

COMPETITION POLICY, ECONOMIC GROWTH AND CORRUPTION

M.M.K. Sardana *

Abstract: *Competition policies are believed to be serving the interest of end users of goods and services by assuring quality and competitive prices. This premise would work under perfect market conditions. Market condition and political system under which such markets operate vary from country to country. Goals of growth of the emerging developing economies, would also determine their competition policy. Therefore different countries should be having competition policies suiting the economic development strategies they have set for themselves. The competition policies of such countries would be dynamic and have the flexibility to change from one state of equilibrium to the other. While international development in competition policies can be learning experience, the time for having a multilateral competition policies has to wait till the economic conditions of the developing economies are near the perfect market conditions. Meanwhile Developed countries take positive and affirmative actions to speed the process of integrating the economies towards a Co-ordinated Competition Policy. In India the growth of competition policy has been gradual and evolving. The steady progress is facing onslaught of all pervading corruption threatening to immobilize the authority and policy.*

All around the world, in every country, the goal of business is to make money and service to the people is incidental. The drive for profit produces certain behaviours which are termed by public against its general good. Nation states build up regulation with a view to establishing balance between the business and the public good. Competition policy, placed in position, by government is to be viewed as one such measure. The underlying context of competition policy is that if entrepreneurs and service providers compete among themselves, the public at large would have freedom of choice and thus better quality at economical prices will result. Such a policy would also ordain that entrepreneurs and service providers operate in a level playing field when allocation of resources including credit is fair and impact of taxation is uniform and operating market conditions are fair. Quality of output and competitive price of product/service would be an index of efficiency of entrepreneurs/service providers which would determine their market share.

For the success of Competition Policy, in terms of economic theory, strict boundary conditions would be pre-requisites which have been summarized by Prof. Laffont¹ as follows:-

* The author is a Visiting Fellow at the Institute.

“Competition is an unambiguously good thing in the first best world of economists. That would assume large number of participants in all markets, no public goods, no externalities, no information asymmetries, no natural monopolies, complete markets, fully rational economic agents, and a benevolent court system to enforce contracts, and a benevolent government providing lump sum transfers to achieve any desirable redistribution”.

Prof. Laffont goes on to observe, “Because developing countries are so far from this ideal world, it is not always the case that competition should be encouraged in these countries.

Ideals are hard to achieve even in Physical Sciences e.g. it has not been possible to go down to absolute zero temperature and total vacuum has never been achieved. Therefore, no economic system which is subject to manoeuvring constantly can achieve perfection of theory. At the same time ideals are useful benchmarks. It is important to set ideals. Ideally, it is impossible to draw a straight line in terms of definition attached to it, yet on this concept, the whole science of architecture has been developed based on which durable monuments have come up all over the world.

Thus, while taking note of the ideal conditions as prescribed by Laffont for a successful competition policy, it would stand to reason that nation states can have a competition policy of their own suiting its markets, states, stage of economy and political goals. In designing and crafting an appropriate and suitable competition policy, the capacity of governments to steer the systems surrounding them towards the ideal would be the most desirable conditionality. Many economies of the newly emerging growth oriented countries like India, China, South Korea, Taiwan province of China, Chile, Mexico, and Brazil etc. have demonstrated the skills of their successive administration to effect interventions with varied degrees of intensities as dictated by their political systems.

The newly industrialized economies enumerated above have to have a dynamic model of policy for two reasons. Firstly, all these countries have to attain long term growth productivity to provide rising real wages to their citizens and secondly as economic systems move from one equilibrium to the next, there is a need to align the policy suiting the next stage of equilibrium. Such situation would necessitate that conditions for attracting and

¹ Laffont, J.J. (1998), “Competition, Information and Development”, Annual World Bank Conference on Development Economics, 1998, pp. 237-57.

retaining more and more investments are maintained by assuming stable and attractive return to the investors on a long term basis.

Taking into considerations the conditions and aspirations of such countries, Prof. Ajit Singh² has aligned his views on competition policy with those thinkers that such countries orient their competition policies on the model of competition policy adopted by Japan during the period 1950-1973, when Japan was also emerging as an industrial economy corresponding to the level of aspiration of the presently industrialized economies. During this phase of development, Japan gave precedence to Industrial Policy over competition policy in case contradiction developed between the two policies. Sometimes, a contradiction develops between the competition policy objective of reducing the costs to consumers which may adversely impact the profits of investors deterring them from further investments or continuing with existing investments. Such a situation would pose a dilemma for developing economies and an option has to be exercised between the competition policy and the industrial policy. This would be a situation conforming to economic analysis that contrary to belief that more competition is better is not always an optimal strategy. Competition for competition's sake may not always be in public interest. Even the purists of competition law strive for protection under TRIPS to safeguard the investments made while developing a patent. The felt need of economy to keep an investor invested in the overall interest of economy, would also stand on the same leg. The consumer in the long run would finally stand benefitted if there are long term gains in growth and productivity with the continued flow of investments; albeit he may bear higher costs in the short term. Following a judicious mix of industrial policy, competition policy and other policies during the period 1950-73, Japanese economy expanded at an extra ordinary rate of 8% p.a., industry grew at a rate of 10% p.a. and its share of exports grew phenomenally. Once, after this, Japan had qualified as in an industrially developed state, its competition policy has got reoriented in tune with developments in world economy.

From the foregoing, an appropriate competition policy would differ between countries depending on the level of development, on the state of their governance and many other factors. One size competition policy would not fit all.

Prof. Ajit Singh highlights the role of profits, investments and technical progress as well as the achievements of an appropriate blend of competition and co-operation in the operation

² Multi lateral Competition Policy and Economic Development. A Developing Country Perspective on the European Prof. Ajit Singh, University of Cambridge Community Proposal.

of competition and industrial policies. Coherence between these two policies is essential. In effect, during the phase of economic development, competition policy may have to play a subordinate role. Prof. Ajit Singh refers to some studies arguing for dynamic model of competition policy for European Union as well. A dynamic efficiency perspective must give proper consideration to (a) the variation in the abilities of firms to exploit particular profit opportunities; (b) the evolution of such capability with the passage of time; or (c) the manipulation of barrier to entry or the incentives for innovations and its possible abuse, a means to undermine competition.

Under the aegis of WTO, there is proposal towards developing a Multilateral Competition Policy and in this connection European union had put up certain proposals which do recognize that each country could have a competition policy of its own but require that the policy should be in conformity with the core WTO principles of MFN, non discrimination, national treatment, transparency and procedural fairness and hard core contents be declared illegal. Prof. Ajit Singh has rightly argued that these principles are not in the best interest of developing countries as these do not recognize the great disparity that exists among nations in regard to their technological development, human capital and infrastructure endowments, as well as the cost of external funds and so on. These countries need the principle of affirmative action to give them a chance to build their production capabilities. In a multilateral framework that is being proposed, the coordinating role of developing states' governments in coordinating investment and activities of firms through formal forums will get circumscribed.

While nation states, in pursuit of keeping their policy dynamic, would interact with and study the competition policies of other countries, they should be avoiding peer review of their policies. Such reviews would have the tendency to align the policy towards best practices which may not suit the stage of development of the country subjecting its policy to a peer review.

The developing economies will do well to look into the proposal that international hard core cartels be declared illegal. In economic theory there is no black and white attitude against Cartels as studied by Schever³. Some cartels aim to maximize monopoly profits through collusion but also result in greater price stability, intended or otherwise, which promotes social welfare. Other may do the opposite, i.e., seek to promote price stability but achieve

³ Schever, F.M. (1996) "International Trade and Competition Policy", Harvard University.

neither this nor higher monopoly profits. The developing countries have to assure themselves that a blanket proposal as put forward does not go against state supported international cartels and also domestic cartels to promote industrial development, or co-operative agreements between firms for mutual development that may require market co-ordination and investment.

The developed countries should demonstrate their intentions through their deeds of building up proposals of differential treatment for developing countries and also by legislating in the domestic laws that anti competitive conduct which is illegal in their jurisdictions would also be illegal in other jurisdictions as well. Further, the aggrieved parties of other jurisdictions are made eligible to contest for damages in the courts of jurisdiction where anti-competition activity has been declared illegal. Such a measure would demonstrate the intention of the advanced countries in the interest of competition at global level.

While developing economies may fall foul of many parameters for a perfect competition, there are certain structural forces there which are pro competitive e.g. the lower sunk costs of entry, the faster rate of growth relative to those of advanced economies, the structure of demand. Above all, the role of governments may not always be anticompetitive as is being exhibited through the increasing trend for international bids for contracts and procurements. Thus while on Laffont Test there are obvious disabilities for a developing economy for an effective competition policy; there are enabling conditions also as outlined above. Consolidating on the enabling conditions and steaming out of disabilities through timely interventions, the nation states should be placing in position a competition policy as it fits in with economic environment and the growth aspirations. The developed economies, through affirmative actions, should be facilitating the task of developing economies to enable them to have a faster pace in moving towards perfect competitive scenario. The stage for a formal multi lateral competition policy may come up through an evolutionary process when the developing economies cross certain thresholds as is demonstrated by the history of economic development in Japan.

The competition law has developed in tandem with the economic development policies of India. In the early years of development efforts dominated by public sector investments, the need of a competition law was not felt. Government intervened directly in economic activity and setting prices for essential goods. State was the sole arbiter for the process of growth

particularly in key sectors. Many sectors were kept reserved for government. Concentration of economic power was sought to be limited in tune with the Directive Principles of Constitution. As the Government sector and Private Sectors attained reasonable sizes, the first competition law in the nature of MRTP was enacted in 1969 primarily to control the growth of private sector monopolies and also to introduce elements of competition in the conduct of businesses recognizing that restricted practices in trade were anti competitive. Dynamic approach to competition was exhibited by government by amending MRTP several times empowering the Commission to examine trade practices of government undertakings also and pass restraining order and awarding claims against them if they were not adhering to competitive policies.

As the government's economic policy moved towards market economy linked to global economy, altogether new competition Act was placed in position in 2002. Keeping in time with the changed economic order, the monopolies themselves were not to be restricted but their dominant behaviour, if any, was to be deprecated and restrained. Dominance per se was not being looked down upon but their dominant behaviour would have to be contained. At the same time anti-competitive arrangements and agreements would also remain under scanner under the new law.

It has been conceived within the 2002 Act that, merger and acquisition may also have the potential of creating dominance and resulting in dominant behaviour and thus the competition commission should be opining on the proposed mergers and acquisitions beyond certain thresholds. At this stage, government has not yet deemed it fit to issue enabling notification on this aspect. This is yet an instance of going ahead with competition policy in a graduated manner.

The Competition Act lays specific stress on advocacy of competitive policy on different sets of stakeholders in market. Such a function includes the task of sensitizing the members of the bar and members of the judiciary so that they get acquainted with the forces operating in the market which lead to anti-competitive practices and the manner of gathering evidence to get a verdict for preventing and penalizing these practices. Even the judicial officers have to reckon with the market and forces operating therein to develop commensurate jurisprudence in Indian context, which does not leave escape routes for offenders.

The advocacy would also be directed towards upgrading the skills of investigating officers of the Commission and its professionals as Market offences are entirely different than usual criminal offences and are performed in aesthetic surrounding leaving generally no trail.

Many countries among the developed countries have had successful operating competition policies. Lots of lessons can be drawn from their experience both in investigation as well as from the jurisprudence developed there. While learning from such experiences towards up scaling skills for effectives implementation of competition policy is of advantage, care needs to be taken that the competition policy of a nation is specific to it and is to be implemented in the scenario of market within and thus nation state has to remain rooted to its own policy and move to another equilibrium on the change of economic scenario only within and not because others are advising.

While competition law in India has been developing in tune with the stage of economic development, its efficacy, in an atmosphere of intense corruption at all levels of economy, is threatened.

Indranil Dutta and Ajit Mishra (2004)⁴ have studied the impact of corruption on competition in the presence of market imperfections. In their analysis they have recalled that contrary to the perception that market forces through greater competition will lead to low levels of corruption has been belied. They have developed a rationale explaining co-existence of corruption with competition in deregulated economies. The failure of Institutional shortcomings leading to corruption in deregulated markets does not explain the scenario fully. The persistence of wealth inequality among the market players; according to their analysis, results in a scenario of growth, competition and corruption all co-existing and feeding on one another.

The triggering point of this scenario is the corruption that is indulged into by market players involving and colluding with the state agents. The advantage drawn by the colluding corporate is far more sinister that the benefits derived by the agents of state. The corporate colliders through their practice of corrupting the agents and corridors of power develop considerable leverage to hijack policies including the competition policy by tweaking with level playing conditions by disorienting the allocation of resources and credit and by evading taxes. The very basis of fair competition is done away with. Inefficient operators in economic

⁴ Indranil Dutta and Ajit Mishra (2004) "Corruption and Competition in the Presence of Inequality and Market Imperfections" Centre for Development Economics, Working Paper 123, March, 2004.

sense are not screened out and remain in market on the strength of their staying power created by their wealth advantage attained through tax evasions. Such players have the capacity of creating competitive atmosphere by maintaining players who, in effect, operate on their behalf. In economic terms, in such a scenario, there may be growth alongside growth in corruption and apparent competition but in the long run this scenario for obvious reasons cannot sustain and keep on maintaining quality at economical rates.

Such a scenario is not confined at high end only. It is percolating at all levels of economic activities and is resulting in misallocation all through the economy. Results are before everyone. The quality of service despite adequate competition is deteriorating; assets created are no longer durable and sustainable. Every ill that a sound competition policy should have taken care of is multiplying.

No competition authority and policy surrounding it can cure the growing menace caused by all pervading corruption. Such an external disability caused to the competition policy has to be tackled by government otherwise the authority and policy would become immobile.