may put into question universal service to many segments of the population by raising costs of previously subsidised services performed by public-owned entities.

Thus, if you ask progressive activists or trade unions representatives, a majority of them will definitely link competition enforcement to un-equality and leading to a decrease of equity.

Indeed ‘populist’ movements are increasingly putting into question, if not merely rejecting, a conception of

competition that should be applied to *all* aspects of the economic activities, without any exception or exemption.

The ‘fairness’ idea also show the strong contribution competition law may play to reduce ‘unfair practices’ generally performed by dominant operators that feel their position on the market allow them to extract undue surpluses for their counterparts.

But we must stress here that free market fundamentalist do not recognise the usefulness of unfair trading laws which they accuse of being not consistent with ‘sound economic thinking’.

- Competition law may be used against equity. I agree with Thula Kaira when he says that growth may create or reduce equity and he takes the sugar or cotton industries example.

This brings us to the way competition law has evolved over the last three or four decades, and now-a-days almost exclusively focusing on cartels. Of course many cartels are ‘bad’. The ‘economic efficiency alone’ conception of competition has led to forgetting Ronald Coase’s basic view that the firm can perform economic activities by two ways either by internalising or externalising activities. One should thus expect from competition enforcers that they pay an equal respect to the treatment of either way of firms’ operations. Such is definitely not the case.

Even the wording to name “abuses” or ‘monopolisations’ has shifted to decrease the potential for enforcement: nowadays one talks of mere unilateral ‘conducts’, not abuses. This shows how much a general conception of free market fundamentalism has suffused

international trade theory and national or international competition theory.

I would sum up all this by saying that to increase competition law and policy contribution to equity strengthening and poverty alleviation one needs to revive the original spirit of antitrust.

Such revival would be a useful contribution to the restoration of public policies designed in favour of workers, consumers and harmonious societies more concerned about long-term and sustainable development rather than short-term financial profits and multiplication of a handful of billionaires and rising pauperism in each of our countries.

In this direction and to conclude, I am struck to see so few interests is being paid to environmental and sustainable development issues by competition law thinking: with the development of market polluting rights, which kind of efficiencies shall agencies enforce against those who may trust and monopolise those rights??

*Professor, University of La Rochelle, France
(May 10, 2013)*

Shadrack Nkelebe

What a knowledgeable discussion has ensued. The diversity of the objectives of our competition laws lead to different ideas, but should come to convergence.

In Tanzania, the law has the objective to enhance the welfare of the people and we have been working towards that. To me this should transcend above consumer welfare. Practically we have experienced discontent of the majority with policies and I think we cannot continue in that manner.

Poverty alleviation is at the heart of developing countries and any policy that comes in should contribute towards that end. Competition policy and law cannot shun away from that fact otherwise deserves the right to be struck off the books.

On the other hand, we are market support institutions to ensure markets work well for consumers, this is what should be. Everyone is a consumer, but the suppliers tend to forget of which the chain reaction raises the cost of living to everyone.

On labour savings from mergers whether a pure welfare benefit results, at some point in Tanzania we approved a merger with that conditionality, but so short lived.

*Head, Advocacy Department
Fair Competition Commission, Tanzania
(May 30, 2013)*

Pradeep S Mehta

I am so happy that this debate reminds the competition community that we live in a bigger world, and that growth is so crucial to lift millions out of poverty in the developing world.

Not only that, after the conclusion of the last OECD Global Forum, which had the theme of poverty I had reminded everyone, through this forum, that a competition regime should create a wider buy in by articulating that better markets help both the growth and the equity agenda, rather than debate orthodoxies endlessly.

Our own work in a large number of countries has been underpinned by sending the message that a healthy and effective competitive regime helps the growth and equity agenda of all countries.

*Secretary General, CUTS International
(May 08, 2013)*

Olatunde Oluwatola

The ongoing debate on growth and equity is good and needed for world prosperity. It is, however, not surprising that the age long divide on capitalism and welfarism ideologies is at the fore of the arguments again. Over the age, reformation and even industrial revolution of the 15th-16th century in Europe and the post second world war era for the Asian tigers emerged when the concepts of guarded social welfarism were introduced into business and governance.

The Quality Circle principle in Japan is an example. Any growth that undermines humanism would always get choked, remaining unsustainable. This was the idea of the ‘Consumer Bill of Rights’ enunciated by Late John F Kennedy, US in 1962 when he opined that every penny made out of non-equity in commerce would kill the economy.

He affirmed that it is like killing the geese that lays the golden egg. We should not be deluded, it is how we lay our bed that we would lie on it. Growth can only be sustained when equity is ensured.

An African adage says that the child, who deprives his/her mother sleep, will also not find sleep. So any growth without equity will always engender social upheaval that poison and chokes the system to death.

*Former Director, Consumer Protection Council, Nigeria
(May 11, 2013)*

Albert Foer

It is interesting that we all seem to be finding this conversation so unusual and useful. Let me add a thought. I do not think it is generally understood that a market system is unlikely to flourish without a state-based welfare net to assure at least some minimal degree of economic equity.

My reasoning is that economies grow because markets induce constant change. But such dynamism inevitably creates both winners and losers – and social anxiety becomes widespread in a dynamic economy because anyone can become a loser at almost any time.

When such anxiety becomes widespread and intense, political opposition to markets will substitute state regulation and control.

The price a stable society has to pay for sustaining political support of institutions dedicated to dynamism is to reduce the downside risk for its members. This does not assure equality – markets cannot do that – but it suggests that we must think of our commitment to markets and the tools of antitrust as contextual, nesting within a political environment in which support for institutions of change are purchased by the state’s promise that its members’ will be protected from the worst outcomes.

If the ‘culture of competition’ does not also include a ‘culture of equity,’ the world’s relatively recent (and, on the whole, positive) dependence on markets will prove to be transitory. It is not capitalism or welfare, but markets and welfare.

*President, American Antitrust Institute, USA
(May 13, 2013)*

Eleanor Fox

This is an important and poignant contribution, and Taimoon, so worthwhile to translate. Do you think that part of the debate is whether and to what extent a principle of fairness and a value of equality of opportunity can and should be built into the competition law, or should simply be incorporated elsewhere?

As Bert Foer has pointed out, some notions of equity are built into virtually every society’s laws. Are some notions of

equity too important NOT to be a part of every law, or is incorporation of these notions into a law that many characterise as an efficiency law only destructive of efficiency that is likely to ensure to the benefit of all, including the poorest, and likely to enhance the discretionary space of corruptible officials?

I do have a point of view on the question as applied to competition law. I do believe that there is a large area in which efficiency is unknowable, and equity can be served consistent with efficiency; also that competition law is properly applied against certain power and its exercise and not just for some notion of efficiency; and that these rules of law can be as clear and knowable as rules based on a standard that nothing is illegal if it is not.

*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA
(May 18, 2013)*

Francois Souty

To elaborate on Eleanor's question, the principle of fairness as well as the value of equity and equality of opportunity should be built in law in a way that would allow such a design to balance the diffusion of competition law. This balance is especially needed when concepts of competition law are enforced in a manner consistent only with a 'pure' allocative and supply-sided efficiency.

Some of competition law enforcers have been over influenced by such a supply-side economics conception of competition. Such conception has discounted the authentic political values of antitrust in which one could very much trace demands for equity, equality of opportunity, fairness and redistribution of unfair income extracted from market abuses deriving for a cutthroat vision of competition or resulting from

an over-concentration of market power only in the hands of ‘some groups or families’ as Tounakti Khalifa puts it.

And in my opinion, as a matter of example, the so-called theory of contestable markets – which is suffusing many current enforcement decisions and policies) is definitely not converging with the notions of equity, fairness, equality of opportunity and social order, as mentioned by Khalifa. This leaves us with the idea that there not only one conception of competition policy, but definitely several (or at least two).

This discussion should indeed lead participants of this forum to define a conception of Competition Law and Policy that is definitely supporting progressive values and that should allow us to openly criticise decisions that are not consistent with Khalifa’s expectation reflecting many Tunisian people’s expectations, which shared by many people in the European Union and elsewhere by the way. This could lead us to contribute again to the design of a competition law integrating progressive views, bringing us into a motion that was greatly felt in President Woodrow Wilson’s times.

Indeed, such progressive efforts could be traced in Barack Obama’s first presidential campaign and during his first term of office.

However, this was not clear enough due to evident institutional gridlocks. Such gridlocks were analysed long ago by Alexis de Tocqueville’s “check and balances” theory in his “On Democracy in America”.

En passant, one could also take into account the still dominant conservative trend at the US Supreme Court and US Senate that blocked President Obama’s initiatives in the area of competition policy just as in the area of Federal Budgetary matters, to mention only these two areas. We see here that competition law, fairness, equity and equality of opportunities have eminent political connexions that should be considered.

*Professor, University of La Rochelle, France
(May 19, 2013)*

The Rebuttal

Cezley Sampson

I might be the only one who feels that competition policy and law should focus on economic issues and not on equity and social justice which is very subjective and depends too much on discretion and culture and norms of a country and society. I detect too much good Samaritan economics in many of the comments as to what one would like to happen against what usually happens.

In designing the Jamaican Competition Law in 1991, I stayed away from issues of equity as far as possible as I felt it was for politicians and bureaucrats to impose their self-interest and not the public interest.

In consulting in some 20 developing country markets since 1990, one thing I have learnt from practical experience is do not try to make competition law correct all the ills of society.

*Consultant, Competition Policy and Law
(May 21, 2013)*

Anthony Clayton

I agree with Cezley's position. I think that governments should try to reduce inequalities. Colombia and Brazil are doing some particularly interesting and innovative work in this regard.

When governments try to rig markets to ensure particular social outcomes, this usually has two bad effects. One is seriously sub-optimal economic results.

As *The Economist* put it in a slightly different context, empowerment programmes in the RSA have been splendid for the small elite who have benefited, but bad for the poor,

as the contracts have gone to more expensive bidders, so fewer schools, water supply systems etc. actually get built.

The second bad effect is that, however well-intentioned these programmes are initially, they rapidly degenerate into corruption and political patronage, used to award favours and thereby ensure re-election.

In addition, where countries grant licences to import, we usually see the rapid development of a secondary market in awarded licences, traded by people who are not interested in running a business, but see the opportunity for a quick profit. This too, then results in higher prices being paid by the poor.

*Professor, Institute for Sustainable Development,
University of West Indies
(May 22, 2013)*

Tounakti Khalifa

This debate is most lively and has allowed an exchange of experiences and of point of views from very diverse horizons. All these contributions have been inspiring.

1. Indeed competition policy does not aim at ensuring neither equality nor social equity. It is chiefly designed to preserve market economies which have more acknowledged virtues than other types of economic organisation. I agree with friends who have insisted on the limits of competition policy with regard to social justice or fighting against poverty.
2. Indeed a sound competition policy should be integrated in a broader economic policy which has well defined objectives that are in accordance with the model of society that has been adopted by the country or the region. A competition policy has a meaning/justification

only if it contributes to the fulfilling of objectives that have been determined by the Nation within the framework of its social and economic choices.

3. If a well-established and well-enforced competition policy must lead to a better efficiency, to the optimal resources allocation and to innovation, the expected result is nothing but a better competitiveness of enterprises and products. The first beneficiaries are consumers who see their earnings increase and their welfare improve.
4. It is in this direction that competition policy contributes to equity and to social justice and even leads to fighting against poverty through a mechanism of redistribution that is ensured by the market functioning/operation. As a rule, a market economy allows levels of consumer welfare and consumer protection that are superior to those prevailing in a planned or administered economy.
5. A competition policy is efficient only if one maintains a coherent environment and a rigorous enforcement. In this respect, one must turn toward government which is responsible for the definition of the economic policy and regulation as a whole.

Indeed the regulatory rule of the *State* remains essential to ensure the equilibrium of the *Society*. Neither the Chicago School nor other schools are today in the position to bring about solutions to problems/risks without involvement of the government as a corrector or as a softener of tensions.
6. The *State* – as a guardian of public interest – must avoid all swinging with regard to economic and social

objectives resulting of a sectoral policy, including competition policy, if stability is endangered. The well-functioning of institutions, the social safety net, the guarantee of minimal rights, legal security are all instruments that allow a sound competition policy to fulfill its essential mission: to preserve growth and development in the best interest of the Consumer and the Nation Welfare.

*Director of Price and Competition
Ministry of Tourism, Trade and Crafts, Tunisia
(May 28, 2013)*

Peter Behrens

Tounakti's contribution touches on the most fundamental question concerning the institutional design of a society that is at the same time using its resources efficiently so as to get the most out of them and limiting the degree of inequality so as to guarantee a fair share for everybody.

I feel provoked by Tounakti's contribution to share with you some basic insights which are at the core of our German so called 'social market economy':

The economic system of market competition in order to be acceptable as a legitimate way of organising economic activities must be complemented by a redistributive system of social security. What is important, however, is the separation of the two.

The slogan of the formerly German (not so) Democratic Republic in East Germany has always been: "Unity of the economic and the social system". The result is well known: epidemic impoverishment.

The reason it obvious: Integrating redistributive mechanisms into the market system dramatically distorts the incentives provided by economic competition and shift competition from the economic level to the political sphere.

The lesson to be learnt is this: Let competition govern the economic system. But no reasonable person would argue that ‘the market’ does everything. It does not necessarily lead to a distribution of wealth that is considered ‘just’.

The government is responsible for an adequate education and training of people in order to make them fit for a job. The government will have to provide a proper healthcare system, a properly functioning administrative and judicial system, infrastructure etc.

Most important is a well-functioning tax system which provides for progressive taxation so that those who benefit most from the market will contribute most to the government’s budget.

The ‘efficiency/fairness/equity-problem’ requires an approach that is not exclusively targeted at the system of economic competition but that is taking the whole institutional system into consideration.

Let us, therefore, not blame ‘the market’ for not solving all the problems of society. Provided markets are based on a proper institutional framework which makes sure that benefits and responsibilities coincide, they are still the fairest way of allocating economic activities (the financial markets failed precisely due to the lack of adequate institutions).

Many of today’s problems are rather due to the malfunctioning of governments and political systems whose job should be to provide for an equitable system of social redistribution which guarantees equity and a fair share for all in what the market produces without destroying the incentives for those who produce what governments may want to redistribute.

In sum, ‘social justice’ should complement ‘market competition’ and not replace it. In many countries the problem may be that to some extent markets are used by some to engage

in hidden redistribution to the detriment of all. Competition law is designed to fight just this.

*Professor of Law Emeritus, University of Hamburg
Germany
(May 21, 2013)*

Russell Pittman

This is a quite reasonable and persuasive position. My concern, though, is what we do when the political system is not taking your good advice: when, as has been the case in the US and other countries for many years now, the fruits of growth are concentrated at the very top of an increasingly skewed distribution of income and wealth. Should we then just ignore the effects of other policies on distribution?

To be more specific: As an economist, I am sympathetic to the notion of ‘total welfare’ as one good thing to be maximised by government policies, including competition policies.

And yet, as I argue here: www.competitionpolicyinternational.com/consumer-surplus-as-the-appropriate-standard-for-antitrust-enforcement/ – if we acknowledge that a huge majority of corporate assets are owned by the very wealthiest citizens, and if we assume, reasonably enough, a declining marginal utility of income, it becomes quite compelling to give a greater weight to consumer surplus than to producer surplus when forced to make the choice.

Or a question that our friends in the labour movement might ask: in a poor country with a permanently large group of unemployed or underemployed – or even in a rich country in a period of high unemployment – does it really make sense to

consider the labour savings from a merger a pure welfare benefit?

*Director of Economic Research & International
Technical Assistance
Economic Analysis Group, Department of Justice, USA
(May 21, 2013)*

M'Hamed Cherif

Discussion on sustainable and inclusive growth is gaining some grounds. Yet, many governments and private sector players seem to be paying lip service to the important issue of putting economic, social and environment policies on the path of sustainable and inclusive development.

The costs and benefits of sustainability and inclusiveness have not been incorporated in the business environment.

Yet, some large companies are calling for governments to make sustainability and inclusiveness financially viable by adopting the appropriate incentives and regulations.

*Director, BizClim, ACP Secretariat, Brussels
(May 07, 2013)*

Nadeem Ul Haque

I have followed this debate with interest and find that we are all agreed that growth and development need both a good government and a good market. The question really is how to build a good government that will work to manage and nurture a competitive and efficient market that maximises consumer welfare.

While we continue to debate the *market vs. government* theme, I find that little attention is paid to how this caring, knowledgeable government will be built. I also find that the

thinking on growth and where it comes from tends to follow traditional lines of aid and infrastructure-led growth.

The new issue of entrepreneurship and innovation in fluid markets in cities receive little attention. Nor is the issue of social capital and community development as a part of the growth process taken into account. These newer issues when incorporated in policy lead to more equitable outcomes.

This is how we incorporated this thinking into the Pakistan Framework for Economic Growth which is now the policy of the government. We think this will create growth with equity and many other good things.

*Former Deputy Chairman, Planning Commission
Pakistan
(May 23, 2013)*

Shanker Singham

This entire discussion has been very interesting and useful. One issue I would like to add to it is the enormous inequalities caused by anticompetitive government distortions. These distortions generally favour the vested interest groups or domestic incumbents but result in wealth destruction, because they reduce consumer and producer surplus (in effect turning surplus into deadweight loss).

The resulting declining economic pie pushes millions into poverty, while at the same time protecting the incumbents and elite groups.

There are many reasons for inequality. Where it is caused by this type of distortion, then competition policy should have something to say about it, and should not feel side-lined because it is a public restraint.

However, it is important to note that inequality can also arise due to private anticompetitive practices, as well as

because in a competitive market, certain firms will do better than others.

As opposed to having competition policy serve purposes other than maximising these surpluses, a better approach to the poverty side of things is, in my view, targeted cash transfers.

If these policies are operating in tandem, then the gains caused by allocative and productive efficiency maximisation will dwarf the small amount of subsidy payments that will need to be made.

On the other hand, by blurring what competition policy is intended to produce, and having other non-economic goals, there is a danger that deadweight losses will result, increasing levels of poverty and in turn requiring much greater transfer payments which governments will ultimately be unable to afford. We think the public sector restraint side of this discussion is a very important one with huge potential benefits for societies if properly addressed.

*Competition Law Consultant, USA
(May 22, 2013)*

David Lewis

Several brief observations on a very interesting debate:

1. Competition policies – including competition law enforcement – struggle to achieve legitimacy in developing countries and also, to a significant extent, in developed countries. For this reason, it may not be a good idea to drive a deep separation between competition law and policy, on one hand, and redistributive policies, on the other.

This is not to say that I think that competition enforcement should divide its burden equally between redistributive and efficiency objectives. But competition law enforcement has to be seen to be addressing the

consequences for *equity* of its enforcement and regulatory functions.

Which is why I think that the public interest considerations built into the South African Act plus the fact that the competition authorities are responsible for their interpretation and enforcement have worked so well to underpin popular support for competition law enforcement.

This is not to say that there have not been difficult moments with predictably a Walmart acquisition creating the greatest difficulties. The decision of the Competition Tribunal in the Walmart/Massmart merger is worth reading for those interested in how a competition authority balances the interests of diverse interest groups.

2. The debate underlines the importance of the relationship between advocacy and enforcement. It is not only from the mental slavery of capitalism or markets from which we need to be freed but also from the notion that markets and competition have no positive impact on democratisation, opportunity and the incomes and wealth of the poor.

Where competition law makes a clear contribution to one or other of these objectives it has to have a well-honed advocacy strategy that 'claims' it.

3. I think that Shanker's insistence that public restraints on competition be tackled by competition authorities is spot on. While there are many reasons for believing that states could be pro-poor and pro-equity, there are at least as many reasons for believing that their actions will support incumbent elites.

This is partly because of state capture where the state is faithfully representing interests of elites; partly because of the information asymmetries between weak states and interests they are attempting to regulate.

Competition authorities may, for a variety of reasons, be best placed to tackle public restraints and elite dominance of competition policy.

This is why *market enquiries* have the potential to become very important weapons in the armoury of competition enforcers – it grants them formal powers that extend beyond the traditional concerns of enforcement.

*Former Chairman, Competition Tribunal, South Africa
(May 30, 2013)*

Aditya Bhattacharjea

This has been a fascinating debate on whether competition policy should be diverted from efficiency-promotion in order to serve equity goals. I have addressed this issue in a paper forthcoming in a volume edited by D Daniel Sokol, Thomas Cheng, and Ioannis Lianos.

Briefly, I first undertake a historical review to show that today's advanced countries enacted and implemented competition laws at a relatively late stage 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.

This orientation provided vital political traction to competition laws, and legitimised the market economy by appearing to control some of its unpalatable features.

However, I argue that the new competition agencies in developing countries can secure popular backing in a different

way: by applying standard (efficiency-oriented) antitrust principles, but prioritising enforcement against anticompetitive conduct and mergers that impinge on the basic needs of the poor, focusing especially on essential consumer goods, agriculture, and healthcare. I have cited several examples, including South Africa, of such smart enforcement.

*Professor of Economics, Delhi School of Economics
University of Delhi, India
(June 04, 2013)*

Bouayad Mohamed Hicham

The debate is very interesting. I would like to react by asking the question differently: what kind of economic efficiency a competition authority looks for? Is it the allocative efficiency in both static and dynamic dimensions, or is it a redistributive efficiency which is based on seeking more equity within firms and consumers.

In order to answer to this question, we have to refer to the institutional culture that drives competition bodies. As we all know, competition authorities are normally responsible for promoting competition in the markets, ‘the whole competition, nothing but competition’.

This goal is reflected in the nature of their work tools which are based on a ‘sanctioning logical’. Unless in advocacy field or merger controls, a competition authority intervene only once an anticompetitive practice committed and detected. It means that these bodies act ‘*ex post*’ not ‘*ex ante*’.

This is why the intervention of competition agencies is basically ‘minimalist’ because they are competent only for fighting against anticompetitive practices and controlling merger control. For the rest, they let the market mechanisms do their regulation work.

On the other hand, equity seeking entails a redistributive efficiency policy that aims to restore the balance in the market. This wide goal requires to develop and use ‘interventionist policies’ that can take several forms, such as asymmetrical regulation between undertakers or using price fixing methods, things that a competition authority will never recommend because it is against its institutional culture.

The intervention of sectoral regulators provides us a typical example of this redistributive efficiency and equity seeking. These entities are not only responsible for introducing competition in network industries, but also their mission involves basically restoring imbalances within the historical operator and the challengers, on the one hand, and *vis-à-vis* consumers on the other.

That is why their work tools are wider than competition agencies. So, they can use several means to try to reach this equity either by using a price fixing methods or asymmetric regulation favourable to new comers to the market...

*Head, Advocacy Debt, Investigations Directorate
Competition Council, Morocco
(June 15, 2013)*

Cezley Sampson

This is one of the best note presenting what a competition policy and law should address; economic efficiency in markets. Taking competition law and policy to address redistributive issues which involve invoking ethical consideration provides opportunity for political opportunism, elitism and corruption, as well as leading to dysfunctional markets.

Bouayad Mohamed Hicham well presented! I hope whoever is putting the summary presents clearly the two views.

*Consultant, Competition Policy and Law
(June 18, 2013)*

Eleanor Fox

May I suggest that there are not just two views. I do not see the debate as between those who will limit competition policy considerations to efficiency and those who would throw into the mix all manner of equity issues, allowing for infinite confusion as to what is equity and opening the door to unbridled discretion and therefore self-dealing and corruption.

I think that none of us proposes that each decision maker applies his/her view of equity, and I think that all of us want a rule of law.

For some, including me, the problem is this: efficiency and how to achieve it is not self-defining. Some jurisdictions assume that a general principle of *laissez faire* with minimal antitrust intervention, plus a strong rule against cartels, will get us there better than any other principle.

Others prefer a principle that leans towards inclusiveness; contestability of markets by outsiders. The latter is a view of equity that helps to set the perspective on efficiency. It may include an appreciation that no society that systematically marginalises a critical mass of its citizens can ever achieve its potential including economic potential (efficiency) without inclusiveness in the economic pipeline.

Others may want to handicap efficiency for the sake of preserving small and middle sized and indigenous firms – but ‘handicap efficiency’ is very western phraseology and I do not think that proponents of more space for SMEs believe that they are handicapping efficiency; although at some point there would of course be a trade-off.

I believe that debate is many-faceted. It is not about two choices.

*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA
(June 21, 2013)*

Cezley Sampson

Eleanor, I hear you but I have lived and worked in sub-Saharan Africa (SSA) and developing countries since 1974 and I have seen what we as advisers state should happen with competition and regulatory authorities and what eventually happens, and particularly when we state that they are independent, hence my strong reservation in this minefield of bringing equity issues into the state of play, especially in the area of distributional matters as the consequence is invariably sub-optimal markets as Anthony from University of West Indies (UWI) has pointed out. Over to you Anthony as I am only a practitioner.

*Consultant, Competition Policy and Law
(June 21, 2013)*

Anthony Clayton

I agree. The purpose of competition law is to increase economic efficiency by encouraging competition and preventing the emergence of monopolies. It is inappropriate to use competition law to try to achieve specific redistributive goals, partly because that greatly facilitates patronage and corruption, and partly because of the high associated economic cost.

Social redistribution should be achieved through social programmes, such as the provision of high-quality education and healthcare in poor communities.

*Professor, Institute for Sustainable Development
University of West Indies
(June 21, 2013)*

Bouayad Mohamed Hicham

The debate is so interesting that I cannot help but react again. I totally agree with Cezley and Anthony's positions. In fact, I think that the role of competition bodies should not be exaggerated.

For sure, competition authorities have an important role to play in ensuring markets efficiency, but it is only about static and dynamic efficiency generated by the competition functioning. This goal is reached through two specific mechanisms:

- Protection competition against anticompetitive practices and harmful economic structures
- Promoting competition in markets through advocacy actions, such as preconising market's contestability and the abolition of entry and exit barriers
- Competition bodies do not have other means to go further, such as ensuring redistributive efficiency in the market, i.e. equal and equity in the market. Indeed, achieving these goals require more interventionist policy instruments that can sometimes neutralise or limit competition under the pretext of social or economic considerations, which are against the institutional culture of competition authorities based primarily on the promotion of free competition in markets. Two examples can be given:
 - o competition can be fulfilled in some markets, prices may remain higher and out of reach of a wide range of population. In this case, the achievement of redistributive efficiency, i.e. social equity goal involves to regulate or/and subsidise prices of certain products or services. But price regulation neutralise the price competition.
 - o protection of national champions or SMEs may take restrictive competitive measures, such as 'safeguard

clauses' or 'state-aid' under the pretext of economic and social equity. By their nature, these redistributive measures entail other economic policies (industrial and foreign trade...).

These 'equity' measures cannot be implemented by a competition authority at risk of making them 'politically captive' because they have to make compromises between competition and other considerations.

We should define and delimitate responsibilities between competition authorities which must be considered as technical bodies in charge of the enforcement of the competition law far from political influences and without bringing to compromise between competition and other preoccupations, and on the other hand, other regulatory bodies, whose mission is to strike balances between competition concerns and other social and economic policies...each institution have to do its job.

*Head, Advocacy Debt, Investigations Directorate
Competition Council, Morocco
(June 29, 2013)*

Pradeep S Mehta

Eleanor, thanks for this. Indeed the debate has been rich and served one goal that I have been pursuing that orthodox approach to implementation of competition laws may not offer a panacea in an iniquitous world.

Competition authorities in the developing world will have to keep in mind the public interest litmus test, somewhat wrought into the South African law. 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.

In the past I recall debates that a competition law should not be used to pursue other goals, which other policies should. But people appear to forget that a competition law in the developing world has to meet with many political challenges, and policymakers do not always believe that a well-functioning market, alone, will offer all types of solutions. A competition law is one component of the economic governance system and cannot be abstracted away.

The book on '*Growth & Poverty: The Great Debate*' resulting from a similar debate kicked off by the free market advocate: Jagdish Bhagwati and the Nobel laureate development economist: Amartya Sen's criticism, which was captured in a book. The book is available at: www.cuts-international.org/Book_Growth_and_Poverty.htm.

The issues raised by Jagdish, in a speech to the Indian Parliament, was that India has been successful in 1st stage of reforms, i.e. growth and now we need to launch the 2nd stage of reforms, i.e. social sector issues, such as health and education (equity).

Amartya Sen was quoted by *The Financial Times* that both need to be pursued in parallel. Many agreed with Sen, as has been stated by C. Rangarajan, when releasing my festschrift, which spurred this debate.

Martin Wolf had the last word: 'Only in India do intellectuals debate this basic fact'. He too believes that without expanding the cake, how can one attack poverty.

I too wrote on similar lines as Rangarajan for an op-ed in *The Economic Times*: www.cuts-ccier.org/Article-Equity_is_Good_for_Growth.htm (see Annexure 4 on page 107). And I also chose the title: 'Growth & Equity' for my festschrift, and not the more popular phrase: 'growth with equity', which some define as inclusive growth.

As part of our 30th Anniversary Lectures, Montek Singh Ahluwalia, Deputy Chairman, Planning Commission of India

spoke on “Inclusive Growth: What Does It Mean” at New Delhi on June 04, 2013. *For details, please visit: <http://www.cuts-international.org/30thAnniversaryLectures/>*

In conclusion, in this policy calculus competition law does not have a limited role, and that practitioners need to be aware of the bigger picture.

*Secretary General, CUTS International
(May 27, 2013)*

Inequity in the World Economy: Structure and Processes

Charles Cheung

There could be tension between the economic efficient and social impact. Let us be specific, for example, when Thailand allowed big box retailers entered the Thai market more than ten years ago, many hundred thousands of small retailers were displaced. I believe this is not the duty of a competition authority to introduce measures to reduce market efficiency and consumer welfare for equity.

The government should deal with it based on its national economic policy and public interest test. Typically, they may introduce certain trade laws/regulations to neutralise the impact. These trade laws also create tension with the competition law.

In connection to this, should Indian government allow market entry of big box retailers in the country for economic efficiency and consumer welfare? What is the role of the competition authority for this matter?

*Chairman, Competition Committee
Board of Trade, Thailand
(May 07, 2013)*

Russell Pittman

I believe that economists who have studied the results of hypermarket entry have found pretty much what one would expect: local consumers benefit; local business owners lose out; and local workers end up somewhere in between, as the hypermarkets create jobs, but these tend to offer low wages and benefits.

Some US states have tried to address the latter issue by requiring higher wages and the provision of health insurance. Overall, some of these indeed look more like broader policy questions than competition law questions.

However, one must keep in mind the potential for the abuse of what may become a dominant position in local retail markets, either downstream or upstream.

In particular, the potential for market power *vis-a-vis* local and regional suppliers is very much a relevant competition issue.

A competition agency may have an important role to play in preventing the abuse of a monopolistic position in the supply of goods for which the geographic market is less than global.

*Director of Economic Research & International
Technical Assistance*

*Economic Analysis Group, Department of Justice, USA
(May 09, 2013)*

Taimoon Stewart

I think that Charles has taken the debate out of the box, which is precisely where I want to go. We have been speaking purely of what is possible within the present paradigm of the competition world. And, we have been applying theories and challenges intra-nationally.

But, developing countries cannot develop national economic policies without taking into account its integration into the international economy, since the terms of our participating in the international division of labour is inequitable at the international level, and leads to inequity at the national level.

The consumers in the UK benefited from cheap clothing made in Bangladesh, but at what cost to labour in Bangladesh?

And it is precisely because there is a good tension between labour and owners of capital in the industrialised world,

leading to better wages and a more equitable sharing of the pie, that there is a big middle class, attesting to that equity.

We in the competition world limit ourselves to the national level, and to the bandwidth within which the competition authority can operate. But, the level of international trade upon which the developing world depend for consumables is such that we are impacted upon more by the conduct of international companies than domestic ones.

And thereby, we perpetuate the very structures that lead to inequity, both internationally and intra-nationally, by doing our part, and leaving it up to other departments of government to bring about the redistribution and equity. The poor always falls through the cracks created by truncated, compartmentalised policy making.

*Associate Senior Fellow
University of West Indies
Trinidad & Tobago
(May 08, 2013)*

Eleanor Fox

Taimoon, you are right! But what to do about it? – even apart from resisting compartmentalisation? One thing is: always to pounce upon the international inequities of free trade rhetoric and restrained trade-when-it-suits the developed world.

But since trade rules always come down to bargaining and those with bargaining power always use it, the hopes are only at a small margin.

Bangladesh – how can we get and enforce world safety standards? The safety standards in Bangladesh were violated. How to stop the greedy or well-off from wanting more and more for less and less? How to deal domestically with

Walmart's moving in? – when critical masses of people want their low prices?

And as you say, poor countries have the incentive to play the game because they cannot resist the benefits of integration into the world economy. What are the main initiatives that you would do?

*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA
(May 09, 2013)*

Taimoon Stewart

Eleanor, you have asked very pertinent, but difficult questions:

- In regard to international inequities created by the 'free trade rhetoric and restrain trade when it suits', you are right, that trade rules always come down to bargaining, and power asymmetries always determine the outcome in favour of the powerful. But, it is not all about 'them' doing it to 'us'. We do it to ourselves in the developing world.

Our technocrats buy into the free trade rhetoric, not seeing that it has a hidden agenda and intention. The point is that the functioning of the international trading system and the international economy has not gone off course; it is very much unfolding as intended.

While we are locked into that world-economy, and I am not at all suggesting absolute autarky, we should at least have our eyes open, and understand the consequences of buying into the rhetoric, and utilise those small spaces and windows for defending our interests, and securing capital retention.

I, therefore, suggest that the brainwashing of our technocrats at our universities and universities in the

north, through uncritical adoption of the hegemonic thinking of the north, lays the foundation for co-opting and moulding them into willing participants in the prevailing system.

- I absolutely agree that there needs to be at the international level rules to ensure safety standards that will prevent transnational corporations (TNCs) and their willing accomplices in the developing world to exploit the poor through unacceptable safety standards and unacceptable wages. But this has to be legally enforceable.

The industrialised countries fight for interests of their TNCs in the WTO and other organisations, and through bi-lateral relations, but are unwilling to accept any rules and disciplines to constrain TNCs conduct at the international level.

Take, for example, the punitive punishments listed in the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement for infringement of Intellectual Property Rights (IPRs), protecting the monopoly holder, but only a reference to countries adopting competition law (Article 40b), to punish abuse of IP monopoly power.

There are many other examples, including an unwillingness to have an agreement that would assist developing countries to discipline cross border anticompetitive conduct.

- Your other questions are already answered above about the co-option of the wealthy of the South, and the technocrats of the South, through their buying into the dominant thinking, and greed. Much has been written about this phenomenon of the wealthy of the South having more in common with the wealthy of the North,

than with the middle class and poor of the South (e.g., Johan Galtung).

- In conclusion, I quote Bob Marley: “liberate your mind from mental slavery”! And, the need to bring back ethics into economics, and holistic approaches to policy formulation. Physicists have now ‘discovered’ that everything in the universe is connected at the deepest level, and affect everything else. It is so obvious that the same applies at the level of society, both intra and internationally.

*Associate Senior Fellow
University of West Indies
Trinidad & Tobago
(May 09, 2013)*

Thulasoni Kaira

An integrated approach to development is critical and should be the way forward for this century. This is within the spirit captured in some of the recommendations in the OECD Guidelines for the Multilateral Enterprise.

However, while the socio-economic impact of multilateral enterprises may have far-reaching consequences on less developed economies, the integrated approach must be part and parcel of any investment and/or economic strategy of any commercial enterprise – whether foreign or domestic.

The uprising of the local community in Nigeria against Shell and its environmental and social impact on the community is an example that economic growth risks a serious derailment where it creates a distortion in equity.

It has been observed also that the small scale contract farmers in cotton, tobacco and sugarcane in the Zambian economy for instance have continued to be in the poverty

bracket for decades while the companies that contract their land and labour continue to flourish exponentially.

The same may be said of the East Asian women (and children) who labour for prosperous and notable global brands while they that labour on the ground never seem to move to the next social ladder.

With such examples, this is a noteworthy statement: Growth cannot be chased at the cost of equity.

Eleanor Fox's *'Economic Development, Poverty, and Antitrust: The Other Path'* provides some enlightenment.

*CEO & Secretary
Competition Authority, Botswana
(May 08, 2013)*

Trudi Hartzenberg

Thank you very much for a really interesting discussion on the competition-trade-growth-development nexus in the international trade arena we need much more of this debate, and on how these relationships define a 21st century trade agenda.

Unfortunately, the WTO is not where the development of this agenda is taking place, but rather in the context of regional trade agreements.

The EU-US negotiations which have recently started (scope and architecture definition) are a good example; new generation trade issues very much define that agenda.

The Trans Pacific Partnership (TPP) is another example of these developments. This could mean more governance fragmentation on issues, such as standards, rather than a coherent global regime, with particularly important implications for developing and least developed countries.

In Africa, these issues are definitely not yet embraced as part of the regional trade and integration agenda, which

focuses very much still on a traditional trade-in-goods (tariffs, especially) agenda.

*Executive Director
Trade Law Centre for Southern Africa (TRALAC)
South Africa
(May 10, 2013)*

Taimoon Stewart

Trudi, thank you for this important contribution alerting us to the fact that governance issues are being incorporated into bi-lateral trade agreements (US-EU; TPP).

We must consider, though, that the depth and scope of a bilateral trade agreement is dependent on the level of development of the countries involved, the level of trade and the nature of trade between them, how important each considers the other's market, and the bargaining power of each. That leaves the developing world with few chips at the bargaining table.

I would venture that it will be a long time before that type of agreement 'trickles' down to North-South agreements. But you are right, that South-South agreements lack foresight, and lag behind, simply imitating what was the order of the day in the past.

Maybe the Brazil, Russia, India, China and South Africa (BRICS) would show different colours, but sadly one does not see a change in the approaches between the BRICS and the rest of the developing world, any different from North South relations have been in the past.

*Associate Senior Fellow
University of West Indies
Trinidad & Tobago
(May 10, 2013)*

Pradeep S. Mehta

Pierre Jacquet, Director General, Global Development Network, New Delhi has been inspired by the debate to contribute an article in *Le Monde*, which is being relayed in English.

*Secretary General, CUTS International
(July 06, 2013)*

Is Competition Compatible with Equity?

Le Monde, France, June 26, 2013

In the eternal debate on the links between growth, poverty and inequality, it is particularly important to hear the views from developing countries.

The Monde.fr is pleased to offer you reading this article usually reserved for subscribers of Monde.fr. Enjoy all items of Monde.fr by subscribing from 1 €/month/’Découvrez l’édition abonnés’.

The online forum organised by the international NGO, Consumer Unity & Trust Society (CUTS) based in Jaipur (India) can head off the beaten track.

In July 2011, Pradeep S Mehta and Bipul Chatterjee of CUTS wrote a book from the first forum (Growth and Poverty: The Great Debate). In May 2013 a new thread of discussion was launched in response to a simple remark of Dr C Rangarajan, Chief Economic Adviser to the Prime Minister of India, Manmohan Singh “The growth cannot be pursued at the cost of damage to the equity”.

Should we be offended on behalf of equity, requires one of the protagonists, if the richest are experiencing an increase in revenues of 15 percent and if the others 99 percent see their revenues increasing of 10 percent?

In response, some suggest the risk of social tension, noting that at the moment of the Arab Spring the economic growth was around six to seven percent per year in Egypt but that inequalities were significantly increased. Similarly, in Tunisia, the perception of social injustice has caused the revolt.

Dehumanisation

Again we must distinguish, in the definition of equity, income distribution – that is a societal choice and public policy – and equal opportunities.

The latter refers to the law and competition policy, whose role is to ensure that markets function properly and that the barriers to entry or positions of monopsony – market with one buyer and many sellers – do not provide to companies the means to abuse market power to the detriment of others, consumers or producers.

Representatives of the competition authorities in many developing countries are engaged in the debate: India, Pakistan, Egypt, Jamaica, Botswana, Zambia, Thailand...

Competition usually brings benefits to consumers, as they said, but sometimes for the benefit of foreign consumers to the detriment of local employees. Then can we talk about equity? or even efficiency? The example given is that of poverty of the producers of cotton, tobacco and sugar in Zambia while multinational organisations thrive.

The equity was present in the original spirit of the antitrust laws, said a protagonist, who regrets that the influence of the Chicago school has gradually dehumanised the economy. Although the German model of ‘social market economy’ is based on a separation between the pursuit of efficiency in the market and equity in social policies.

But in countries where institutions are weak and where policies are ineffective we cannot count on this separation of

roles and the competition authorities are forced to explicitly take into account the impact of their actions in terms of equity. It is also essential to the social acceptability of the market economy.

*This article can be accessed in French at:
www.lemonde.fr/economie/article/2013/06/26/la-concurrence-est-elle-compatible-avec-l-equite_3436847_3234.html*

Annexure-1

Competition and Poverty Reduction

*David Lewis**

Nandi Mokoena, PR Consultant, South African Competition Tribunal, stated that David Lewis in his speech spoke about the role of competition enforcement in alleviating poverty, and had some helpful suggestions for how competition agencies in developing nations can support this goal meaningfully.

David Lewis asserted that there is an obligation on defenders of the market system to be seen to be concerned about the shortcomings brought about by market failure, or the inevitable losers even when markets operate efficiently.

He argued that the objectives of competition law either explicitly or implicitly take into account poverty alleviation: that distribution of power and opportunity, and distribution of income are core objectives of competition law, and by extension, addresses inequality and poverty.

Indeed, the origin of antitrust was in opposition to power, that is, unrestrained capacity to increase prices, and the impact

* *Speech delivered by David Lewis, Former Chairman, Competition Tribunal, South Africa at the OECD Global Forum on Competition in February 2013.*

this had on rivals. He ascribed to rivals a very important role in restraining the capacity of dominant firms to raise prices, and therefore, the importance of promoting rivalry by ensuring that there is ease of market access. In his view, efficiency is a secondary outcome to ensuring market access.

He traced the transmission belt from enforcement of competition law to poverty alleviation through market access, leading to increased rivalry, and to distribution away from producers to consumers, which in turn forces producers to strengthen their position *vis-a-vis* rivals, that is, to become more efficient, thereby giving consumers better products at better prices. This in turn alleviates poverty.

His approach, therefore, is that competition law enforcement is not in conflict with poverty alleviation objectives, but that the enforcers may need to balance interests if there are conflicting objectives, and make trade-offs explicit. He cautioned, however, that it is always best to be discerning and to use first best policy instruments to address problems of poverty.

He critiqued the approach of some that competition law is about protecting competition and not competitors, as unhelpful to those that are concerned with exclusionary conduct of dominant firms, even if dominance is achieved on the merits.

He used the example of the process through which a competition authority evaluates a merger or investigates abuse of dominance to show that there is a constant process of balancing conflicting interests and outcomes, with redistributive consequences.

A conduct may be benign, or a merger may lead to greater efficiency, but may increase concentration and pose a potential threat to rivals, and this reduces the incentive of dominant firms to behave in a pro-competitive way. This experience of balancing interests should make easier the requirement to balance consideration of efficiency on the one hand, and, on

the other, those of equity and poverty alleviation, for competition law, law makers, enforcers, and adjudicators.

Finally, he defended the non-competition objectives in the South African Competition Law, asserting that it provides legitimacy for the Law and its enforcement, and described it as a foundational piece of socio-economic legislation that addresses unemployment, poverty, and inequality in wealth, income, and opportunity.

He also argued that US Antitrust Law's legitimacy is anchored in the deep-seated opposition to constraints on opportunity and access represented by powerful monopolies, and the fact that unfettered opportunity to participate in the market economy is a core societal value of Americans.

Similarly, the German competition law's legitimacy rests on the welfare state and the social safety net it provides.

Lewis offered practical solutions on how a competition authority can address poverty alleviation in its enforcement. There are three approaches: prosecutorial discretion; inclusion of public interest in its reasoning, and the role of advocacy to intervene in government regulatory decision making in the interest of consumers.

In regard to prosecutorial discretion, it is important to choose the markets in which to intervene in order to achieve poverty alleviation.

For instance, competition authorities may focus on price reduction in basic consumer goods and key intermediate products. But, he cautioned that the markets earmarked may not be the obvious final end consumer product.

This would require identifying markets in which collusion is sustainable, that is, with mature technology and homogenous product, such as cement or electronic products, rather than markets in which rapid changes in technology would destabilise cartels or erode dominance.

He linked the ITC market with poverty alleviation through its impact on cost of communication, an important input into other key products that affect the poor.

Another important key to choosing markets in which to intervene is targeting those with socio-economic significance, such as healthcare, citing the detrimental effect on the poor of retarding entry of a product that would promote access to private health care, a very important product in the context of the government's overburdened public healthcare.

The inclusion of public interest considerations in competition law enforcement is embedded in the South African Competition Act, with the specific objectives of promoting employment, providing equitable opportunity for small enterprises to participate in the economy, increasing ownership of stakes for historically disadvantaged persons, and the obligation to assess merger decisions on public interest grounds, including the sector and region affected, the effect on employment, the entry of small and medium enterprises, and the ability of national companies to compete in international markets.

Here, Lewis illustrated with case examples the cautious and nuanced approach to application of these public interest clauses, and the importance of vesting final decision making power to the competition authority rather than the public authorities, who could be too easily swayed to use protectionist measures and not take into account competition considerations.

In the case of a merger, in which the merging firms claimed that there will be loss of 1,500 jobs, the competition authority imposed an evidentiary burden on the parties to show a rational process had been followed to arrive at the estimated job loss.

The parties failed the test, as also the requirement to show public interest justifying the job loss, as they were unable to

show that the job loss was necessary to save either merging parties, and it was found to be an attempt to induce shareholders to agree to the transaction. The Competition Authority approved the merger, imposing a two year moratorium on employment loss.

He also discussed the Wal-Mart/Massmart merger, pointing to the fact that on competition grounds, it was perfectly acceptable, but there was great concern that local supplies may be excluded and replaced by cheaper imported products.

This was a hotly debated issue, in which the government wanted to impose trade barriers to imports, but a resolution was arrived at in which the merging firms were required to invest a specific amount in the productive sector, particularly in small firms, as a condition of the approval. The point here was that the competition authority defended the interest of consumers in access to cheaper goods, with recognition of the industrial policy aspects of the case.

Lastly, Lewis emphasised the importance of competition authorities using their powers of advocacy in the interest of the poor. He targeted primarily regulated industries, and government regulations that effectively bar entry into the formal sector.

In regard to regulated industries, he pointed to the importance of these services to the poor, and the fact that regulators can be easily influenced by the regulated firms, and the competition authority can and should keep consumer interests alive in the decision making process, as consumers are not well represented, particularly poor consumers.

In regard to anticompetitive acts, the competition authority should also be alert to the regulated firm leveraging its power in secondary markets, to exclude rivals. The competition authority should also be alert to bid rigging of public tenders, in the interest of consumers.

He proposed that regulations should be relaxed for new entrants from the informal sector into the formal sector, and allowance of tax breaks, to allow these firms to compete both with their competitors in the formal and informal sectors.

And, he advocated the value of conducting market enquires in sensitive sectors, as a way of being alert to possible misconduct, and so that the sectors know that they are under scrutiny.

In conclusion, Lewis admits that there are no obvious answers to the question of how to ensure that competition law and policy supports poverty reduction, but that the primary lesson to be drawn from the South African experience with incorporating public interest objectives (that is, supporting employment creation and avoiding employment loss, and promotion of small firms) into decisions of the competition authority is that it is wholly possible to balance non-competition and competition considerations, and that this is best done by the competition authority and not the political decision-maker. He strongly advocates that the competition law must be seen to be addressing inequality and poverty to provide it with legitimacy in developing countries.

Annexure-2

Economic Development, Poverty, and Antitrust: The Other Path

*Eleanor Fox**

Thulasoni Kaira, Botswana Competition Authority supports the proposition by Eleanor Fox that “growth cannot be chased at the cost of equity”.

Fox, Walter J. Derenberg Professor of Trade Regulation, New York University School of Law, New York, USA highlights the standard Western claim that if conduct cannot be shown to raise prices to consumers it must be efficient and should be beyond antitrust challenge, and argues that this construct is inappropriate for most developing countries.

She notes that economic conditions in developing countries differ from those of industrialised countries, argues that many rules based on presumptions that markets work well do not fit developing country economies, and further that developing countries appropriately pursue a goal efficient inclusive

* *Working Paper, Southwestern Journal of Law and Trade in the Americas, Vol 13, p 211, 2007*

development.

She argues that the Western aggregate efficiency standard weighted as it is with the presumption that markets work well has little resonance for developing countries with massive poor and historically excluded populations. It is not sufficient to simply tinker with the laws of developed economies to adapt them to developing economies.

The challenge is to understand when a foreign law is appropriate or not. It must be evaluated in the context of deep systemic poverty, aggravated by corruption, cronyism, selective statism, weak institutions, excessive regulatory barriers, and often, unstable democracy, all leading to opacity, blockage, and political capture of markets. She expressed the concern that the Washington Consensus approach largely based on liberalisation and *laissez faire* threatens to widen the inequality moat rather than build a mobility ladder.

Fox contended that the US law regarding dominant firm offenses is too deferent to dominant firms to be appropriate for developing countries, where dominant firms are more likely to have and retain much more and more durable market power.

Developing countries need rules that prevent dominant firms from using their power and leverage to fence out powerless firms and to ensure that small and young firms have clear pathways to compete on the merits of their products and services.

Fox stated that anti-cartel law is necessary for developing countries. Equally important, the law should reach market blocking acts and anticompetitive practices facilitated by the state. Fox stressed the importance of the independence of the competition authority, sound institutional design and due process in the fabric of the competition regime.

Fox observed that the Millennium Development Goals are centrally about distribution and stated that, "If policy is to be friendly to economic development, it must look dire poverty

in the eye: it must harness market forces to keep prices competitive; It must build a ladder of mobility from the lowest rung up, to enable mobility centered entrepreneurship and stimulate innovation.”

Fox recommends prioritising challenges to conduct that affect staples, anchoring the law to existing jurisprudence where it fits, and focusing the analysis on key concepts that make law enforcement simpler than in many jurisdictions.

Finally, she argues that a good system would require developing countries to make hardcore export cartels illegal, or failing that, to provide jurisdiction for the discovery of documents and testimony from knowledgeable people about cartels targeted at developing countries.

This should include power to obtain evidence from the alleged victimisers of the people of developing countries. She observed that evolving case law of the US does not demonstrate the vision and generosity of spirit needed to accept responsibility for the harm caused by US firms to consumers in other countries by their firms.

Annexure-3

Seven Questions to Guide the Future Agenda

*Frederic Jenny**

Ladies and gentlemen,

Over the last three decades we have witnessed a number of important developments in the area of competition law & policy and economic regulation.

The 1980s, mainly marked by deregulation in many developed and developing countries, culminated with the downfall of the Berlin Wall and the shift from a system of command and control economies to a market based system in the former USSR and in East European countries.

In the 1990s and the early 2000s there was a massive adoption of competition legislation throughout the world, in particular in developing countries. During this period more than 50 countries adopted a competition law and many other countries upgraded their pre-existing laws.

In the 2000s financial scandals such as the Enron scandal (2001), the Tyco International scandal (2002), and the World Com scandal (2002) showed the importance of ensuring proper

* *Inaugural speech by Frederic Jenny, Judge, French Supreme Court (Cour de Cassation) at 2nd Biennial Conference organised by CUTS and CIRC at New Delhi in April 2011.*

governance of firms on free and competitive markets and the necessity of ensuring adequate regulation in markets newly open to competition and characterised by an essential facility (such as the electricity market).

The onset of the financial crisis in 2008 brought attention to the disturbing reality that competitive markets can fail. Massively irrational behaviour both on the supply and the demand sides led to the crash of the real estate and mortgage markets in the US and Spain.

We were reminded of the fact that if competition is necessary to promote economic welfare, it may not be sufficient when information is less than perfect and perceptions are distorted.

Finally, an additional lesson can be learnt from recent political upheavals in the Middle East and North Africa. Egypt, for example, is a country where deregulation and pro-competitive market reforms were undertaken in the early 2000s.

A competition law was adopted in 2005 and the Egyptian competition authority wasted no time in pursuing anticompetitive practices in the steel and cement industries. The growth of the Egyptian GDP which was in the range of two to three percent in 2001-2003 rose to an average of seven percent between 2006 and 2008.

Yet what is notable (and what contributed to the political instability of Egypt) is the fact that very little of that growth trickled down and that the economic circumstances of a vast majority of Egyptian citizens remained unchanged.

One of the reasons for this was analysed by the development economist Hernando De Soto, who observed that the Egyptian economy was characterised by a combination of burdensome regulations and the fact that very few property owners had a title to their properties.

These factors made it difficult to start a business or to allow a business to grow since property owners could not use their property as collateral to obtain loans from banks. The result was a large informal sector, accounting for nearly half of all Egyptian employment, and the impossibility for most Egyptians to benefit from the opportunities offered by a market economy.

The growing contrast between the wealth and success of the modern economic sector and the stagnation of the informal economy created a level of frustration which eventually led to political unrest.

In Tunisia, which adopted a competition law in 1991, corruption and the well documented tendency of the President's family to directly or indirectly expropriate successful businesses also limited the impact of a timid economic liberalisation effort.

One lesson to be drawn from these experiences is that competition law is only one of the elements necessary to promote a free and competitive economy and economic development. The protection of property rights and other policies and regulations consistent with the notion of competitive markets are equally important.

These developments suggest a number of questions. In this speech I touch upon seven critical questions:

1. *Anticipating market failures:* First, how can we do a better job at anticipating market failures than we have in the past? Whether one talks about the recurring famines in East Africa or the collapse of the housing market in the US, there is a need to better anticipate massive failures of markets.
2. *Reassessing interdependence among competition law, consumer policy and economic regulation:* Second, we have relied heavily in the recent past on the assumption that

economic rationality was a characteristic of markets and that therefore the perfect competition model would promote efficiency and economic welfare.

We have largely ignored the teachings of behavioural economics which suggest that individuals and firms may not be quite as rational as we thought they were and that therefore additional means, besides competition law enforcement, are necessary to make markets work well for consumers. Should we then reassess the interdependence between competition law enforcement, consumer policy and economic regulation?

3. *Balancing ex ante and ex post regulation:* Third, we must ask what is the proper balance between ex ante regulation and ex-post competition law enforcement? The last few decades have been characterised by a massive shift from ex ante regulation to ex post competition law enforcement, justified by the fact that *ex ante* regulation could distort the incentives of market players and could therefore impose a large cost on society.

But it is now clear that insufficient *ex ante* regulation, at least in sectors which have systemic implications, such as the banking and the financial sectors, may have played a major role in creating the financial crisis.

One of the reactions of governments to the financial crisis and to the subsequent economic crisis has been to reinforce regulation in financial markets and to provide stimuli on real markets.

There is a significant risk that such interventions may have anticompetitive effects and may limit innovation; at the same time they may contribute to making economies more stable. The balance of costs and benefits of regulations has to be more carefully studied than has been the case in recent years.

4. *Globalisation demands better coordination among countries:* Fourth, the rapidly developing globalisation of the economy (by which I mean the integration of national markets due to the development of the information technology, trade and investment liberalisation and the subsequent move toward open and competitive markets) calls for a better coordination of regulatory interventions across countries.

The need for better coordination of regulatory interventions exists both with regard to sectoral regulation of specific sectors and to general policy interventions and can be illustrated by two examples.

Electricity regulation needs to be better coordinated among European countries because national electricity grids need to be interconnected to promote efficiency and security in the transport of electricity.

At the macroeconomic level, as the economic crisis has revealed, stimulus packages need to be coordinated across countries (to eliminate the need for protectionist measures aimed at ensuring that the benefits of any stimulus package will be realised in the country where the stimulus package is implemented).

How we can promote better international coordination of regulatory interventions is an important issue on which we should focus.

5. *Consistency and coherence of different policies:* Fifth, the need to better integrate different policies which contribute to economic development raises important institutional issues.

For example, financial sectoral regulations must be consistent with competition law in order to protect not only the stability of the financial sector but also its efficiency and its ability to innovate.

Yet, as the unfolding of the response to the financial crisis has shown, the governmental bodies in charge of different policies are not only separate but rarely communicate with one other unless such communication is mandated by law.

Trade policy makers do not routinely seek the input of competition authorities; competition authorities do not contribute to the formulation of industrial policy nor do they dialogue with patent offices about intellectual property policy, etc.

Finding a better architecture for the formulation of consistent and coherent economic policies is an important concern.

6. *Improving the quality of regulation:* Sixth, it is worth thinking about how we improve the quality of regulation. The lessons learnt from Egypt and Tunisia where too many restrictive regulations and too little protection of property rights have led to a very unequal distribution of wealth and incomes and a failure of market liberalisation measures could be applied in a great many developed and developing countries.

It has also been alleged that the increasingly poor quality of patents and the increasingly long delays in the granting of patents have contributed both to reducing innovation and limiting competition.

Governmental intervention to promote alternative sources of energy, such as the promotion of solar energy in Europe or the subsidisation of ethanol in the US have been turned into fiasco, not because the promotion of alternative energy sources is questionable but because the regulatory interventions were ill conceived.

Thus, the task ahead is not only to eliminate useless regulations but to improve the quality of regulations which

are necessary because of a market failure or justified by the desire to pursue sociopolitical objectives.

7. *Accountability of regulators:* Lastly, there is the question of how we ensure the accountability of regulators? What is the appropriate design of the framework to ensure independence, responsiveness, relevance and quality of regulators in the financial and real sectors?

As you can see, there are many important questions with respect to regulation which deserve urgent attention. I want to finish by saying that CUTS has done an excellent job of putting together an ambitious programme that will allow us to look at all the relevant issues.

Annexure-4

Equity is Good for Growth

*Pradeep S Mehta**

At a seminar on competition policy for promoting growth and equity, chief guest Yashwant Sinha asked why we have not used the conventional phrase: growth with equity. It was not a mistake, and my answer was simple, that even if there is growth, there is no guarantee that it would benefit all. The Bharatiya Janata Party's election campaign 'India shining' was proof of this dichotomy and the Congress rode on the wave of *aam aadmi*. Promoting equity is as essential as promoting growth, and people should believe so.

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.

* *Secretary General, CUTS International. The article appeared in the Economic Times, on October 08, 2012*

The current buzzword for economic planning and management is ‘inclusive growth’. A popular e-debate on growth and poverty ensued last year following a disagreement between Jagdish Bhagwati and Amartya Sen, on whether growth is a sufficient or a necessary condition for addressing poverty and inequality.

Bhagwati rightly felt that one needs growth to expand the cake and then invest in social sectors, while Sen felt that too much emphasis on growth may reduce our attention to poverty-reduction and inequality. Both are correct. It is a policymaker’s dilemma on how to fund social sectors without the wherewithal. Today, the government is struggling with high deficit and inflation. The poor suffer more and are, thus, despondent.

What is worse is the diminishing trust of people in the government and the private sectors, aided by exposes of scams. The other day, a taxi driver told me that if only trust can be restored among people, and *netas* and *babudom* reined in, animal spirits will be unleashed. Concrete action and not hortatory statements, in both policy and practice, will make sense to both the business and the people, which can restore such trust.

The root cause of political economy differences related with ‘policies and the need for change’ lies in the way ‘reform’ is perceived. For the common man, reform in general stands for changing the *status quo* to facilitate corporate interest, on which I have written frequently in these columns. They are unable to appreciate that such reforms can lead not only to creation of wealth, but also jobs, the equity agenda.

We cannot ignore the imperative for optimal regulation and curbing crony capitalism and conspicuous consumption, which do create mistrust and scorn.

In terms of optimal regulation, we do need to unburden both businesses and consumers by maintaining minimalistic

regulation, i.e., if one is applying for building permits, then the process should be swift with the caveat that violations will be dealt with strongly by demolitions and imprisonment.

Veerappa Moily's suggestion that managers of the electricity system should be jailed for violation is a welcome step in this direction. Similarly, if the poor are violating any facility, then too harsh penalties should be levied. The only problem is that the powerful people can easily drag cases forever, as we have seen in many cases. On the other hand, the poor are weak and cannot do so easily.

In any event, if harshness is used against well-to-do violators, then the poor will feel that the government is doing something well and trust can be reinforced. On the other hand, there are many reforms happening in wider public interest, particularly benefiting the poor, but the message does not go out well. Such a strategy can also reinforce trust. Examples include reforms done or planned in the area of patents, medicines, food security, transparency, slum resettlement, etc.

Furthermore, many states have reformed the PDS, launched free medicine schemes, other than offering free power, enacted laws for guaranteed redressal of public grievances and have tightened anti-corruption regimes. Problem areas include all types of basic needs.

Bringing the two groups together and finding a middle path is the need of the hour. For instance, if allowing FDI in retail can be taken as a policy reform, regulating the sector through adequate safeguards to address public concerns can also be said to be a regulatory reform.

The problem is that there is growing perception – thanks to the Anna anti-corruption movement and a proactive CAG – that the government is not a neutral party and, therefore, it will be very difficult to strike a balance between the two. Parliamentary debates are useful to bridge this gap, but they too are polarised or have shifted to TV channels.

Apart from corporate-versus-public interest, there is an additional dimension of domestic-versus-foreign interest. Even though it is not as deep-rooted as it was some years ago, we still hear of the East India Co syndrome, and from mature people.

However, the corporate-versus-public interest divide seems to have much more serious undercurrents in today's political economy, than domestic versus foreign. FDI in retail is being opposed in spite of the fact that big domestic business houses are already in organised retailing. Whether it is labour reforms or 2G spectrum or mining and coal or land acquisition, the inherent opposition is on the issue of corporate versus public interest.

Clearly, the polity, government, business and civil society have a big agenda to speak to the people and also ensure that public interest is not sacrificed to private interest. People should be confident that equity remains at the core of governance, so that we can grow harmoniously.

Annexure-5

Reality Ignored: How Milton Friedman and Chicago Economics Undermined American Institutions and Endangered the Global Economy

*Taimoon Stewart**

This book by Kenneth Davidson, Senior Fellow, American Antitrust Institute, USA provides a well-researched critique of Chicago economics, unmasking its flawed assumptions, and pointing to behavioral characteristics, values and institutions that form the foundations upon which a market system can function effectively, many of which are ignored in the theory proffered by the Chicago School economists.

Further, Davidson argues that all our theories that seek to explain the market system are incomplete and only explain parts because it is a complex self-organising system that is not easily understood.

* *Book review by Taimoon Stewart, Associate Senior Fellow,
University of West Indies, Trinidad & Tobago*

Yet, according to Davidson, the Chicago School theory of markets has assumed a dominant place in policy formulation since the decline in perceived utility of Keynesian economics in the 1970s, even though this decline was due to external shocks and foreign policy disasters in the US in the 1970s.

The danger of the rise to dominance of the Chicago school theory is that it was adopted by politicians and has influenced changes in economic organisation and policy that removed the very safeguards needed for an efficiently functioning market system.

He points to the repeal of legislation that gave regulatory authority to government over financial and investment institutions and instruments, together with the “me first” personal and social ideology as largely responsible for the decline of American manufacturing industries and the global financial crisis that began in 2007.

Davidson chooses Milton Friedman as representative of the Chicago School’s perspective which uses profit maximising assumptions about economic man as providing accurate predictions about competitive markets, and even though they admit that many of their assumptions are inaccurate, they consider this irrelevant since the market punishes sellers and consumers who do not act in accordance with the profit maximising assumptions.

He pointed to the flaw in resting theory on a view of American rugged individualism derived from the experience of the initial immigrants who risked everything and proved that they could survive and prosper, rather than also incorporating the societal imperative of cooperation which is reflected in American experience of major events and negotiated agreements, such as the Declaration of Independence, the negotiation of the Constitution of the US, the abolitionist and civil rights movements, and the New Deal safety nets.

He condemns the Chicago School economics as a political philosophy that has a dangerously incomplete view of the necessary role of government and the social need for values that facilitate cooperation.

Part I traces the historical foundations of the Chicago School: how it was transformed from a 1930s concern about private concentrations of economic power to a 1960s concern about the power of government.

This transformation took place after the Chicago School decided that human behavior could be described as interactions of individuals responding rationally to economic incentives. Within this economic framework, it became possible to develop an ideology that assumed individuals pursuing their private interests would enter only into transactions voluntarily and only with a full understanding of the consequences of those transactions.

Based on this framework, Milton Friedman and the Chicago School asserted that the enforcement of property rights and contractual freedom held the key to the creation of the best possible society which would be endangered by most types of government regulation.

Part II illustrates how the refocused concerns of the Chicago School helped transform the enforcement of American antitrust laws. Antitrust laws that were enacted as a response to public fears about private economic power became instead a Chicago influenced ideology that defended the freedom and prerogatives of powerful private businesses.

The assumption that transactions are presumptively voluntary, absent direct evidence of coercion or conspiracy, allowed the Chicago School to argue with great success that competitive market forces are sufficient to protect businesses and consumers and promote the economy.

Part III describes ways in which the Chicago School free market theory has transcended its academic origins and became

an ideology that exalts the benefits of private market exchanges, denigrates regulatory efforts to channel market forces, and rejects the ability of non-market forces to support our social, political, and commercial institutions. This free market ideology offers attractively simplistic solutions to complex public policy issues.

Unfortunately, the theoretical free market does not reflect the complexities of how businesses operate in the commercial world. As a result, undue reliance on free markets has frequently led the United States of America in wrong directions during the past half century.

Part IV discusses the impact of Chicago rhetoric on the size, operations, and functions of government. Attempts to implement these Chicago ideas sometimes have resulted in what appear to be parodies of what might have been intended. Programs to make government smaller, for example, have resulted in a larger, less coordinated federal bureaucracy.

Part V considers Chicago contributions to our current financial disaster. The problems created by overly simplistic economic assumptions about business transactions have been magnified by equally naïve Chicago assumptions about how financial markets operate.

History has shown repeatedly that individuals lack the information that would allow them to act in the ways that Chicago Economics predicts and, furthermore, they make decisions that include more than economic considerations.

The failure to include noneconomic factors, such as trust, and the failure to appreciate the unpredictability of the future has led the Chicago School to promote disastrous financial policies that ignore the lessons of history.

In the epilogue to the book, Davidson accepts that benefits have been derived from the market system, pointing to the advances in provision of food, clothing and shelter and the availability of a range of consumer goods for entertainment,

and acknowledges that competition has made goods cheaper, more abundant, and of better quality.

But, he argues that it was by trial and error that these privileges were accomplished, rather than a pre-conceived path that led to the shaping of the modern market economy.

Yet, there is much to be improved, given the persistence of pollution, poverty, and pestilence.

He lists eleven assumptions underlying the theory of economics espoused by the Chicago School, pointing to the fact that these assumptions may be true in some circumstances and not in others, and refers to the work of behavioural economists to show that the Chicago based assumptions that people will choose the options that maximises their incomes are predictably wrong in many settings.

Yet, he acknowledges that profit is a powerful motivation in the market and, in many instances, it is the dominant force. The problem is that the instances when the assumptions are correct are not obvious, and therefore the determinants of market outcomes need to be investigated to predict an accurate outcome.

Rather than ignore factors that cannot be counted, as in the Flynn Fallacy, he argued for a framework that includes a larger amount of what we know about human behavior and economic interactions.

For instance, competition is central to the dynamics of Chicago theory, yet, cooperation is also central to most other theories of biological and human interaction; it is missing from Chicago theory.

Because it is missing from Chicago theories, actions that appear to be beneficial from a Chicago perspective may, in fact, be harmful to the economy and society.

He marshals a range of studies to show the remarkable interdependence displayed by groups of same or different

species, or even prey and predator that is indispensable to their survival.

According to Davidson, human cooperation is not instinctual, but learnt, and given that it is an anonymous market place in which we operate, we need institutions with rules and mores to guide behaviour. The key to survival of those institutions is the internalisation of those rules of honest behaviour.

In his view, profit incentives, personal rivalries, and the joy of creation also play important parts, but without trust there is no glue to hold together a private enterprise system.

Rather, learnt values of respect for others, honesty, loyalty, cooperation, and trust are hopefully internalised, making lives safer, happier, and more efficient.

By contrast, when the Chicago School says unequivocally that society benefits from profit maximising behaviour, it encourages everyone to monetise all relationships. In his view, the greed-is-good mantra makes it difficult to limit the pay of CEOs.

It encourages people to take advantage of all moral hazards because they personally profit from risking or spending other people's money that is entrusted to them.

As an example, he points to Madoff who deliberately played on all the cultural factors that support cooperation and trust, and betrayed the most fundamental trust relationships. In his view, the rules developed over the last century and a half to prevent the frauds and fakes, manipulation and other financial mischief and which had been internalised as codes of moral behaviour, was overturned by the deregulation of financial institutions inspired by Chicago economics.

Davidson concludes that the market economy depends on the independent decisions of individuals, is not a chaotic marketplace, and is governed by rules about property and contract rights.

But, this is 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 from specialised institutions are supplements that control the exceptional behaviour that defies accepted norms. The market works, but not by itself.

References

- Aghemoglu, Daron and James A Robinson (2012) “ Why Nations Fail: The Origin of Power, Prosperity and Poverty”, Crown Business, US
- Cherif M’Hamed, Sustainable Business for Development: Engaging the Private Sector. BizClim. ACP Business Climate Facility
- Davidson, Kenneth M (2011), “Reality Ignored: How Milton Friedman and Chicago Economics Undermined American Institutions and Endangered the Global Economy” Amazon.
- Fox, Eleanor M. (July 2007) “Economic Development, Poverty, and Antitrust: The Other Path” New York: New York University School of Law, Public Law and Legal Theory Research Paper Series, Working Paper No. 07-12
- Giovanni. Arrighi (2007) “Adam Smith in Beijing: Lineages of the Twenty-First Century” London: Verso. ISBN: 978-1-84467-104-5; 420 pages
- Ha-Joon Chang (2002) “Kicking Away the Ladder: Development Strategy in Historical Perspective” (Paperback)
- Ha-Joon, Chane (2002) “Kicking Away the Ladder: Development Strategy in Historical Perspective” (Google eBook). Anthem Press
- John Galtung (1980) “A Structural Theory of Imperialism – Ten Years Later, Millennium: Journal of International Studies, Vol. 9, No. 3

- Lewis, David (2013) “Competition and Poverty Reduction” Paris: OECD, Global Forum on Competition. DAF/COMP/GF(2013)3
- Mangabeira, Roberto Unger (2010) “Free Trade Reimagined: The World Division of Labor and the Method of Economics” Paper
- Rawls, John (1971) “A Theory of Justice” Belknap Press, Harvard University Press
- Roberto Mangabeira Unger (2007) “The Work of ... Free Trade Reimagined” (Book, 214 pages). The World Division of Labor and the Method of Economics.
- Spence Michael “The Growth Report: Strategies for Sustained Growth and Inclusive Development”

...issue of competition policy and concerns of equity...it is not necessary that all the instruments of economic policy must try to achieve the twin goals of efficiency and equity. Some instruments may emphasise efficiency and some others equity.

C Rangarajan
Chairman, Economic Advisory Council to the Prime Minister of India

There is a large area in which efficiency is unknowable, and equity can be served consistent with efficiency; also that competition law is properly applied against certain power and its exercise and not just for some notion of efficiency; and that these rules of law can be as clear and knowable as rules based on a standard that nothing is illegal if it is not.

Eleanor Fox
*Walter J. Derenberg Professor of Trade Regulation
New York University School of Law, New York, USA*

...increase competition law and policy contribution to equity strengthening and poverty alleviation one needs to revive the original spirit of antitrust. Such revival would be a useful contribution to the restoration of public policies designed in favour of workers, consumers...concerned about long-term and sustainable development...

Francois Souty
Professor, University of La Rochelle, France

Economic growth is a good thing, but it is not the only good thing. Especially if we accept the great likelihood that people in general have a declining marginal utility of income, the importance of considering whether we might purchase a bit more equality at the expense of a bit more growth, becomes clear.

Russell Pittman
*Director of Economic Research & International Technical Assistance
Economic Analysis Group, Department of Justice, USA*

An integrated approach to development is critical and should be the way forward for this century...However, while the socio-economic impact of multilateral enterprises may have far-reaching consequences on less developed economies, the integrated approach must be part and parcel of any investment and/or economic strategy of any commercial enterprise...this is a noteworthy statement: Growth cannot be chased at the cost of equity.

Thulasoni Kaira
*CEO & Secretary
Competition Authority, Botswana*



www.cuts-international.org

