

Developing Countries and Competition Law and Policy

Bold Challenges, Bold Solutions

Eleanor M Fox

Walter J. Derenberg Professor of Trade Regulation

I am going to talk about what can competition law and policy do to help development. Those of you who are far from the field of competition are probably thinking what competition is doing on this panel as developing countries and the people in developing countries need food, they need education, they need healthcare not competition. It is critically important to the world to bring up those in deep poverty and embarrassingly enough such people make up half the world's population. One of the aspects through which it can be done as we all know is grants-in-aid that can address the needs of education, of food and so on. What, then, can competition law and policy do? Empowerment! Competition law and policy break down barriers.

CUTS has done remarkable work in developing countries – its 7Up model comes to my mind. Serious work carried out under the model clearly brought out barriers to participation of ordinary people in the life of the economy. They are blocked out. How are they blocked out? They are blocked out by government restraints, regulatory restraints, trade restraints and blocked by a lot of cronyism. These restraints through cartels raise prices of vitamins, of fertilisers all over the world. The poor are squeezed by higher prices and closed doors to opportunity. In many of these countries, majority of people fall into this category. They might be 50 to 60 per cent. They are below the poverty line and then another 10 to 20 per cent just above it. They are so disempowered by so many acts and disregard of the developed world that they are below the reach of the escalator of opportunity.

I want to give you a different picture of competition from what you might have come with. Competition does empower. Competition really just means market; it just means open markets, open economic opportunity. Developing countries have the most disempowered people in the world. I want to tell you three little stories and then I am going to say some words about how to think about competition law and policy in developing country markets – both in the market itself when the regulatory restraints are initiated within the market and when regulatory restraints are initiated in the world that hurts developing countries.

My first story is about trade and competition. Several years ago Oxfam came up with a study and it is called '*Cultivating Poverty*'. When you think about it, it is the developed world that is cultivating poverty, not just closing their eyes to actively cultivating poverty in the developing world. How? A lot of this is subsidies, a lot of this is about the cotton subsidies that the developed world gives to their farmers; and mostly big agriculture business and because of subsidies they over produce cotton. In sub-Saharan Africa, they have some of the most efficient ways to produce cotton. The farmers can produce cotton at half the prices than we can produce the cotton. We put in billion dollars of subsidies and we export to these countries. We deprive the people who could make the product at half the cost for making and selling under merits. This is actively disempowering people who could do well under merit and engage in the market.

American corn farmers receive more in subsidies than the entire gross domestic product of Burkina Faso – a country of more than 2 million people most of who depend on corn production.

American corn farmers receive three times more in subsidies than the entire USAID budget for Africa's five hundred million people. In other words, they are giving away money and saying that try to help yourselves and it seldom gets well to the people who need it. But we blocked opportunity to participate in markets on the merits. However, in recent times subsidies is one of the areas that have broken down a bit.

Canada and Russia have export cartels. Potash is one of the big cost ingredients for fertiliser that the farmers use to make their crops and especially in Africa again. So export cartelists cartelise, they only get together in Canada and Russia and raise the price thereby disempowering the people.

My second story on food and education is just a couple of lines from an editorial I read in the *New York Times* several years ago, and the story comes back to me so many times. It is a story of a school in a town in Kenya. A particular teacher in the school noticed that all the children were laggards and seemed lazy and often did not attend classes. She tried to find out what was the problem was. She found out that it was food and they did not get enough to eat, they were hungry. She and her colleagues made efforts to find enough food to bring in for the students but still they could not get enough food. There were 100 students. They had to make a terrible choice. They decided not everybody could eat apart from the top two grades – 7th and 8th graders because soon they will be taking national exams to move on to high school.

Here is my third story which is on corruption. Some years later, I was in Tanzania and Godfrey Mkocha, who was the head of the Competition Commission gave me a book which was called '*It's Our Turn to Eat*' by Michela Wrong. I thought I knew what the story was: it was about the school in Kenya where the students did not have enough to eat. However, it turned out to be something else – and people here in the audience who have read this book would know what it is about. It is about the level of corruption which gives opportunity to people in powerful position to take their turns in extracting public resources. And thus these resources seldom get utilised for their original intended purpose. It explains how people in powerful positions siphon out scarce resources for their own personal benefits. Often by setting up false corporations, they squeeze out resources from government budgets meant for supporting education, providing healthcare and food and building infrastructure. The schools and roads, therefore, never get built and all the money is pocketed by those in these powerful positions.

And so, the stories are not *ad hoc*. They are really all connected because corruption as well as the regulatory restraints in the markets prevents people from competing just on merits. In the developing countries, many competition agencies are doing very impressive work and there are terrific people who are heading them and trying to do their best with limited resources.

Regulatory restraints that hurt the most are government-related and state-related. In Kenya, for example, there is marketing board for something called Pyrethrum – a plant. The blossoms of the plant are made into an extract which makes fertiliser which is a very important ingredient in fertiliser. Kenya was doing wonderfully in the world, selling 80 per cent of the world production of Pyrethrum when the government set up a marketing board. The marketing board became the monopoly buyer and the monopoly seller. Millions of farmers and businesses were therefore pushed out of the market as a result of this monopoly. A big campaign was launched by the Competition Authority of Kenya to get rid of the law that setup of the Pyrethrum marketing board. The competition authority has taken this case forward well through its friends and

supporters in the policy circuit in Kenya, and there is a high likelihood to dissolve this board soon.

So is this competition law or competition policy? It is certainly competition policy because competition policy is really a broad word that means a broad concept getting rid of the restraints that hurt the people and often the restraints that hurt the people are directly price raising and often to do that they are blocking out the opportunity to others to get into the market, blocking the economic opportunity as well as raising the price. Sometimes, these restraints come right within the area of the competition law itself in a number of countries but the antitrust law, which is same as competition law can actually reprehend a marketing board that it can be illegal as monopoly in many other is that as outside of the law and it requires an advocacy.

So in concluding I would have to say that there are many restraints looked from within the nation. I had mentioned as to whether the competition agency has enough power to get at the restraints that hurt them the most but they do try and they try their best and sometimes they become successful. Then there are than their restraints from abroad, such as the potash cartels and other world cartels.

The developing countries actually would be so much better off if there is a cosmopolitan view, for example, world cartels and their harms anywhere in the world would come within the purview of the competition law so that the harmed nation could actually take action against the harming nation. But for such a cosmopolitan agreement to materialise may be a long way away.

So just to conclude, markets set a big role in leading the millennium goals and they are a better way to fight poverty.