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COMPETITION AND POVERTY REDUCTION

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FOREWORD

This document comprises proceedings in the original languages of a Roundtable on Competition and Poverty Reduction held by the Global Forum on Competition in February 2013.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of a series of publications entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur la concurrence et la réduction de la pauvreté qui s'est tenue en février 2013 dans le cadre du Forum mondial sur la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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EXECUTIVE SUMMARY

By the Secretariat [1]

Considering the discussion at the Forum, the delegates' written submissions, and the Secretariat's background paper, several key points emerge:

(1) Poverty is multidimensional, not defined solely by incomes below an arbitrary level

Simple measures of poverty such as the number of people living below a poverty line, whether expressed in terms relative to median incomes or as an absolute benchmark like US$1.25 per day, are misleading. Such measures provide no information about how far below the line the poor are on average.

Beyond very low (or no) monetary incomes, absolute poverty entails lack of access to indispensable social services such as medical treatment and education, and adequate food, shelter and communication. Choices and opportunities are denied, and physical and economic security are absent. Many people in this category, for example subsistence farmers in remote rural areas, live largely outside the market economy, and competition policies may have little impact on their lives.

Delegates emphasised that in addition to people living in absolute poverty, there are far larger numbers living somewhat above that level, but who are still not well-integrated into the global or national economy and who would be plunged into deep poverty by any financial or medical upset. Such persons' living standards are directly affected by the strength of competition.

(2) Competition can result in faster growth and lower prices, but these alone cannot eliminate poverty

Delegates agreed that stronger competition results in lower prices, benefiting consumers, including those living in poverty. Several delegates also emphasised the beneficial dynamics of stronger competition on economic growth. A McKinsey study showed that countries with strengthened competition experienced stronger innovation, greater competitiveness in export markets, and faster GDP growth. Millions have been lifted out of poverty as a result, particularly in China, as employment and entrepreneurial opportunities expanded. Faster growth also generates resources that can be used to finance more ambitious social policies.

However, delegates also acknowledged that growth and lower prices alone will not necessarily eradicate poverty. Even in countries with growing economies and competitive markets for essential goods and services, the distribution of income may still result in some people living in

[1] This summary does not necessarily represent the consensus view of the Global Forum on Competition. It does, however, encapsulate key points from the discussion at the roundtable, the delegates' written submissions, and the Secretariat's background paper.

absolute poverty in developing countries, and in relative poverty in any country. Other policies, such as trade, anti-corruption and tax, are also crucial in the fight against poverty.

(3) Moreover, stronger competition creates losers as well as winners

A number of delegates called attention to the possible negative effects of stronger competition on poverty. If stronger competition takes the form of lifting price controls on basic foodstuffs, energy or rents, abolition of subsidies on such goods or on the purchase of agricultural output at artificially high prices, the poorest sections of the community would suffer disproportionately, at least in the short term. This was not regarded as a reason for keeping or intensifying such controls, as those policies also benefit wealthier citizens.

Other potentially negative effects of stronger competition on the poor include ending the sharing of economic rents with workers, or over-staffing, when cartels and monopolies are sanctioned and/or dismantled. However, there was some scepticism about the extent to which rent-earners actually share with their workers.

More generally, the panel of experts emphasised that competition can lead to losers as well as winners, especially during a transition period, and that some of the poor can be among the losers. Stronger competition not only leads to lower prices, but can destroy some jobs while creating others. Lower prices do not always have a major impact on individual or household consumption possibilities, but job losses can be catastrophic. Recognizing these attributes of competition, people in many developing countries are sometimes sceptical about its benefits and fear that it will deepen inequality domestically and globally. Therefore, flanking policies to address poverty directly, such as retraining or help in moving to areas where jobs exist, are helpful. In addition, competition advocates should be honest about the possible negative consequences for some individuals in the short term.

(4) Competition law enforcement helps poor producers as well as poor consumers

Many developing countries tend to have markets with one or two of big firms, sometimes currently or formerly state-owned, and many small firms. Competition law enforcement breaks up cartels, exposes dominant firms that engage in anticompetitive conduct to more competition, and reduces barriers to entry, helping small firms to enter the market and survive. Entry provides a dual benefit to the poor, not only helping them as consumers by putting downward pressure on prices, but by expanding their employment and small business opportunities.

(5) Technological progress combined with competition has aided poor consumers and producers

Several delegates mentioned mobile telephony and the ingenious uses to which it can be put as powerful means of raising the incomes and welfare of the poor, provided that competition between phone manufacturers and between service providers keeps prices low enough for the poor to benefit.

“Mobile money,” i.e. sending small sums via a mobile phone application, has made money transfers between individuals far faster, safer and more reliable than entrusting funds to, for example, bus drivers, which is how many people in developing countries still transfer funds across long distances. About two thirds of Kenyan adults now use mobile money services provided by several operators that use networks of agents, generally shopkeepers and garage owners.

Although mobile money is not banking (it is aimed at those who do not or cannot have bank accounts), established banks in some countries have resisted its implementation. In at least one case banks have succeeded in ensuring that the service is provided by them, and not by the mobile telephone operators. Mobile money providers argue that as typical transactions are small, and no credit is extended, regulation should be light.

By allowing poor producers, for example fishermen or small-scale producers of fruit and vegetables in remote areas, to obtain market information in real time, competitively-supplied mobile telephony permits them to optimise their time and effort, and reduces the market power of middlemen.

(6) The focus of competition law and policy differs as between developed and developing countries

Delegates and panellists from developed countries noted that absolute poverty is hardly a problem there and relative poverty is addressed by social policies. Competition laws and competition policies were initially introduced to break up major cartels, and have usually been in force for decades. They are primarily seen as instruments to protect consumers from market distortions created or maintained by producers, and to reduce barriers to entry. Competition policies spur growth and raise material living standards, but their impact on the income or employment of the poor is a second order consideration. Moreover, competition authorities in developed countries usually have teams of economists and legal specialists, they are often independent from government, and have sufficient legal powers to pursue offenders. This institutional framework has helped to bring about a "competition culture" in developed countries.

By contrast, delegates from competition authorities in some developing countries explained that they have few highly-trained legal and economic experts and their powers to intervene are often weak. The overarching policy priority in developing countries is development: raising significant proportions of their populations out of absolute poverty and enabling more substantial proportions of their populations to have access to basic necessities such as clean water, education, and medical treatment. Widespread poverty among small producers as well as consumers exists side-by-side with small numbers of very wealthy landowners and industrialists. In such a context, the political credibility of the competition policy authorities depends to a large extent on how they are seen as contributing to poverty reduction and employment creation. It would be risky for them to state that their only target is combating harm to competition by producers, and that the impact of their efforts on poverty or inequality is irrelevant. They also often operate in an environment of comparatively large, industry-dominating firms that have solid political support. Markets may be small, the informal sector is important, and the poorest of the poor live outside the market system. In these circumstances, advocacy is often the most useful, or even only, instrument for the competition policy authorities to influence government decisions and educate the public.

(7) Can there be "pro-poor" competition laws and policies?

Delegates agreed that competition is not an end in itself, but a means to an end, namely promoting consumer welfare and, ultimately, raising living standards. Thus there is no inherent conflict between the goals of competition policy and poverty reduction.

In countries where poverty is severe and widespread, the likely impact on the poor can be a factor in deciding which matters competition authorities pursue. Delegates gave several examples:

- The marketing and distribution chains for basic foodstuffs and other basic necessities are often found to be cartelised. Action against those cartels disproportionately helps the poor, so some competition authorities have given a higher priority to prosecuting them than to prosecuting, for example, luxury goods cartels. Delegates also mentioned some other cartels they pursued, in part, due to their harmful effects on the poor, including in markets for agricultural inputs, bread, chicken, tortillas, sugar, road transport and medicines;

- Some competition authorities prioritise strengthening competition in essential goods markets in which demand elasticities are high, rather than those in which demand elasticities are low, as small price declines will allow many poorer people to make purchases;

- Governmental restraints on international trade and ill-designed product market regulations are major causes behind high prices and barriers to entry in developing countries. Frequently, only a small number of firms, and often only domestic firms, are allowed to tender for public procurement contracts. The scope for corruption is substantial, but even when competition authorities have demonstrated the lack of competition, remedial actions have been rare and state officials have not been prosecuted. Corruption discourages foreign and domestic investment and raises the cost of doing business. Bid-rigging can raise the prices paid by governments by 20-30 percent. Nevertheless, publicity and advocacy rather than formal prosecutions may be the most effective actions for some competition authorities;

- Export cartels raise costs and prices in importing countries. Some importing countries may lack the means and powers to attack those cartels. In an effort to contribute to poverty alleviation, competition authorities should raise awareness of the impact of hardcore export cartels on the poor in other countries and advocate against exemptions for such cartels.

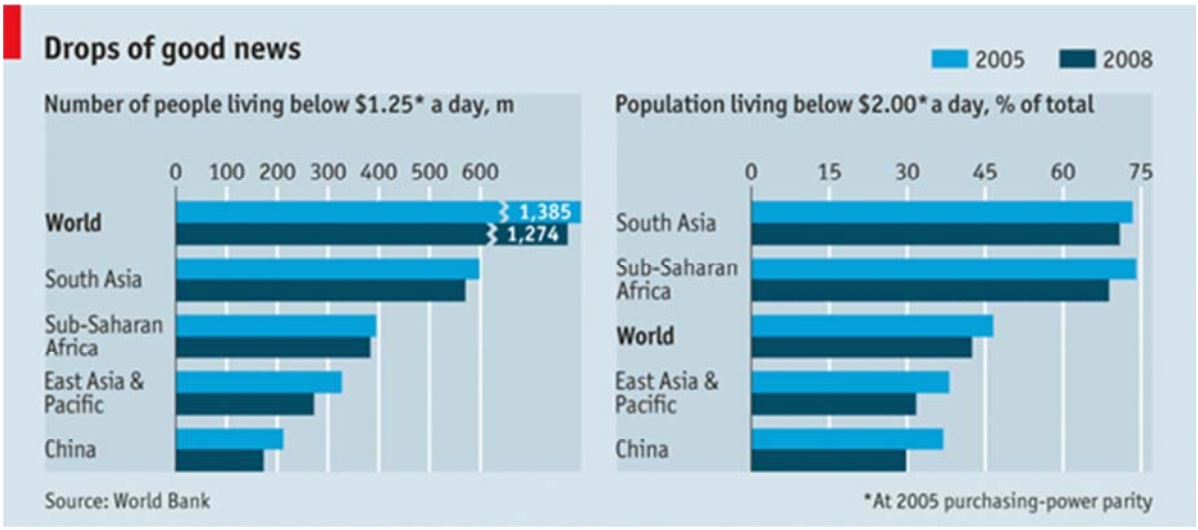
BACKGROUND NOTE

By the Secretariat [*]

1. Introduction

Poverty statistics have been uncharacteristically encouraging in recent years. The number of poor people declined in every major region between 2005 and 2008, according to the World Bank. (See Figure 1, first panel.) It was the first time that happened since the Bank began collecting data in 1981.

Figure 1. Population Living in Absolute Poverty, by Region, 2005 and 2008[1]



Nevertheless, poverty reduction remains one of the most important challenges that governments face. The benchmark of US$1.25 per day identifies extreme poverty. If the benchmark is raised to just US$2.00 per day, then nearly 45 percent of the world's people still live in poverty. (See Figure 1, second panel.) It is no exaggeration to say that "[a]bsolute poverty is a problem of massive dimensions."[2]

Governments are therefore looking in many policy areas, including competition policy, for answers that will help them to make more progress in reducing poverty. To assist in that effort, this session of the OECD's 2013 Global Forum on Competition will explore the impact of competition on the poor. In this paper, we examine competition's effect on the poor as both consumers (the demand side) and as small

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[*] This paper was written by Zsofia Tari and Jeremy West, OECD Competition Division.

[1] These two charts appear in "Global Poverty: A Fall to Cheer," The Economist (3 March 2012), available at www.economist.com/node/21548963.

[2] Gary Fields, "Poverty and Low Earnings in the Developing World," in Philip Jefferson (ed.), Oxford Handbook of the Economics of Poverty 249, 251 (Oxford University Press: 2012).

entrepreneurs or workers (the supply side). In both cases, the primary inquiry is whether competition alleviates poverty or not.

1.1 The Poor as consumers of essential goods and services

A country's poorest people may not always be viewed primarily as consumers, but they necessarily consume things to live. Like everyone else, impoverished people need certain basic goods and services. Those include, for example, foods such as chicken, rice, beans and tortillas; financial services like money transfers and small loans; housing; fuel; and public infrastructure like urban mass transit systems. For the poor, the money spent on such things is a greater – and often far greater – share of their income than it is for wealthier consumers. Therefore, when those essential goods and services cost more than they should, poor consumers suffer disproportionately. For them, higher prices might make essential items altogether unaffordable or might require the sacrifice of another item that is also greatly needed. On the other hand, lower prices for essential items have the potential to relieve poverty by putting previously unaffordable items (or greater quantities of items) within their reach. That is one reason why it is intuitively appealing to look toward competition policy as an agent for poverty reduction.

Higher prices have many possible causes, such as economy-wide inflation or supply failures. But when prices rise because essential goods or services providers merge with their rivals, use anti-competitive conduct to stifle them, or form a price-fixing cartel with them, protecting competition can lead to substantially lower prices. Other factors, such as overly restrictive or biased regulations, may also lead to unnecessarily low levels of competition and artificially high prices. Ironically, some government policies are motivated by pro-poor concerns but wind up doing more harm than good by harming competition. Some possible examples are implementing subsidies and import/export controls and mandating transportation services on infrequently-used routes. Competition authorities can identify such policies and advocate pro-competitive change as well as encourage competition considerations in pro-poor policymaking generally.

1.2 The Poor as small business owners and workers

Another way competition can make a positive difference is by helping the poor to earn more. If markets are open and competitive rather than closed and monopolistic or cartelised, one might intuitively expect there to be more opportunities for small, poor entrepreneurs and labourers. At a broader level, if more competitive markets translate into greater macroeconomic growth, and that growth boosts employment and wages, then competition might have economy-wide effects that help the poor, too.

Alternatively, one could argue that, in some circumstances, competition could take away poor people's opportunities to succeed with small businesses or to find and keep jobs. Intense competition could lead employers to cut jobs or slash wages as part of an effort to become more efficient, for example. Innovations spurred by the pressure of competition sometimes make jobs obsolete. A market that once had room for small, inefficient entrants would tend to become more efficient as competition increases, possibly so much so that poor, start-up entrepreneurs with little capital would no longer have any chance of surviving if they entered. Even established employers sometimes go out of business when they can no longer compete with more efficient rivals, and when they go, jobs go with them – including jobs that were held by poor people.

How can these opposing forces be resolved? Is there evidence that greater competition actually does help entrepreneurs and workers in practice? If it does, are the benefits of competition collected mainly by large companies and wealthy people, or do the poor share in the rewards?

1.3 Other considerations

Regardless of whether we are talking about helping the poor by lowering the prices they pay or by increasing the amounts they can earn, competition's success in alleviating poverty depends not only on the quality of a country's competition law and competition authority, but on several conditions. For example, if corruption and non-transparency are widespread within a government, greater competition may not lead to better results for those below the poverty line. It may also be difficult for a competition authority to intervene. In many countries, laws that could be used to fix competition problems are in place but they are not always adequately enforced. That could be, for instance, because the authority lacks the political power and influence to fight multinational corporations, which are often well connected to other parts of the government. We address those types of issues, as well.

Parts 2 and 3 of the paper set up the rest of the discussion by reviewing various ways to define poverty and by identifying its main causes. In Part 4, we quickly review what economic principles tell us about the likely effects on poverty of competition in essential goods and services markets. Then we explore some examples of how competition has actually affected poor consumers in real life. Part 5 focuses on competition's theoretical and practical effects on the poor as entrepreneurs and wage earners/job seekers. Part 6 examines whether interventionist measures like price controls, import barriers, and subsidies might be better for the poor than competition. Part 7 addresses the issue of competition's potentially mixed effects on poverty, given that both buyers and sellers are impoverished in some markets. Finally, Part 8 suggests some things that competition authorities can do to help reduce poverty.

2. Definitions of poverty

While there is widespread agreement on the desirability of poverty reduction, defining poverty is more controversial. There is no objectively correct definition of poverty and most commentators accept that any definition must be understood in relation to specific political, economic or social contexts.[3] For example, although poverty is a problem for both developing and developed countries, the official poverty line is usually higher in developed counties.

An article that appeared in *The Economist* in 2005 illustrates this point. The article compared the lives of an unemployed truck driver in the coal mining industry of the US's Appalachia region and a doctor in the Democratic Republic of Congo. At US$521 and US$250-$600 per month, respectively, the incomes of the two men were roughly similar, but the American truck driver was considered desperately poor while the Congolese doctor was deemed to be very well-off. In the US, the median annual income in 2004 was $44,389. More often than not, even "impoverished" American families had at least one television in their home, their children usually attended school, and they typically did not have to grow their own food to survive. In contrast, the average annual income in Congo was US$673 and even basic utilities such as running water and electricity were rare.[4]

Poverty can be defined by using three different concepts: income, basic needs and capability. Of these, the most commonly used concept is income, according to which a person is poor if her income is below a certain amount. The basic needs concept considers the material requirements for a minimally fulfilling life. These are normally understood to include factors such as basic health care and education. The capability perspective concentrates on basic needs such as adequate nutrition, clothing, and shelter, but also considers social aspects such as partaking in the life of a community.

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3 Ruth Lister, Poverty (Key Concepts), Polity Press (2004), Chapter 1.

4 "The Mountain Man and the Surgeon: Reflections on Relative Poverty in North America and Africa," The Economist (20 December, 2005). Available at: www.economist.com/node/5323888.

For each of the above concepts there are two measurement methods: drawing an absolute poverty line or choosing a relative poverty threshold. Developing countries, where poverty tends to be a more widespread problem, usually use absolute poverty lines, whereas developed countries often prefer relative poverty measurements tailored to their inhabitants and their particular society's standards.[5]

2.1 Absolute poverty lines

An absolute poverty line is a level below which the minimum requirements for an adequate life are not being met. Absolute poverty lines are typically defined by either a state or an international organisation. For example, in 1990 the World Bank defined poverty as the inability to attain a minimum standard of living and established an international poverty line at US$1 per day to help track the global incidence of extreme poverty.[6] The $1 per day standard was widely adopted.

To set that poverty line, the World Bank examined national poverty lines in low-income countries. The poverty lines were converted to a common currency to make it easier to compare them. The Bank used purchasing-power parity (PPP) exchange rates to take into account the variations in purchasing power of different currencies in domestic markets. Poverty lines varied between $275 and $360 per year in PPP terms, using 1985 commodities prices. Because these values are close to $1 per day, that benchmark prevailed as a popular poverty line.[7] The advantage of using an absolute line and the PPP concept for defining poverty is that any two people with the same purchasing power over commodities are treated the same way, even if they live in different countries.[8]

The $1 per day definition has drawn criticism for not reflecting the real cost of meeting basic requirements for a human being. However, almost one fifth of the total population in developing countries still lives below even that line.

2.2 Relative poverty thresholds

Relative poverty thresholds are based on comparisons to a median or average, and they tend to be used by the developed countries. Typically, relative poverty thresholds are set at 40-60 percent of the national median income. Relative poverty thresholds vary by country and they also change over time. The thresholds rise when the country becomes richer and fall when it becomes poorer. Unlike absolute lines, "relative lines do not claim to represent physiological minima and are instead (typically) set at a constant proportion of current mean income or consumption."[9] Because relative thresholds are always based on the population's median or mean, poverty can never be eliminated under this definition (unless the distribution is fairly uniform).

Sociologist Peter Townsend uses a more subjective definition of relative poverty:

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5 Martin Ravallion, "Poverty Lines across the World," World Bank Policy Research Working Paper 5284 (2010), p. 3.

6 World Bank, World Development Report on Poverty (1990), p. 26. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/12/13/000178830_98101903345649/Rendered/PDF/multi_page.pdf.

7 The figure was revised in 2008 to $1.25 per day at 2005 PPP. Martin Ravallion, Shaohua Chen & Prem Sangraula, "Dollar a Day Revisited", World Bank Policy Research Working Paper 4620 (2008).

8 Martin Ravallion & Shaohua Chen, "Weakly Relative Poverty", World Bank Policy Research Paper 4844 (2009), p. 3.

9 Ravallion, supra n.5 at 3.

> *Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the type of diet, participate in the activities and have the living conditions and the amenities which are customary, or at least widely encouraged or approved in the societies to which they belong. Their resources are so seriously below those commanded by the average family that they are in effect excluded from the ordinary living patterns, customs, and activities.*[10]

The European Commission's definition, adopted in 1975, is very similar to Townsend's, but the social participation dimension is not explicitly mentioned: "The poor shall be taken to mean persons, families and groups of persons whose resources (material, cultural and social) are so limited to exclude them from the minimum acceptable way of life in the Member State in which they live."[11]

2.3 The holistic approach

Some approaches integrate the absolute and relative methods without setting an exact threshold. Most of the international organisations that have a part in alleviating poverty publish a general definition or explanation of poverty. These are usually holistic definitions that consider not only food scarcity but social and psychological aspects of poverty, as well.

The OECD does not endorse a specific definition of poverty, but in its Poverty Reduction Guidelines the Organisation's Development Assistance Committee summarises poverty as follows:

> *The concept of poverty includes different dimensions of deprivation. In general, it is the inability of people to meet economic, social and other standards of well-being. The multidimensionality of poverty is now widely accepted. It is based solidly on research that includes major participatory studies of what poor people mean by poverty. It covers measures of absolute poverty such as child and infant mortality rates, and relative poverty, as defined by the differing standards of each society.*[12]

According to the World Bank, "[p]overty is pronounced deprivation in wellbeing. . . . To be poor is to be hungry, to lack shelter and clothing, to be sick and not cared for, to be illiterate and not schooled. . . Poor people are particularly vulnerable to adverse events outside their control."[13] "The main focus is on whether households or individuals have enough resources to meet their needs. . . . Do they have enough food? Or shelter? Or health care? Or education?"[14]

The United Nations (UN) Economic and Social Council has a similar definition that emphasises an inability to participate in a society:

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10 Peter Townsend, Poverty in the United Kingdom, University of California Press (1979).

11 This definition of poverty was elaborated by the European Commission during its first Anti-poverty Programme (1975-1980). It may be found in the Joint Report by the Commission and the Council on Social Inclusion. Available at: http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf at p. 8.

12 OECD, Poverty Reduction, Development Assistance Committee Guidelines (2001), p. 37. Available at: http://publications.oecd.org/acrobatebook/4301091e.pdf.

13 World Bank, World Development Report 2000/2001: Attacking Poverty, p. 15. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/09/18/000094946_01083004025527/Rendered/PDF/multi0page.pdf.

14 Jonathan Haughton & Shahidu Khandker, Handbook on Poverty and Inequality, World Bank (2009), p. 2. Available at: http://issuu.com/world.bank.publications/docs/9780821376133.

> *[P]overty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to, not having the land on which to grow one's food or a job to earn one's living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living in marginal or fragile environments, without access to clean water or sanitation.*[15]

Nobel Prize-winning economist Amartya Sen used the holistic approach when defining poverty in his book *Development as Freedom*. Economic poverty, he says, deprives people of the freedom to satisfy hunger, obtain sufficient nutrition, remedy treatable illnesses, dress with dignity, live in acceptable housing, or have access to clean water and sanitation.[16] The holistic approach is also reflected in some comments made by Andrew Mitchell, UK Secretary of State for International Development, in 2011. Discussing the progress that has been made in reducing poverty around the world, Mitchell refers not only to growth in per capita incomes but to non-monetary factors such as increased life expectancies and higher enrolment rates in secondary schools.[17]

2.4 The Human Poverty and Multidimensional Poverty Indices

The Human Poverty Index (HPI) was developed by the UN to indicate the standard of living in a country. According to the UN, poverty means that the opportunities and choices that are most basic to human development are denied, so the HPI focuses on the deprivation of three basic elements of human life: longevity, knowledge and a decent living standard.[18] Because poverty can have very different meanings in developed and developing countries, there are two different ways to calculate this index.

The index for developing countries takes into consideration the probability at birth of not surviving to the age of 40, the adult illiteracy rate, the fraction of the population without sustainable access to a decent water source, and the percentage of undernourished children. The index for developed countries sets the life expectancy at age 60 and considers the proportion of adults lacking functional literacy skills and the population below the income poverty line (50 percent of the median household's income) as well as the long term (12 months or more) unemployment rate.

The UN replaced the HPI with a Multidimensional Poverty Index (MPI) in 2010. The three basic elements remain the same, but the MPI also uses ten indicators of critical "deprivations", such as education, health, sanitation, assets and services (electricity, drinking water). Taken together, these indicators provide a fuller portrait of acute poverty than either simple income measures or the HPI. A household is identified as multidimensionally poor if it is deprived in some combination of indicator categories whose weighted sum exceeds 30 percent of all the types of deprivations that are tracked.[19]

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15 United Nations Statement, June 1998 (this definition of poverty is also available at: http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf).

16 Amartya Sen, Development as Freedom (Alfred A. Knopf: 1999).

17 Department for International Development (UK), "The Engine of Development: The Private Sector and Prosperity for Poor People" 4 (2011).

18 United Nations Statement, June 1998 (this definition of poverty is also available at: www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf).

19 Sabina Alkire & Maria Emma Santos, Oxford Poverty and Human Development Initiative Multidimensional Poverty Index (July 2010). Available at: www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf

2.5 An alternative approach to measuring poverty

As we have seen, poverty can be defined in multiple ways, but a good definition should also correspond well with the population's conception of poverty. A newer term, the "social subjective poverty line"[20], acknowledges that there is an income above which people tend to think they are not poor anymore and below which they usually think they are poor.

Poor people sometimes believe that they cannot escape from poverty because of factors beyond their control that contribute to a lack of opportunities. Whether to have impoverished parents or not, for example, is obviously not a choice that a child can make, but if a child does have parents who are poor, that circumstance will certainly have an effect on the child's opportunities. Recognising that fact, the World Bank developed an alternative index to measure how external factors affect one's opportunities for having an acceptable life. The Human Opportunity Index (HOI)[21] considers how personal circumstances (birthplace, wealth, race or gender) affect a child's probability of access to basic goods and services. The HOI indicates how many opportunities (e.g. overall access to primary education, clean water, etc.) are available in a given country or region, and how equitably those opportunities are distributed between rich and poor people. With the numeric representation of differences in opportunities, it becomes possible to measure a society's progress in moving toward universal access.

3. Why poverty persists

Determining why poverty is an ongoing problem is challenging because, among other reasons, perceptions of poverty tend to be different in rich countries from what they are in poor ones. While in some developed countries poverty is mostly viewed as a social problem, in developing countries it is often viewed as an economic one. Andre Béteille describes the complexity this way:

> *It is undeniable that economic stagnation and backwardness make the removal of poverty very difficult, and this is particularly true when economic stagnation is accompanied by high population growth. But poverty, including absolute poverty, persists even in countries that are economically advanced and have little population growth, and this has led sociologists to be skeptical about the assumption of a simple relationship between poverty, inequality and economic backwardness.*[22]

It might seem intuitive that stagnant or low economic growth rates contribute to poverty, and that economic growth therefore must be an engine for lifting people out of poverty. It certainly may be, as China's recent record shows. But a high GDP growth rate, especially in the short run, might also be accompanied by an increase in poverty rather than a decrease. Income distribution is just as relevant to poverty as economic growth is.

Among the root causes of poverty, some can be changed and some cannot. Immutable factors include a country's geography and history, for example. Those things cannot be undone by government policies.

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20 Martin Ravallion, Shaohua Chen and Prem Sangraula, "Dollar a Day Revisited," World Bank Policy Research Working Paper 4620, 2008, p.4.

21 José Molinas, Ricardo Paes de Barros, Jaime Saavedra & Marcelo Giugale, "Do our Children Have a Chance? The 2010 Human Opportunity Report for Latin America and the Caribbean," The International Bank for Reconstruction and Development/The World Bank. Available at: http://siteresources.worldbank.org/INTLACREGTOPPOVANA/Resources/840442-1260809819258/6645553-1273515611898/Livro2010_final1.pdf.

22 Andre Béteille, "Poverty and Inequality," 38 Economic and Political Weekly 4457 (2003), available at www.jstor.org/stable/pdfplus/4414161.pdf

Factors that are at least partially remediable – and are therefore more interesting from a policy standpoint – include overpopulation, skewed resource and income distributions, inadequate educational and employment opportunities, and environmental degradation.

The remediable causes of poverty can be further divided into general-economic, political/governance and psychological factors. These groupings are just an organisational convenience. As the cursory review below shows, the factors are highly interactive rather than neatly separated.

3.1 General-economic causes of poverty

3.1.1 Malnutrition

Poverty is almost synonymous with hunger. In the UN's first Millennium Development Goal, being poor was essentially defined as not having enough to eat.[23] But hunger is not the same as malnutrition. A malnourished person does not experience only discomfort, but an impairment in physical and mental abilities, either due to illness or fatigue.[24]

The human body needs a certain number of calories to survive. When someone is very poor, the food they can afford may be barely enough to allow them to go through the motions of living and perhaps earn the meagre income that is used to buy that food. If people earn more, they can buy more food, build strength and work more. This simple biological fact can be depicted in an S-shaped curve representing the relationship between income today and income tomorrow. The very poor earn less than they need to be able to do significant work. That creates a poverty trap: the poor stay poor while others get richer, eat better, become stronger, and then find better paid jobs, so the income gap keeps increasing.[25]

3.1.2 Inadequate education

Illiteracy and poor education are widespread among the world's poor people. While almost all children have access to a primary level education due to recent global programs, 68 million children still do not attend elementary school.[26] Some say that the main reason behind that number is that some children have to work to sustain their families and some parents see little reason for them to go to school when the employment opportunities are very limited anyway. That attitude is more common in rural areas. Yet Banerjee and Duflo report that the cause of absenteeism among poor schoolchildren does not seem to be driven by an obvious need at home, but rather by bad health or a simple unwillingness to be in school coupled with a lack of parental pressure to go.[27]

Another problem is that some countries cannot afford to provide good schools, so even though an education is available it is not always a very good one.[28] In developing and developed countries alike, meanwhile, people who cannot afford a college education may increasingly find themselves to be

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23 See United Nations, Millennium Development Goals, available at www.un.org/millenniumgoals/.

24 Partha Dasgupta & Debraj Ray, "Inequality as a Determinant of Malnutrition and Unemployment: Theory," 96 Economic Journal 1011, 1013 (1986).

25 Abhijit Banerjee & Esther Duflo, Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty 19, 21-22 (PublicAffairs: 2011).

26 United Nations, The Development Goals Report 2010, New York (2010) p. 17.

27 Banerjee & Duflo, supra n.25 at 71-74.

28 Id. at 73-74.

economically disadvantaged, particularly as employment opportunities in many economies continue to shift from being labour-intensive to knowledge-intensive.

Not everyone believes that improving formal education will necessarily reduce poverty. William Lewis, for example, has argued that while formal education may be necessary for social, political and philosophical development, workforces can be trained on the job to work at higher productivity levels. He pointed out that even though South Korea made a massive investment in public education, its workers achieved only 35 percent of the United States' level of labour productivity.[29]

That, however, was in 2004. By 2011, South Korean labour productivity had grown to nearly 50 percent of the US level, meaning that labour productivity in South Korea grew faster than it did in the United States.[30] While education may not have had anything to do with that, it might be the case that returns on an investment in education just take a while to show up.

3.1.3 Unemployment

The lack of employment opportunities has an obvious influence on poverty. "Historically, the link between unemployment and poverty is unmistakable."[31] Unemployment rates are currently high (varying between 5 and 20 percent) in developed countries.[32] The situation is generally worse in developing countries (10 to 95 percent, but accurate data are often unavailable).[33] In countries with large populations, a few percentage points of unemployment represent millions of people without jobs.

Of course, finding work does not automatically mean that a person's financial situation will become adequate. Wages may be so low that people remain poor even when they are employed. In fact, there are more than six times as many working poor people in the world as there are unemployed poor people. That fact led Fields to observe that "[w]hat the developing countries have is an employment problem – that is poverty among those who work – rather than an unemployment problem."[34]

3.1.4 Environmental degradation

The exploitation and deterioration of the environment (including bodies of water, forests, air and soil) can lead directly to poverty. The overpopulation and overuse of lands may cause shortages of food, clean water and building materials for shelters. In many developing countries a considerable percentage of the people subsist on agriculture, so they are dependent on lands and forests for their survival. Deforestation and the overuse of lands narrow the possibility for those people to feed themselves properly. Air and water pollution also contribute to health problems, which can limit a person's ability to work and earn an income.

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29 William Lewis, The Power of Productivity: Wealth, Poverty and the Threat to Global Stability 243-46 (University of Chicago Press: 2004).

30 OECD StatExtracts, available at http://stats.oecd.org/Index.aspx?DatasetCode=LEVEL.

31 Christopher Johnson & Patrick Mason, "Theories of Poverty: Traditional Explanations and New Directions," in Philip Jefferson (ed.), Oxford Handbook of the Economics of Poverty 111 (Oxford University Press: 2012).

32 United Nations, World Economic Situation and Prospects 2012 – Global Economic Outlook, New York, 2011, p. 9.

33 US Central Intelligence Agency: The World Factbook, available at https://www.cia.gov/library/publications/the-world-factbook/fields/2129.html.

34 Fields, supra n.2 at 253.

3.1.5 Economic trends

Inflation and certain changes in labour markets also contribute to deepening poverty. High inflation is a particularly punishing tax on the real incomes and savings of the poor.[35] They tend not to use savings accounts, which (should) pay interest that rises with inflation, while the interest rates they pay to borrow money will surely climb. Very poor people already have to pay relatively high interest rates because regular commercial banks do not usually lend to them. So in the end they are likely to lose more than they gain by borrowing when inflation increases. Debt overhang (a condition in which a business, government, or family has so much debt that it cannot easily borrow more, even though new loans might be good investments that would more than pay for themselves) is another factor that causes and prolongs poverty.

Even when a family is not heavily indebted, economic trends can push them into poverty. For example, older workers who have held labour-intensive jobs most of their lives in developed countries are often jeopardised when manufacturing processes are outsourced to developing countries where the labour force is cheaper. While that shift can help to lift people in the developing countries out of poverty, when the older people who lost their jobs in the developed countries cannot be retrained, they may become unemployed and poor.

3.1.6 Single parenting

Single-parent families, usually women with children, tend to have a harder time escaping poverty than traditional families do. When both parents live with the children, the adults can allocate and share childcare and work duties. In contrast, poor single parents have to do everything themselves unless another relative is available to help, and they have no spouse to rely upon if they become unemployed. Illustrating the greater susceptibility of single parent families to poverty, the (absolute) poverty rate for mother-only families in the US was 43 percent in 2010, whereas the rate for two-parent families with children was 13 percent.[36]

Some developed countries have had a substantial decrease in the percentage of two-parent households during the past few decades. From 1970 to 2008, divorce rates increased in most OECD countries.[37] In the US, for example, about 87 percent of children lived with both of their parents in 1970. By 2000, only 69 percent did. Part of the reason for that decline was an increase in the divorce rate, which more than doubled between 1960 and 1980. The rate levelled off in the 1980s and fell a bit in the 1990s, but in the meantime, the proportion of children born to unmarried parents had grown from five percent in the early 1960s to more than 33 percent in 2000.[38]

Across all OECD countries, 9.1 percent of households are single-parent households, out of which almost 85 percent are mothers with children.[39] Single-parent households are three times more likely to be

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35 OECD: The DAC Guidelines: Poverty Reduction (2001), p. 43

36 Christopher Johnson & Patrick Mason, "Theories of Poverty: Traditional Explanations and New Directions," in The Oxford Handbook of The Economics of Poverty 105, 117 (Philip Jefferson, ed.) (Oxford University Press: 2012).

37 OECD Family Database: SF3.1: Marriage and Divorce Rates, available at: www.oecd.org/els/familiesandchildren/SF3.1%20Marriage%20and%20divorce%20rate%20-%20updated%20240212.pdf.

38 Morley Glicken, Social Work in the 21st Century: An Introduction to Social Welfare, Social Issues and the Profession (SAGE Publications: 2011) 114.

39 OECD Family Database: SF1.1: Family size and household composition, available at: www.oecd.org/els/familiesandchildren/41919509.pdf.

poor. The mean poverty rate in single parent families was 31 percent, compared with nine percent in two-parent families, in the mid-2000s in all OECD countries.[40]

3.1.7 Sickness and disease

HIV/AIDS and other disease epidemics not only cause poverty but spread it, generating a far-reaching vicious circle. Even in the case of less serious illnesses, if a poor family has to borrow money for medicine or just for ordinary living supplies while a father or a mother is unable to work, the extra expenses and interruption to the flow of income can leave the family with no way to climb out of debt. Making matters worse, poor countries and people often lack the financial resources for preventative measures such as vaccinations, antiseptics, and educational programmes.

3.2 Political/Governance aspects

Factors like corruption, rent-seeking elites, and a lack of respect for human rights also contribute to creating and perpetuating poverty. Weak institutions, laws, and courts, inefficient bureaucracies, a lack of social cohesion and insufficient political will to undertake reforms are all common features of bad governance and are inimical to sustainable development and poverty reduction. Moreover, political instability and unreliable institutions not only deter foreign investment but encumber national entrepreneurs who could be the basis for developing small and medium size enterprises.

Political violence from guerrilla groups can also contribute to poverty. In areas where such groups are serious threats, the steady risk of sudden expropriation reduces investment incentives and can force people into low productivity occupations, and thus into poverty. Political violence can also lead to huge displacements in which people are forced to abandon their land and jobs in order to escape from dangerous conditions. Rural people may wind up in cities, where their skills and educations may not match the demand for labour, so they have difficulty earning a living.[41] When political violence has flared in Colombia, for example, the vast majority of displaced people have suffered from poverty.[42]

Former World Bank President Paul Wolfowitz recently wrote that "[a]round the world, countries that are governed well, such as Brazil and Ghana, are making progress against poverty. Countries that are governed poorly are not reducing poverty [.]"[43] Good governance, in the opinion of Wolfowitz and his co-authors, includes establishing written constitutions and laws, having free elections and universal voting rights, guaranteeing the right to free speech and association, protecting the judiciary's independence, and holding public officials accountable for their actions. The authors also note that democratic societies have typically been better at reducing poverty than politically closed societies. Part of the reason is that when

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40 All of the poverty rates in single-parent families in the OECD countries can be found in the OECD Factbook 2009, available at: www.oecd-ilibrary.org/docserver/download/3009011ec101.pdf?expires=1360225789&id=id&accname=guest&checksum=8B3638DC0C55FF5CD1FC5BC69BF6D8B3.

41 Ana María Ibáñez & Andrés Moya, "Vulnerability of Victims of Civil Conflicts: Empirical Evidence for the Displaced Population in Colombia," 38 World Development 647 (2009); Ana María Ibáñez & Andrés Moya, "Do Conflicts Create Poverty Traps? Asset Losses and Recovery for Displaced Households in Colombia" in The Economics of Crime (Rafael Di Tella, Sebastián Edwards & Ernesto Schargrodsky, eds.) (University of Chicago Press: 2009).

42 Manuel Fernandez, Ana María Ibáñez & Ximena Peña, "Adjusting the Labor Supply to Mitigate Violent Shocks : Evidence from Rural Colombia," World Bank Working Paper Series No. 5684 (2011).

43 Mark Palmer, Patrick Glen & Paul Wolfowitz, "How About Some World Governance Goals?" Wall Street Journal (1 April 2012), available at http://online.wsj.com/article/SB10001424052702303816504577312104045133344.html.

too much political power is held by too few people, a sense tends to develop among citizens that the economic game has been rigged to benefit the society's elite class: "Where political power is concentrated, economic power tends to be concentrated as well, with the result that the enterprise and initiative that are essential for economic growth and job creation are stifled."[44]

In a new book, two professors place the blame for poverty squarely on political institutions. A lack of natural resources, a poor climate, a particular culture -- none of those factors are valid excuses for poverty, according to Acemoglu and Robinson. Until a country's political institutions are fixed, they assert, it cannot develop because economic institutions depend on political ones. The most common reason nations fail today is because they have extractive institutions -- which cement the power of those who benefit from the extraction -- instead of inclusive ones. [45]

> *Extractive political institutions concentrate the power in the hands of a narrow elite and place few constraints on the exercise of this power[46] , [while] inclusive political institutions […] are those that allow and encourage participation by the great mass of people in economic activities that make the best use of their talents and skills and that enable individuals to make the choices they wish.[47]*

Through the analysis of the histories of both empires and countries, Acemoglu and Robinson conclude that development and prosperity can come about only when people know that if they work hard they will make money and get to keep it.

For development and prosperity, strong political institutions that share power – like the institutions of democracy – are crucial. They enable entrepreneurs to start businesses and to make long term strategic plans for how to grow and be productive so as to earn even more profit. Acemoglu's and Robinson's analysis shows, incidentally, that more productive countries have lower unemployment rates, which result in lower poverty rates.

Inclusive institutions also enable innovation, which is crucial to growth and poverty reduction. Innovation should not be held back because of special interests or protectionism, the authors argue. Historically, economies that supported the mechanisation of sectors like agriculture and manufacture prospered faster than those that mechanised more slowly due to concerns about the unemployment caused by industrialisation. Short term unemployment, though it can cause serious hardship, is therefore a sacrifice worth making. Economic growth and technical change are always accompanied by creative destruction. New technologies make existing skills and machines obsolete and this process obviously creates economic as well as political losers and winners on the market for a while.[48] Often, however, the political elite stand in the way of development because they want to protect their power and incomes. That is why Acemoglu and Robinson conclude that egalitarian countries grow faster than elitist ones.

We take a closer look at the ways in which biased and misguided governance can contribute to poverty (partly by preventing competition from helping) throughout Parts 4.2.5, 5, and 6.

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44 Id.

45 Daron Acemoglu & James A. Robinson, 'Why Nations Fail: The Origins of Power, Prosperity and Poverty, Profile Books Ltd, London (2012) p. 369.

46 Id. at 81.

47 Id. at 75.

48 Id. at 83-87.

3.3 Psychological aspects – A Culture of poverty

The idea of a culture of poverty is a theory about a psychological poverty trap. The theory holds that people who grow up in a poor family are socialised as poor people and that they do not view long term planning or saving money as realistic ways to escape poverty. Oscar Lewis describes them as being disconnected from the rest of society:

> *The people in the culture of poverty have a strong feeling of marginality, of helplessness, of dependency, of not belonging. They are like aliens in their own country, convinced that the existing institutions do not serve their interests and needs. Along with this feeling of powerlessness is a widespread feeling of inferiority, of personal unworthiness…. Usually, they have neither the knowledge, the vision nor the ideology to see the similarities between their problems and those of others like themselves elsewhere in the world. In other words, they are not class conscious, although they are very sensitive indeed to status distinctions. When the poor become class conscious or members of trade union organizations, or when they adopt an internationalist outlook on the world they are, in my view, no longer part of the culture of poverty although they may still be desperately poor.*[49]

Poverty has many different roots, and even if governments could eliminate all of the others they would still have to conquer the psychology of poverty, convincing poor people that it is worthwhile to save and spend the savings wisely.

4. Competition's Effect on Poor Consumers of Essential Items, in Theory and in Practice



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[49] Oscar Lewis, "The Culture of Poverty," 35 Society 7, 7-9 (1998).

4.1 Theoretical effects

From a standard microeconomic theory perspective, the effect of competition on poor consumers is straightforward: competition drives markets toward the equilibrium of supply and demand, eliminates inefficiency, and eventually results in prices that are equal to the most efficient firms' marginal cost. If a market is less than perfectly competitive to begin with, then greater competition should bring about lower prices, higher output, better quality, and possibly more innovation. These results are generally to be expected in all markets, not just essential goods and services markets, and they benefit all consumers, including impoverished ones.

For example, if a rice cartel is dismantled by a competition authority's intervention, we would expect poor consumers to benefit from lower prices and higher quantities in the rice market because the cartel members are no longer coordinating with each other to restrict their output and keep prices artificially high. Similarly, if a proposed 3 to 2 or 2 to 1 merger between two mobile phone service providers is blocked, we would probably expect the prices of mobile phone calls and text messages to remain lower than they would have been had the merger been permitted, because the two firms involved will have to continue competing. In the longer run, the competition that was preserved may also lead to more productivity growth – and thus relatively lower prices – as the firms vie with one another by innovating to cut costs and raise quality/service.

The poor can also benefit indirectly from greater competition. Suppose that a country has an anti-poverty programme in place, but that its procurement operations are generally plagued by bid-rigging. The contractors would be siphoning off money that would otherwise be used to fund the programme. The artificially high premiums charged by the big-riggers might mean, for example, that a supplemental nutrition program for poor children has to be cancelled due to lack of funds, or that only two new job training centres can be built instead of three. Ending the collusion and making the contractors compete again would lower costs, putting the savings back into the government's budget.

Of course, a government programme does not necessarily have to be aimed specifically at fighting poverty for it to do so. For example, good roads can help people in many different socioeconomic groups, including rural farmers who need to receive farming implements and transport their crops to market. When bidding for road construction is rigged, though, fewer roads get built and repaired. Keeping the bidding process competitive will be very beneficial for the farmers, along with everyone else who relies on the roads.

Moreover, competition can have a kind of cleansing effect that eliminates the harm caused by corrupt and inefficient practices like nepotism and other forms of meritless favouritism. Businesses facing competitive constraints are less able to afford the habit of filling well-paid positions with poorly qualified relatives of executive officers or well-connected customers. Likewise, under competition, successful companies are those with the best products and prices, not those paying the biggest bribes or managed by people from favoured ethnic groups, etc.

A special case arises when competition problems exist at multiple levels in the chain of production. Suppose, for example, that in a particular country there are two wheat processors, who are protected from import competition by trade barriers and who allegedly collude by fixing the price at which they sell wheat flour to food manufacturers. Those manufacturers, in turn, sell to two large supermarket chains that share a duopoly. Suppose further that the two supermarket chains allegedly fix the price of wheat bread they sell to consumers. The national competition authority receives complaints about both price fixing arrangements, but it does not have the resources to pursue both matters simultaneously. Assuming that the authority's objective is to achieve the best result for consumers, which case should be pursued first? Does it matter?

Some might argue that the authority should go after the supermarkets first because the retail bread market is logistically closer to consumers than the wholesale flour market. In particular, one hypothesis could be that because pass-through rates of supra-competitive pricing are less than 100 percent, a price reduction upstream can be expected to result in less benefit for consumers than a price reduction downstream. But does "closeness" to the consumer market really matter? In other words, if the competition authority succeeds in proving its price fixing case and the supermarkets no longer collude, will consumers see a greater reduction in the price of bread than they would have if the authority had successfully prosecuted the wheat processors for collusion instead?

Which case will yield the most savings for consumers on the price of wheat bread depends mainly on which stage in the chain of production has the bigger supra-competitive price mark-up and which case is easier to prove. The mark-ups depend on the elasticities of the cost and demand curves faced by the cartelists in their respective markets. There is simply no way to know in advance, as a matter of pure theory, which intervention by the competition authority will yield the biggest payoff for consumers. If the supra-competitive mark-ups in the flour and bread markets happened to be identical, and if both cartel cases really were equally easy to prove, then a retail market intervention would probably yield a larger benefit for consumers. Otherwise, that would not necessarily be true.[50]

What is clear is that when there are competition problems at multiple stages in the chain of production, solving only one of them is unlikely to bring retail prices down to the competitive level. That may present a thorny public relations problem for competition authorities, especially in small or developing nations where essential goods frequently do have chains of production that are rife with multi-stage market power and/or anti-competitive conduct. Under these circumstances, consumers may not see a meaningful difference in prices until the competition problems at most or all of the levels are fixed. But the competition authority may be able to address only one problem at a time. That can create a frustrating, no-win situation for the authority. Either it loses its first case, which is an obvious public relations blow. Or it wins its first case but consumers do not see a significant difference in retail prices because competition problems remain at other levels of the production chain. So from the consumers' perspective – and possibly from the average Minister's perspective – the authority failed to make a difference.

The best approach that authorities can take in such situations is to base their decision about which stage of production to pursue first on a) where the highest supra-competitive price mark-up is occurring; b) which case is easiest to prove; and c) whether the authority would be able to solve competition problems in several product or geographic markets at once by intervening against certain firms, e.g. if the colluding firms at one particular link in the chain of production are also colluding in other markets, whereas the colluding firms at another link in the chain are not.

If we put theory aside, though, what is known about the actual effects that competition has had on poor consumers? We examine that question in the following section.

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[50] Another way to put the argument in favour of prioritising downstream interventions would be to contend that all the gains of an upstream intervention would be swallowed by the downstream cartel, so upstream actions are futile until the downstream problem is solved. But that would not be correct, either, because as marginal costs to retailers fall, their prices will also fall to some degree, regardless of the market structure. Then again, not *all* of the gains from an upstream intervention will get passed through, so it is possible that even if the mark-ups are bigger upstream than downstream, a downstream intervention might yield bigger benefits for consumers, all else being equal. However, in reality, all else will not be equal, and the answer to the question of which market to address first will depend mainly on which market has the highest mark-up and which case is easiest to prove.

4.2 Actual effects

4.2.1 Competition problems affect consumers in both developing and developed countries

One way to establish that competition has actually helped poor consumers is to show that a lack of competition has harmed them. The competition community tends to accept as fundamental truths the ideas that wherever there are markets there is always a possibility that competition problems will occur, that such problems can indeed be found in virtually all market economies, and that they cause substantial harm to consumers. At times, however, officials from other policy domains and backgrounds, particularly in developing countries, have expressed scepticism about whether those ideas really hold true in their jurisdictions.[51]

To help change that attitude, Simon Evenett, Julian Clark and Frédéric Jenny amassed databases of actual and alleged anti-competitive conduct in developing countries around the world.[52] Their information shows not only that there is plenty of anti-competitive conduct in the developing world, but that much of it affects markets for essential goods and services. For instance, Peruvian poultry farms and their trade association have conspired to block entry and eliminate competitors. Likewise, 11 Peruvian wheat flour producers and their trade association formed a cartel to end a price war. Zambian poultry firms have demanded that their biggest customer stay out of the production market – and the customer complied.[53] Cartels and boycotting agreements have been discovered and prosecuted in the baking, milling, sugar and milk industries in developing countries. Anti-competitive practices are endemic in public transportation markets such as bus and taxi services, on which many poor consumers depend. The cement industry, on which so much public infrastructure – including public housing – relies, is riddled with cartels and abuse of dominant positions.[54] These problems are not specific to a small group of countries but rather are widespread throughout the developing world. (In fact, a closely related sector, construction, is perennially one of the most cartel-infested industries across the developed world, as well.[55])

Years ago, the World Bank compiled a list of cartel prosecutions in developing countries. The cartels involved several kinds of essential goods and services, such as phone cards in Bulgaria, milk products in Estonia, citrus fruits in South Africa, and wheat in Chinese Taipei.[56]

At a more detailed level, OECD peer reviews of developing countries reveal numerous instances of anti-competitive conduct in essential goods and services markets. In Argentina, for example, six cement

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51 See Frederic Jenny, "Cartels and Collusion in Developing Countries: Lessons from Empirical Evidence," 29 World Competition 109, 109 (2006) (describing how competition issues were dropped from the Doha round of WTO discussions in part because a number of government officials believed that domestic anti-competitive practices were not prevalent in their counties, or that they did not impose a large cost on their economies).

52 Id.; see also Eleanor Fox, "Economic Development, Poverty and Antitrust: The Other Path," 13 Southwestern Journal of Law and Trade Policy in the Americas 211, 224 (2007) (reviewing Jenny's and Evenett's work).

53 This case is discussed in more detail in Part 5.2.2.2.

54 Jenny, supra n. 51; see also Eleanor Fox, "Economic Development, Poverty and Antitrust: The Other Path," 13 Southwestern Journal of Law and Trade Policy in the Americas 211, 224 (2007) (reviewing Jenny's and Evenett's work).

55 OECD, Competition in the Construction Industry, DAF/COMP(2008)36. Available at www.oecd.org/daf/competition/liberalisationandcompetitioninterventioninregulatedsectors/41765075.pdf .

56 World Bank, Global Economic Prospects and the Developing Countries, p. 101 (2003), available at http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf

companies were alleged to have engaged in a nationwide market allocation scheme for a period of almost 20 years. A 1999 news article describing cartel activity in the sector sparked an investigation, which ultimately generated enough evidence to prove the conduct. The agreement was coordinated by the cement manufacturers' business association. Its members exchanged detailed, company-specific, and current information on production, shipments and sales. Five of the six producers were fined a total of US$106 million.[57]

In 2008, the competition authority in Honduras opened an investigation of the cement market to determine whether an agreement existed between the country's two cement producers to fix prices and share markets. The authority determined that the firms had colluded, given the regular communications between them that had taken place through the Cement Institute Foundation (Fundación Instituto del Cemento), their parallel behaviour in setting and changing prices, the fact that there were only two competitors in the market, and the lack of a rational explanation by the larger firm for the fact that it charged the same prices as its competitor despite having lower production costs. The Commission imposed a fine of L.51 896 000 (approximately US$2 730 000) on one firm and L.35 515 000 (approximately US$1 869 000) on the other.[58]

Another 2008 case in Honduras involved the sugar industry. The competition authority investigated whether the sector's leading six firms were colluding. The evidence included the uniformity of price levels and price movements, despite variations in the firms' costs. Several market characteristics facilitated collusion, including the lack of substitutes, a homogeneous product, and inelastic demand. In their defence, the investigated firms claimed that the Ministry of Industry and Trade invited them to regulate and agree upon sale prices to the wholesaler Central de Ingenios S.A. Nevertheless, in addition to imposing a fine on each of the firms ranging from L.6 514 306 (US$324 000) to L.20 204 899 (US$1 095 000), the Commission prohibited them from participating in meetings at the Ministry of Industry and Trade for the purpose of regulating market prices.[59]

A paper by Joseph Wilson of the Competition Commission of Pakistan describes several episodes of anti-competitive conduct that specifically harmed low-income consumers. One involved a savings program designed only for small account holders that was advertised by a bank industry trade association. The announcement mentioned a particular interest rate that would be paid by every bank offering that type of account. Wilson notes that the banking sector in Pakistan is highly concentrated, with the top five banks controlling 80 percent of the market. The spread between the interest rates for borrowing and saving in Pakistan is among the highest in the world, and Pakistani banks are the most profitable banks in the Asia-Pacific region. Jointly fixing the interest rate that would be paid to low-income savers obviously deprived them of the ability to benefit from competition and, by making saving less attractive, hindered efforts to alleviate poverty.[60]

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57 OECD, Competition Law and Policy in Argentina: A Peer Review (2006). Available at www.oecd.org/daf/competition/prosecutionandlawenforcement/37970045.pdf.

58 OECD, Competition Law and Policy in Honduras: A Peer Review (2011). Available at www.oecd.org/daf/competition/liberalisationandcompetitioninterventioninregulatedsectors/competitionlawandpolicyinhonduras-2011.htm.

59 Id. See United Nations, Implementing Competition-Related Provisions in Regional Trade Agreements: Is It Possible to Obtain Development Gains" (2007) for more examples.

60 Joseph Wilson, "Competition Policy and Poverty Alleviation: The Case of Pakistan" in The Effects of Anti-Competitive Business Practices on Developing Countries and Their Prospects (Hassan Qaqaya & George Lipimile, eds.) 222-23, UNCTAD (2008), available at http://unctad.org/en/Docs/ditcclp20082_en.pdf. Wilson also mentions a cement industry cartel. Id. at 225-26.

4.2.2 A lack of competition harms poor consumers – and it does so disproportionately

Once we accept that significant anti-competitive conduct occurs in both developed and developing countries, we can implicitly argue that competition helps poor consumers everywhere by showing that a lack of competition harms them. There is evidence for that proposition. As Eleanor Fox observes, the data compiled by Evenett and Jenny leave no room for doubt that consumers in developing countries are harmed by elevated prices arising from cartels, mergers and monopolistic practices,[61] and because some of the anti-competitive conduct affects essential goods and services, poor consumers suffer, too. Jenny describes the information in the databases as "stunning with respect to the scope and importance of anticompetitive practices revealed in developing countries."[62] Connecting this finding with poverty and how greater competition can alleviate it, he observes:

> *[A]nticompetitive practices such as price fixing in the retail sector or in the consumer goods sector clearly impose a large cost on consumers, and in particular the poorest consumers, by artificially increasing the price of basic necessities[.] If a sizeable portion of these goods [is] beset by competition problems and subject to overcharges of 10 to 15 percent, the problems of the poor will be compounded and their lives made worse. Thus, the fight against extortionary anticompetitive strategies should rightly be a part of pro-poor policies.*[63]

Separately, academics like John Connor have studied the impact of cartels on consumers. In one study, he found that during the period 1990 to 2007 Latin American consumers paid at least US$35 billion in overcharges due to price fixing by international cartels.[64] Of course, that amount was paid by all consumers, not just the poor. Then again, the figure represents only the harm due to the cartels that were actually detected, and it ignores domestic cartels as well as effects in other parts of the world.

Moreover, some studies show that low levels of competition tend to harm poor consumers disproportionately. Creedy and Dixon, for example, have studied the relative burden of monopolies in certain commodities markets on Australian households from diverse income groups. The authors examined data from the Australian Household Expenditure Survey to see how the households spent money on products in 14 commodity groups such as food, non-alcoholic beverages, and housing costs. Creedy and Dixon were able to calculate the static loss of consumer surplus due to monopoly across the commodity and income groups. They found not only that there were welfare losses associated with monopoly power across all the income groups, but that the losses as a relative percentage of consumer surplus were higher for low-income households than for high-income households.[65] In other words, the study showed that monopoly increases inequality among consumers. In fact, the data showed that the burden on the poorest ten percent of households was 46 percent higher than the burden on the richest ten percent. That finding did not change from market to market, leading Creedy and Dixon to conclude that regardless of the absolute size of the welfare loss due to monopoly, there may be a disproportionate impact on poorer consumers.[66]

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61 Fox, supra n.54 at 226.

62 Jenny, supra n. 51 at 113 (2006).

63 Id. at 134 (2006).

64 John Connor, "Latin America Cartel Control" (2008). Available at http://ssrn.com/abstract=1156401.

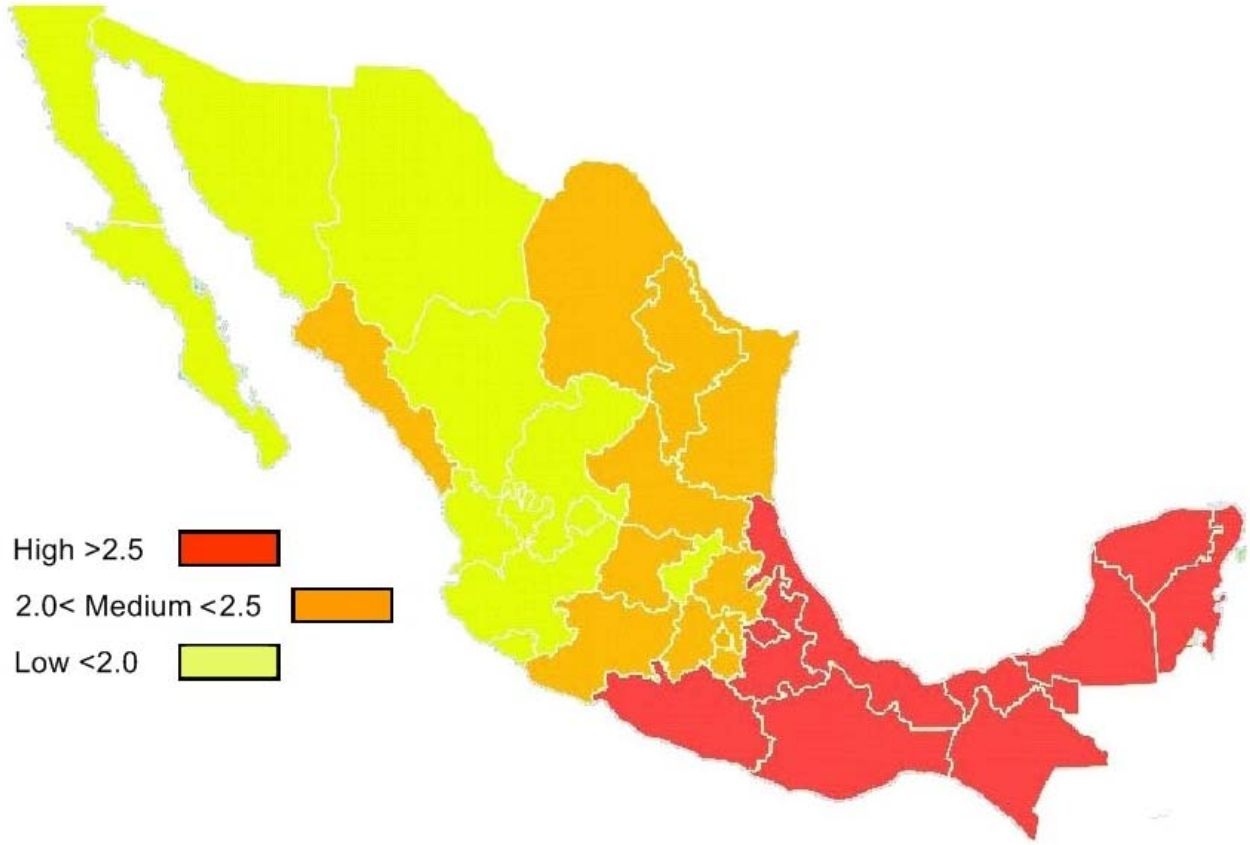
65 John Creedy & Robert Dixon, "The Relative Burden of Monopoly on Households with Different Incomes," 65 Economica 285 (1998).

66 A year later, Creedy and Dixon followed up with a study that examined the same issue but used a better method for measuring welfare and a concept of the lack of competition that was broader than the extreme case of a single seller. The main results and the authors' conclusions were the same as in the earlier study,

Carlos Urzúa reached similar results in a study carried out for the OECD in 2008.[67] Using data from Mexico's National Survey of Income and Expenditure of Households, he studied the impact of market power on levels of household spending on staple products like tortillas, chicken, and milk. The data showed, as it did in Australia, that the relative negative effect of monopoly power is greatest among the poorest ten percent of households. In urban areas, those households suffer a relative welfare loss that is nearly 20 percent higher than that suffered by the wealthiest ten percent of households. This discrepancy is even more pronounced in rural areas, at nearly 23 percent.

Urzúa also created a map, reproduced below in Figure 2, which compares the welfare losses of each Mexican state relative to the state with the lowest loss, Baja California (in the upper northwest corner of the map). On the map, the red states (which look dark grey in black and white versions of this paper) have losses more than 2.5 times higher than Baja California's loss, the orange states (medium grey) have losses that are 2 to 2.5 times higher, and the yellow states (light grey) have losses less than twice Baja California's. It is easy to see that the southern states – many of which are among the poorest in Mexico – have the highest relative welfare losses.

Figure 2. Relative Social Welfare Loss Due to Monopoly Power in Mexico, by State



Source: Carlos Urzúa, "Evaluation of the Distributional and Spatial Effects of Companies with Market Power in Mexico".

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however. John Creedy & Robert Dixon, "The Distributional Effects of Monopoly," 38 Australian Economic Papers 223 (1999).

67 Carlos Urzúa, "Evaluation of the Distributional and Spatial Effects of Companies with Market Power in Mexico". Available at www.oecd.org/dataoecd/43/20/45047597.pdf.

Such findings appear to be consistent from country to country as well as from market to market. Hausman and Sidak obtained similar results when they studied the relative burden on poor consumers of the low level of competition in the US residential telecommunications market. They found that poor and less educated consumers pay more for long distance telephone calls than wealthier and better educated consumers, even after controlling for differences in levels of usage. Although the data available at the time was insufficient to prove it, the authors suspected that the discrepancy between what the two sets of consumers pay would shrink as a result of entry.[68]

Given the especially heavy and negative effect of market power on poor consumers, these studies suggest that attacking cartels, abuses of dominant positions, and anti-competitive mergers in markets for essential goods would not only yield benefits to poor consumers, but that those benefits would be relatively strong.

4.2.3 A sample of cases showing that competition benefits poor consumers

Currently, there is not a large amount of publicly available data concerning the direct effect of competition in essential goods and services markets on poor consumers. This could be a fruitful area of study for competition authorities, who may be in the best position to examine the effects of their past interventions on consumers. At least some helpful information is available, though. This section of the paper focuses on two markets, banking and mobile telecommunications services, which provide clear illustrations of the benefits that competition can bring to poor consumers. Later, we will examine how competition in these same two sectors has helped poor entrepreneurs, as well.

4.2.3.1 Banking services

When he was Secretary-General of the United Nations, Kofi Annan observed that

> *[b]uilding inclusive financial sectors improves people's lives, in particular those of the poor. A small loan, a savings account or an insurance policy can make a great difference to a low-income family. They enable people to invest in better nutrition, housing, health and education for their children. They ease the strain of coping with difficult times caused by crop failures, illness or death. They help people plan for the future.*[69]

Relatively few poor households in the world are connected to formal banking services (i.e. services provided by a regulated financial institution), though. A survey by Banerjee and Duflo, for example, found that in Panama and Peru less than one percent of poor households (defined as those living on less than US$2 per day) have savings accounts. Globally, more than 2.5 billion people do not have a formal bank account.[70] But poor people in general do manage to save money. Furthermore, many of them *want* to save money. One survey of urban adults in Brazil, for example, found that 64 percent of the respondents who did not have bank accounts were interested in having one. Yet poor people, whether they live in developing countries or not, tend to keep the extra cash they accumulate in unsecure places because formal savings accounts are either too expensive or unavailable at any price in their geographic area.[71]

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68 Jerry Hausman & Gregory Sidak, "Why Do the Poor and the Less-Educated Pay More for Long-Distance Phone Calls?", 3 Contributions in Economic and Policy Research 1 (2004).

69 United Nations, "Building Inclusive Financial Sectors for Development" (2006) at iii. Available at: http://www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

70 Department for International Development, supra n.17 at 13.

71 United Nations, supra n.69 at 36, available at: www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

Consider, for example, that bank account maintenance fees cost formal sector workers in Rwanda three percent of the average monthly wage. In Singapore, those fees amount to only 0.05 percent of the average monthly wage. In fact, not only is the relative amount higher, the absolute amount is higher, too – much higher (US$4 per month in Africa, on average, versus about US$0.50 per month in South Asia). Asset concentration among banks is higher in Africa than in any other region. That may have something to do with the relatively high fees.[72]

In any event, formal financial institutions typically do not go out of their way to serve the poor. It is a cruel irony that the relative cost of providing banking services to the poor is high, in large part, because the poor have so little money. With very low amounts at stake in each account, the profit available for banks in providing traditional savings accounts and loans to the poor is quickly eaten up by transaction costs. Another problem is that many of the poor live in thinly populated rural areas. The banks, being profit maximisers, seek economies of scale, so they are mainly interested in serving wealthier clients who live in large urban areas with dense populations. As a result, geographic distance, unsuitable terms and conditions, and unrealistic minimum balance and deposit size requirements all inhibit the poor from engaging in the formal banking industry even when the opportunity to do so is technically available to them.

Nevertheless, and even though participation in the formal banking sector is still rare among poor customers, things are better than they used to be and a major reason for that is competition. For example, many Latin American financial markets were liberalised in the 1990s, allowing foreign banks into the region. The resulting increase in competition motivated banks to find progressively smaller-scale customers, which has helped some low-income families.[73]

More competition would probably be even more helpful. Fortunately, the advance of technology is making that happen. More than one billion people own mobile phones but do not have a bank account.[74] That fact created an enormous opportunity for mobile technology-based entrants to compete with the formal banks for the poor's banking business. Not only did that happen, but the entrants have done it profitably.

Text messages sent and received by prepaid mobile phones have now emerged as a way for poor consumers to complete financial transactions while bypassing the formal banking infrastructure. For example, if the recipient of a money-bearing SMS does not have a bank account, the remitted sum can be converted into a pre-paid debit card that can then be used to make purchases. Or a line of consumer credit can be opened at a local retail outlet with password protection that works via SMS. Governments such as South Africa's have advocated these systems, using them for many types of payments, including conditional transfers to low-income recipients. Text messages are not only faster than traditional financial transaction media like cheques, they are cheaper and more secure, too, both for the sender and the receiver.[75]

M-PESA, which debuted in Kenya, is probably the best example of how successful mobile payment systems for the poor can be – both for the system operators and for the poor themselves. Safaricom Limited, a private telecoms company backed by Vodafone, introduced a mobile payment system called M-

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72 World Bank, "Banking the Poor" (2009) at pp. 10, 29.

73 Luis Moreno, "Extending Financial Services to Latin America's Poor," McKinsey Quarterly 83, 90 (2007).

74 Department for International Development, supra n.17 at 14.

75 Moreno, supra n.73 at 88-89; **Sahba Sobhani & Subathirai Sivakumaran,** "Beyond Microfinance: Can Government Cash Transfers Scale Up Financial Access for the Poorest?", Business Fights Poverty (26 March, 2012). Available at: www.businessfightspoverty.org/profiles/blogs/beyond-microfinance-can-government-cash-transfers-scale-up.

PESA in 2007. M-PESA is a low-cost, SMS-based, person-to-person money transfer service that requires neither senders nor recipients to have bank accounts. Senders can buy digital funds at any M-PESA agent and send electronic cash to any other mobile phone user in Kenya. Recipients redeem the SMS for conventional cash or else use their M-PESA-enabled phones as an electronic wallet. Phones are permitted to hold up to 100,000 Kenyan shillings (about 847€ at the current exchange rate). Within two years of M-PESA's launch, its subscriber base exploded from about 100,000 to more than 7 million and during that time it moved approximately 130 billion Kenyan shillings (approximately US$1.5 billion). There are now at least 17 million registered M-PESA accounts in Kenya and more than 18,000 M-PESA agents.[76] In contrast, Kenya has only 750 traditional bank branches and three million formal bank accounts.

Moreover, M-PESA is a profitable endeavour. During its first two years, M-PESA generated £50 million of Safaricom's £150 million in profits.[77]

Good ideas tend to spread, and mobile banking services have done so. After its success in Kenya, M-PESA was implemented in Afghanistan, Tanzania, and South Africa. In Pakistan, a mobile payment service called easypaisa grew so quickly that within two years it had more customers than all the banks in Pakistan combined.[78]

Mobile payment technology has also given poor consumers a fast and safe alternative to traditional and considerably more expensive international remittance services like Western Union's. Remittances – loosely defined as payments sent home by a family member who is working abroad – have grown tremendously over the years. The IDB estimated that 2006 inflows to Latin America and the Caribbean from remittances amounted to more than US$60 billion per year, which was more than three percent of the region's GDP at the time.[79] Remittances usually go to low-income recipients and are primarily used to finance consumption, so they are indeed an essential service for many poor people. Because relatively few of the senders or beneficiaries of remittances have formal bank accounts, they have historically relied heavily on money transfer services like Western Union, which has many locations around the world but is quite costly, having claimed as much as 20 percent of the amount transferred in the late 1990s.[80] The ability to send and receive payments on a cheap, prepaid mobile phone via text message negates Western Union's old-economy advantage of having many physical locations while undercutting its price. Once again, competition brought about by technology was the key to breaking that market open and reducing prices.

The success of these innovative payment systems shows that greater competition can help to extend financial services to the poor, and thanks to superior technology it can also be profitable. Seizing on that theme in a 2007 article, the IDB's President, Luis Alberto Moreno, urged financial institutions not to sit on the sidelines but to join in the process of coming up with innovative and profitable ways to serve impoverished customers:

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76 "CCK Releases 2nd Quarter ICT Sector Statistics for 2011/2012," Communications Commission of Kenya, (17 April 2012). Available at http://www.cck.go.ke/news/2012/sector_statistics.html.

77 "Private Sector Has Potential to Aid Development, but Beware the Pitfalls," The Guardian (UK) Poverty Matters Blog (11 July 2011), available at: www.guardian.co.uk/global-development/poverty-matters/2011/jul/11/private-sector-aid-potential-and-pitfalls.

78 Department for International Development, supra n.17 at 14.

79 Luis Tejerina, César Bouillón & Edgardo Demaestri (eds.), Financial Services and Poverty Reduction in Latin America and the Caribbean, Inter-American Development Bank (2006) at vii.

80 United Nations, supra n.69 at 39, available at: www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

> *It is time for financial institutions to accelerate the development of innovative mechanisms and new programs to reach the microfinance, remittance, and other underserved markets. If . . . financial institutions exploit this opportunity, we will have taken a major step toward improving the lives and possibilities of the majority of the region's inhabitants. From the standpoint of financial institutions, such moves represent an opportunity to open up a potentially enormous and profitable market.*[81]

4.2.3.2 Mobile telecommunications services

We have just discussed how competition from mobile telecommunications firms has helped poor consumers in the context of banking and payments services. But as everyone knows, mobile phones also provide a means of communicating by voice and text messaging, and smartphones can provide internet access. These features have been very useful to impoverished consumers, and competition has made them more accessible.

In contrast to formal banking services, access to mobile telecommunications services has spread to poor populations around the world with great speed. The number of mobile subscriptions in Africa increased from fewer than 25 million in 2001 to almost 650 million in 2012, making Africa the fastest growing region in the world for mobile phone services. Two-thirds of African adults now have access to information and communication technologies, and today Africa has more mobile subscribers than either the United States or the European Union.[82] Although Asia already has a huge mobile subscriber base, it is still growing at an impressive rate. A 2011 UN report notes that the number of mobile telephone subscriptions in the Asia-Pacific region more than doubled during the previous five years, rising from around one billion to 2.5 billion. Even in the rural areas of East Asia, 83 per cent of people now have a mobile phone.[83] In Latin America, meanwhile, mobile phone subscriptions have overtaken fixed line subscriptions as the preferred method of communication. As of 2009, more than 88 percent of the population in Latin America had a mobile subscription, while fixed line penetration was below 20 percent.[84]

Much of the growth in mobile phone subscriptions among poor consumers is due to competitive deals that target low-income consumers. Pay-as-you-go deals are often cheaper than installing a fixed line, especially in rural areas where fixed line service may not even be offered at any price. Before the introduction of mobile phones, telephone service had simply been out of reach for many poor people – an unavailable or unaffordable luxury. But mobile phones have come to be viewed as essential goods, even for many of the poor. Furthermore, mobile phone services have made broadband internet access possible for many of the world's poor people, especially in difficult-to-reach areas where there is no DSL or cable coverage. It is therefore hard to deny that in this case, at least, competition has benefited the poor, and once again the catalyst was technological development.

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81 Moreno, supra n.73 at 89.

82 The World Bank and the African Development Bank (with the support of the African Union), The Transformational Use of Information and Communication Technologies in Africa, (Enock Yonazi, Tim Kelly, Naomi Halewood & Colin Blackman, eds.) (2012), pp. 6, 13. Available at: http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/282822-1346223280837/MainReport.pdf.

83 Noeleen Heyzer, "Digital Asia-Pacific in the Twenty-First Century," UN Chronicle (2011), available at: www.un.org/wcm/content/site/chronicle/home/archive/issues2011/thedigitaldividend/digitalasiapacificinthe21stcentury.

84 "Latin America Enjoys Mobile Telephone Boom," Euromonitor International (28 May, 2010). Available at http://blog.euromonitor.com/2010/05/regional-focus-latin-america-enjoys-mobile-telephone-boom.html.

Many empirical studies by the World Bank of entry by mobile telephony service providers show that the more competitive their markets were, the more these providers succeeded in penetrating the potential customer base. Competition, in other words, helped to bring phone service to more people than the absence of competition did.[85]

One comparative study of competition in the mobile telecommunications markets in five countries showed that greater competition drives the introduction of new services, brings those services to more people, and lowers prices. A competitive environment also strengthens incentives to offer services that meet the needs of poor customers, including price and product promotions designed specifically for them. Some of the services that competition helps to bring about have additional development benefits, too, such as money transfer services. A noteworthy example in the study is Kenya, which until recently had a concentrated mobile telecommunications market with relatively high prices. When two new service providers entered in 2008-2009, though, the additional competition they brought caused tariffs to fall by as much 50 percent.[86]

4.2.4 An arguable example of competition harming poor consumers

Although competition has certainly reduced poverty in many essential goods and services markets, one cannot realistically claim that competition has served the poor well in each and every instance throughout history. An extreme example occurred in Bolivia's microcredit market and is described in a report issued by the United Nations.[87] After the hyperinflation crisis of the mid-1980s and the strong structural adjustment policies that followed, small-scale enterprise grew dramatically as employment in traditional mining and state enterprises declined. That shift provided a golden opportunity for microfinance to serve this emerging market. The early microcredit organisations worked with banking authorities and donors to transform into banks and non-bank financial intermediaries.

Problems arose in the late 1990s, however, when Bolivian consumer credit companies also began to enter the microcredit market. Because these credit companies did not understand how to analyse a client's ability to pay very well, they simply relied on the fact that an applicant for credit had borrowed or had a current loan from a microfinance institution as proof of creditworthiness. Clients then took advantage of the multitude of lenders, often maintaining two or more loans at a time and borrowing more than they could handle. Some of them were late making their payments or "bicycled" their loans. That is, they used the proceeds of one loan to pay off another.

The increase in excessively risky lending coincided with the arrival of a major recession and soon borrowers found themselves with unmanageable levels of debt. Heightened social unrest in Bolivia followed, with mass protests over the prices of basic utilities like water and electricity. The microfinance institutions' relations with clients worsened, too, as they struggled to get their clients to pay.

In that tense atmosphere, two borrower associations formed out of people's growing desperation. Both of them worked on the same principle: for a fixed membership fee of roughly US$8.50, they promised debt relief through borrower revolts. Their appeal was powerful and their memberships swelled. With municipal

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85 World Bank, Global Economic Prospects and the Developing Countries, p. 98 (2003), available at http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf.

86 Karen Ellis & Rohit Singh, "Assessing the Economic Impact of Competition," Overseas Development Institute (July 2010) at p. 56. Available at www.odi.org.uk/resources/docs/6056.pdf.

87 United Nations, supra n.69 at 35, available at: www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

elections approaching, political parties were attracted to this cause because it enjoyed so much popular support.

Subsequently, the debtors' associations threw their own leaders in jail. In one association, the leaders had illegally collected debt service payments owed to the microlenders and used them to make their own loans. After a few months, the associations resurfaced with new leaders and new demands. In addition to debt forgiveness, they wanted prohibitions against certain collection practices, extended grace periods, longer loan terms, and annual interest rates of two per cent. Their tactics escalated, too. In the most extreme example, demonstrators carrying dynamite took over the Superintendency of Banks in July 2001, holding employees hostage and threatening to blow up the building.

It is not really fair to blame competition for the result in this case, though. Competition did not cause the credit companies to do a poor job of analysing creditworthiness; it merely encouraged them to enter the market. They failed to make wise lending choices and all of the participants in the market suffered because of it. One could just as well blame inadequate banking regulation for the predicament in which the debtors found themselves, as more prudent lending policies would have prevented them from becoming so mired in obligations.

4.2.5 Other conditions may prevent competition from helping poor consumers

Even assuming that a country's competition authority is adequately vested with financial resources, professional expertise, and investigative and remedial powers, competition still depends on a number of other framework conditions and policies to thrive and function properly. The conditions include the effective rule of law, a reasonably transparent and corruption-free government, adequately staffed and funded courts and police forces, a liberalised trade regime, the absence of anti-competitive regulation, and a certain degree of macroeconomic stability. The absence of any one of those conditions can undermine competition's ability to work – and therefore undermine its ability to help poor consumers.

4.2.5.1 Undue influence: close relationships between firms and government officials

The recent work of Karen Ellis and Rohit Singh highlights this problem in the context of developing countries (though it can certainly arise in developed countries, too). Ellis notes that one of competition's virtues is that it can balance the power between businesses and the government.[88] Where competition is weak, however, that balance may tilt in a dominant firm's favour and enable it to convince politicians to help prevent competition from emerging in a market. The typical results are sustained supra-competitive prices, persistently inferior quality, and/or stifled innovation, all of which harm consumers, including the poor.

Ellis elaborates, noting that large multinational firms with substantial market power are often well connected with government officials, particularly in underdeveloped countries, and that such firms may have considerable influence over governments for a variety of reasons. A nation may badly need a company's products, investment capital, and know-how, for example. But a class of economic elites can arise when well-connected politicians and business people join forces to extract the economic rents in a market at the expense of the rest of society. Public works projects may be steered toward favoured contractors even if other firms submit more competitive bids. Alternatively, potential entrants might be willing to compete in a market but they can be deterred with tools like import/export barriers, regulations that make it difficult and expensive to acquire business permits, or preferential tax rates for incumbents. Regardless of the particular strategy chosen, the intention and the effect is to stop competition from

88 Karen Ellis, "Making Markets Work: Can You Compete with the Elite?" ODI Opinion 123 (January 2009), available at www.odi.org.uk/opinion/details.asp?id=2778&title=business-competition-politics-elite-development.

functioning, thereby enabling incumbent firms to keep their prices higher and their quality lower. Furthermore, in one way or another, the government officials in these extractive alliances will take a share of the profits. The relationship may involve full or partial state ownership of the business, or some degree of ownership by politicians or their families, for instance.

Notably, it is not only large multinational firms that can affect competition by influencing governments. Khemani points out that in many developing countries it is normal for major corporations to be family-owned or controlled by a small group of powerful investors. These corporations and families may control multiple companies in a pyramid ownership structure or one that has interlocking directorates.[89] Such closely held or family groups may have a strong effect not only on particular markets but on the general economy, too, which can translate into an outsized influence on the government. Fox agrees that excessively snug relationships between businesses and governments are a serious problem in developing countries, noting that markets there "are pock-marked by state intervention and control. Whether the intervention is through state measures, state-owned enterprises, or enterprises licensed or privileged by the state, these enterprises are likely to run on principles of privilege, preference, and cronyism."[90]

Ellis's and Singh's field work reveals many examples of this type of close relationship between powerful firms and the governments of developing countries. In fact, the fortunes of those firms are frequently determined by the strength of that relationship rather than the crucible of market competition. Some of them enjoy the government's protection and largesse for a while, but they are replaced by new favourites if they do something to fall out of favour. For instance, Ellis mentions a company that was asked by one government to provide its product at discounted rates to a new foreign company in another industry. The government wanted to help that company to get established within its borders. The first company refused and claimed that the government punished it by licensing a new entrant to compete with it, thereby eroding what had been a safe and mature monopoly position. "Thus competition itself becomes a bargaining chip in a power game between government and business[.]"[91]

4.2.5.2 An example: trade protectionism in the Zambian sugar market

A superb example of governments getting in the way of competition in an essential goods market is provided by Ellis's and Singh's study of the refined sugar industry in several countries. Sugar is part of the staple diet in most countries and is also a source of income for many people in rural areas. Consequently, some governments are heavily involved in the sugar industry, including governments in Bangladesh, Kenya and Viet Nam. In various ways, those governments support, operate, protect, or control the business of sugar in their respective countries. While the motives for that involvement, such as promoting rural development and job creation, may have been benign, the state-led sugar industries in those countries perform poorly. They use obsolete technology and inefficient farming methods that result in comparatively low productivity. The sugar industries in all three countries are struggling to survive against competition

89 R. Shyam Khemani, "Interplay and Implications of High Product, Ownership and Financial Market Concentration" in The World Bank, Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries, ch. 2 (2007).

90 Fox, supra n.54 at 229-230; see also Mark Dutz & R. Shyam Khemani, Competition Law & Policy: Challenges in South Asia 11 (2007), quoted in Fox, supra n.54 at 213 n.6 (summing up the problem of overly snug relationships between influential big businesses and governments, which are often accompanied by "inflexible, inefficient industrial and financial market structures [and] have adverse implications . . . for fostering effective competition . . . and for the persistence of an anti-competitive nexus mutually supporting vested interests between incumbent firms and government, with some of the earned rents used to entrench market power by buying government favoritism.").

91 Ellis, supra n.88 at 2.

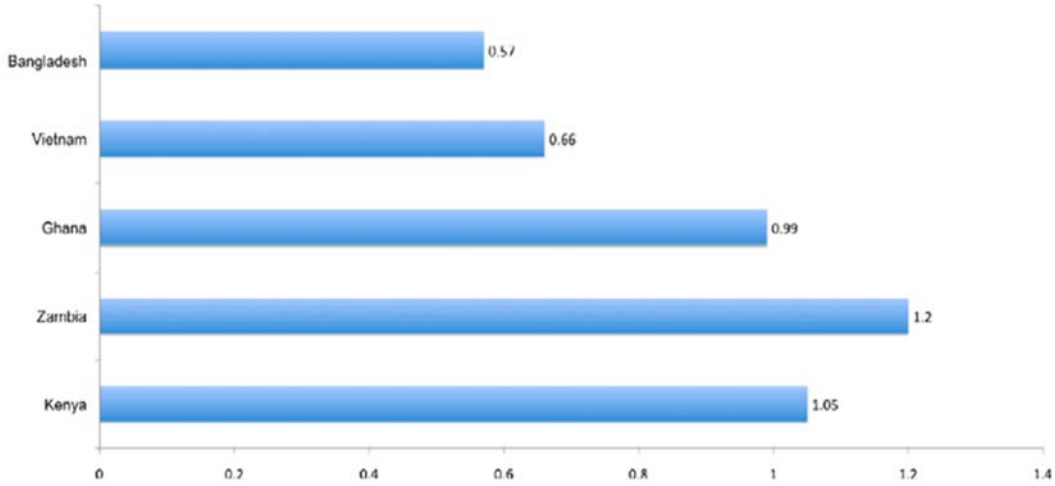
from privately produced and imported sugar. The approach of direct intervention by governments is close to failure.[92] But that conclusion is just part of the context for a more surprising finding.

Continuing to set up their key point, Ellis and Singh note that in contrast to the first three countries, Zambia has a sugar industry that is led by the private sector. It produces the highest amounts of sugar per hectare of the five countries they studied.[93] Indeed, Zambia's output per hectare is three times higher than Viet Nam's, the second most efficient country in the group, and its cost of production is one of the lowest in the world (US$169 per ton vs. the world average cost of US$263 per ton). The Zambian sugar industry is very profitable, internationally competitive, and is expanding to take advantage of new export opportunities. These results imply that private sector incentives and management expertise are superior to those of governments, at least in the sugar industry.[94]

Significant reforms are needed to improve the performance of the sugar industries in Bangladesh, Kenya and Viet Nam. Because reforms could put some existing sugar mills out of business, however, local interests would make this politically unpopular and thus difficult to accomplish even though it would be in the best interests of consumers and the country as a whole.

And what is the surprising part of the Ellis and Singh study? Given Zambia's substantially superior productivity, one would expect Zambian consumers to pay much less for sugar than consumers in the less efficient countries. But Zambian consumers actually pay significantly more for sugar than consumers in every other country in the study:

Figure 3. 2008 Retail Spot Market Prices for Sugar, in US$/kg



Source: Karen Ellis & Rohit Singh, "Assessing the Economic Impact of Competition," Overseas Development Institute (July 2010) at p. 14. Available at www.odi.org.uk/resources/docs/6056.pdf.

Sugar prices are not only higher in Zambia than in other countries, they are well above the price at which Zambian sugar sells on international markets. That is at least partially due to the monopolistic structure of the industry in Zambia, where one large, multinational firm has 93 percent of the market and is protected from foreign competition by non-tariff import barriers. Sugar importers wishing to do business in

92 Karen Ellis & Rohit Singh, "The Economic Impact of Competition," Overseas Development Institute Project Briefing no. 42 (July 2010); Ellis & Singh, supra n.86 at 88.

93 The fifth country was Ghana.

94 Ellis & Singh, supra n.92; Ellis & Singh, supra n.86 at 13.

Zambia must acquire permits in a process that Ellis and Singh describe as "bureaucratic and non-transparent . . . with the Ministry of Agriculture, the Ministry of Health, and the Ministry of Commerce all having to clear the import of sugar". The Zambian Competition Commission has investigated but was unable to fix the problem. Ellis and Singh tersely observe that "the government may have vested interests in the industry's profitability."[95]

On the other hand, where genuine market competition does manage to take root in spite of a cosy relationship between an incumbent and a government – say, due to a breakthrough innovation that enables a new firm to enter the market in spite of the barriers put in place to protect the incumbent – it may result in the favoured incumbent being outperformed. That, in turn, can break down the anti-competitive alliances formed by economic elites, combat cronyism, and reduce the profitability of corruption.[96] Competition has the ability to do a variety of great things – if it is allowed to flourish.

4.2.5.3 Another example: anti-competitive zoning regulations in Mexico City

Mexico's submission to the 2012 Latin American Competition Forum contains another good example of how government policies can interfere with competition's ability to reduce poverty.[97] The Assembly of Representatives of Mexico City approved a zoning standard that restricted the ability of large-scale supermarkets to operate in impoverished areas of the city. The CFC argues that the standard has both an anti-competitive purpose and a harmful effect on consumers. Specifically, the regulation is designed to protect owners of small, established, less efficient and more expensive convenience stores from potential entrants. It also harms poor consumers who would have saved time and money and had more choices if the more efficient, larger supermarkets had been allowed to enter the areas where they live.

Mexico's submission acknowledges that zoning regulations can have legitimate purposes, such as protecting residents from negative externalities that might occur if businesses were allowed to operate wherever they pleased. But when zoning regulations are implemented for the purpose of protecting businesses from competitive pressure, they lack legitimacy. Mexico City is not the only place where zoning regulations are used to protect small local stores from more efficient potential entrants. Brusick and Evenett point out that the same type of problem exists in Indonesia, for example.[98]

4.2.5.4 Benevolent motives for interfering with competition

A complicating factor is that the motives of the government officials involved in "partnerships" with protected businesses are not always rooted in corruption. They may be benevolent. In fact, their motive may be precisely to reduce poverty. Thus government officials might demand, in exchange for helping to block competition, that a protected incumbent provide a certain number of jobs or that it provide health or education services for employees and their families. Or the goal might be to diversify the economy, foster regional integration, or pursue some other legitimate goal that happens to be something other than the traditional objectives of competition policy in developed countries, i.e. maximising efficiency and consumer welfare. Alternatively, officials might ask a company to give the government a discount on

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95 Ellis & Singh, supra n.92; Ellis & Singh, supra n.86 at 14, 17-18.

96 Ellis, supra n.91; Nick Godfrey, "Why is Competition Important for Growth and Poverty Reduction?", paper submitted to OECD Global Forum on International Investment (2008) at p. 4, available at www.oecd.org/investment/globalforum/40315399.pdf.

97 OECD, Contribution of Mexico to the Latin American Competition Forum, DAF/COMP/LACF(2012)12, available at www.oecd.org/competition/latinamerica/programmeanddocuments.htm#Session_I.

98 Philippe Brusick & Simon Evenett, "Should Developing Countries Worry about Abuse of Dominant Power?" 2008 Wisconsin Law Review 269, 291 & n.80.

public procurement projects. They might also simply have their eyes on the greatly-needed tax revenue that a company generates, which will be even more substantial if it earns heavy profits due to a low level of competition.

Similarly, it has not been uncommon for privatisation programs to result in the sale of state-owned monopolies to the highest bidder, with the understanding that there will be little or no real regulatory oversight in the future, so as to maximise the sale's proceeds for the state.[99] But this means that a public monopoly is transformed into a private monopoly, with consumers ultimately paying for the premium received by the government on the sale of the enterprise. Even if the sale is accompanied by the creation of a regulatory authority that is charged with preventing the now-private monopoly from abusing its dominant position, a well-documented problem with regulatory agencies (whether they are in developed or developing countries) is that they are vulnerable to being captured by the industries they are supposed to control.[100]

A major problem with these types of benevolently motivated arrangements is that consumers are paying for the profits that drive the deals, and in essential goods and services markets, it is the poor consumers who are most heavily affected. In any event, Ellis's and Singh's evidence suggests that the risk that these kinds of influence-peddling partnerships will be misused for rent-seeking purposes is substantial.[101]

4.2.5.5 The difficult problem of very small, local monopolies

Sometimes geography and population size stand in the way of competition's ability to help poor consumers. A village might have such a small population that it can support only one business – e.g. a single village grocer or general store. If the next village or town is far away and residents cannot afford transportation, they will be unable to shop elsewhere. Competition under such circumstances is tightly constrained by geographic and scale-related barriers, so the village stores in such places can charge supra-competitive prices and consumers will persistently suffer. Furthermore, if anti-competitive conduct occurs in these small, remote villages, competition authorities are unlikely to have the resources to investigate such low-stakes matters, given their other responsibilities. Does that mean governments can do nothing to encourage competition in small, isolated communities?

Not necessarily. While many villages simply do not have the necessary size to support more than one local competitor in a given product or service market, and investigations of small-town anti-competitive conduct may be out of the question, governments can try other approaches. Supporting the development of internet infrastructure is one of them. E-commerce is ideal for bringing competition to places where it has never existed before. And though it may seem unrealistic to expect e-commerce to flourish in some poor areas, a) e-commerce has been very successful in boosting competition in many places where citizens have internet access, whether they live in small towns or not; and b) the advent of increasingly cheap mobile phones that can connect to the internet has made the idea of poor people living in small towns and surfing the web more realistic than ever before.

"The Internet has provided consumers with a powerful tool for searching for and buying goods and services. Benefits have included increased competition and lower prices, more choice in products and

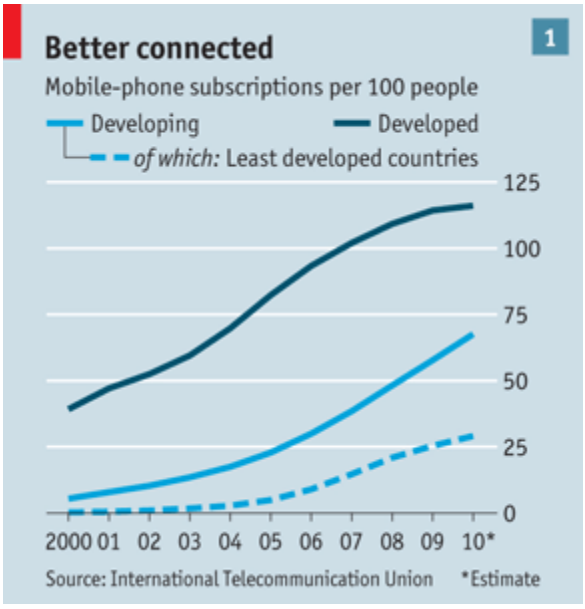
99 Brusick & Evenett, supra n.98 at 276.

100 Id. at 281.

101 Ellis, supra n.91.

services, and the convenience of shopping for goods and services . . . anywhere and at any time."[102] Furthermore, even though it was issued more than three years ago, a joint report for the OECD and World Bank already noted that "many millions of poor people are engaging in tasks normally associated with the Internet such as information retrieval, payments and remote computing using relatively simple mobiles."[103] Mobile phone usage has grown quickly all over the world, and is continuing to do so in the developed world. (See Figure 4.)

Figure 4. Mobile Phone Penetration in Developed and Developing Countries (2000-2010)[104]



However, more internet infrastructure and more mobile phone usage will not stimulate competition from e-commerce if shipping costs are prohibitive or if consumers believe that their orders are unlikely to reach them anytime soon, if at all. For e-commerce to become a realistic alternative in small villages, postal services have to reach them regularly. And those services have to be affordable, reasonably quick, and very trustworthy. Although internet access is spreading in Mexico, for example, e-commerce has hardly blossomed. Part of the reason for that is the poor quality of the postal service.[105] If governments

102 OECD, "Conference on Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy," Background Report, p. 6, DSTI/CP(2009)20/FINAL, available at www.oecd.org/ict/econsumerconference/44047583.pdf.

103 Rohan Samarajiva, "How the Developing World May Participate in the Global Internet Economy: Innovation Driven by Competition," Report for Joint OECD and World Bank Workshop on Policy Coherence in the Application of Information and Communication Technologies for Development, p. 2 (2009), available at www.oecd.org/ict/4d/43603296.pdf .

104 This chart appears in "Mobile Services in Poor Countries: Not Just Talk," The Economist (27 January 2011), available at www.economist.com/node/18008202.

105 See, e.g., "On Mexican Time," The Economist (23 March 2006) (noting that Mexicans tend to avoid using Sepomex, the state-owned postal service, for important mail, delivering it by hand themselves or relying on private carriers instead), available at www.economist.com/node/5664823; "¿Cuál Es el Destino del Correo en México? La Experiencia Internacional Sugiere Uno: Servir al Comercio Electrónico," Sin Embargo (9 October 2012) (urging that Sepomex should be made into a reliable distribution platform for e-commerce, noting that the postal service in the US has formed partnerships with large e-commerce companies like eBay to enhance speed and reliability), available at www.sinembargo.mx/09-10-2012/391623; Noemi Luján Ponce, "El Tiempo Se Acabó: El Servicio Postal Mexicano en la Encrucijada de Su Modernización,"

wish to take advantage of the formidable competition and growth that e-commerce can create,[106] they must take steps not only to improve internet access, but to make their postal services affordable and reliable.

Even with adequate internet access and postal services, though, e-commerce cannot improve competition in all essential goods markets. One would not want to buy fresh milk or meat through the internet and have it delivered by post, for example. Private delivery services exist for e-grocery businesses in the well-populated areas of many OECD countries, but deliveries to tiny, remote villages would be very expensive. Nevertheless, essential goods like clothing and non-perishable foods are more suitable for postal delivery.

Another option, of course, is to invest in improving roads and public transportation. If travelling to other towns to shop becomes more feasible, poor consumers can avoid having to buy from their monopolistic village store. Where very small and remote communities are concerned, however, it may be prohibitively expensive for governments to improve roads and transportation.

4.2.5.6 Some of competition's effect on poor consumers depends on the poor themselves

Another type of practical problem that may get in the way of competition's ability to reduce poverty is simply that poor consumers might not take advantage of what competition has to offer them. This problem can occur, for example, if the poor are less informed or more easily manipulated than other consumers. As an illustration, consider that the study of the US residential telecommunications market by Hausman and Sidak,[107] mentioned earlier, could also be interpreted in a different way. The fact that wealthier and better educated consumers were able to obtain lower prices than poor consumers could be viewed as suggesting that there must have been some competition in the market. Therefore, it implies that the problem for the poor and undereducated group might not have been a lack of competition so much as an inability or a disinclination to capitalise on that competition. If that is correct, then this is another reason why making markets more competitive will not necessarily be enough to help the poor. They may need help with learning how to be better buyers, how to compare complicated offers, or – if they are being intentionally deceived – they will need the help of a consumer protection agency.

Indeed, the deception problem figured prominently in the collapse of the US real estate market bubble that triggered the 2008 global financial crisis. So-called predatory lenders were competing so fiercely with one another that they had begun to market loans to poor homebuyers with very high risk profiles. In their eagerness to finalise more and more loans, the lenders engaged in deceptive practices that enticed poor customers to accept the loans even though the lenders knew the financial terms were so onerous and the customers' ability to pay so weak that the likelihood of default was high. When they were ultimately

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Princeton University Center for Migration and Development Working Paper #08-05j (September 2008) (background on postal service reform in Mexico), available at www.princeton.edu/cmd/working-papers/idlac08/wp0805j.pdf.

106 According to the management consulting firm McKinsey, the Internet has generated as much economic growth in the past 15 years as the Industrial Revolution did in 50 years. McKinsey studied the correlation between Internet maturity and growth in per capita GDP, concluding that "an increase in Internet maturity similar to the one experienced in mature countries over the past 15 years creates an increase in real GDP per capita of [US]$500 on average during this period. It took the Industrial Revolution of the 19th century 50 years to achieve the same results." McKinsey Global Institute, "Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity" (May 2011), Executive Summary at 3.

107 Jerry Hausman & Gregory Sidak, "Why Do the Poor and the Less-Educated Pay More for Long-Distance Phone Calls?", 3 Contributions in Economic and Policy Research 1 (2004).

unable to keep up with their mortgage payments, many borrowers lost what little savings they had, sliding deeper into poverty or moving below the poverty line for the first time.[108]

The University of Michigan Professor Aneel Karnani bristles at what he perceives as a fashionable assumption that poor people are rational, well-informed and willing participants in free market economies. He contends that this romanticisation of the poor leads to an over-reliance on unfettered, market-based approaches to poverty alleviation, which in turn allows governments and corporations to deny poor people the legal and regulatory protections they need.[109] Karnani, to be perfectly clear on this point, is *not* saying that the poor are incapable of making rational choices. Neither is he advocating heavy-handed government interventions, tightly regulated markets, or the old-fashioned notion that government officials should take all important choices out of the poor's hands in a paternalistic fashion. But he does believe that governments should impose some limits on free markets to help prevent the exploitation of the poor. He also points out that even when the poor avoid deceptive sellers and take advantage of the lower prices made possible by competitive markets, they often decide to spend the money they save on things that do not reduce their poverty in the long term.

In fact, he argues, poor consumers often make decisions that appear to be against their self-interest. For example, suppose that competition lowers prices in some essential goods market. One might assume that this result will at least marginally reduce poverty, but that could be a mistake. Whether lower prices will actually reduce poverty depends on what poor consumers do with the money they save due to the lower prices. As any person might do, the poor could choose to spend it on a "vice" product like alcohol or tobacco. In the case of the poor, though, making that choice might mean that they or their children continue to be malnourished, that their leaky roof does not get patched, or that their broken-down bicycle – which might be needed for getting to and from a job – continues to be out of service. In addition, too much alcohol or tobacco can damage people's health and keep them out of work. Seen in that light, it is possible that greater competition could harm the poor precisely because it can reduce prices on essential goods.

From a policy standpoint, this is an inconvenient fact. Malnutrition (for example) can trap people in a condition of poverty. But if it is true that by eating more, the poor could start doing more work and thus get out of that poverty trap, then they should eat as much as they can. Yet, that is not necessarily what they do. A typical poor household could spend up to 30 percent more on food than it actually does if it completely cut out expenditures on alcohol, tobacco and festivals. Likewise, when very poor people get a chance to spend a little bit more on food they typically do not maximise their intake of calories. Instead, they just tend to buy better-tasting, more expensive calories.[110]

Karnani's point is, essentially, that while policymakers need to adopt measures to reduce poverty, including promoting competition, they should also acknowledge that "the poor lack the education, information, and other economic, cultural, and social capital that would allow them to take advantage of – and shield themselves against – the vagaries of the free market."[111] While that description is too stark (the poor certainly do not always lack information, for instance), there is some support for his argument.

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108 E.g., James Pulliam, "Good Cop, Bad Cop: Market Competitors, UDAP Consumer Protection Laws, and the U.S. Mortgage Crisis," 43 Loyola of Los Angeles Law Review 1251 (2010); Timothy Johnston, "Mortgage Marketing Practices and the U.S. Credit Crisis," 13 Academy of Marketing Studies Journal (2009).

109 Aneel Karnani, " Romanticizing the Poor," 7 Stanford Social Innovation Review 38 (2009).

110 Banerjee & Duflo, supra n.25 at 22-40.

111 Karnani, supra n.109 at 40.

He also notes that the economists Banerjee and Duflo found that because the poor typically do not have bank accounts, they are more likely to spend any available cash on impulse purchases.[112] Furthermore, the hardships that poor people are more likely to face, such as hunger and violence, often lead them to do whatever they can to ease their suffering in the short term rather than focusing on advancing their long term economic prospects. Karnani points to research showing that the less income people have, the more likely they are to try to draw some comfort from smoking, drinking alcohol to excess, eating unhealthy diets, and splurging on ceremonies and festivals.[113] Notably, he presents this in a sympathetic rather than a sanctimonious manner, citing Banerjee's and Duflo's observation that "Perhaps at some level this [escapism] is emotionally wise. Thinking about the economic problems of life must make it harder to avoid confronting the sheer inadequacy of the standard of living."[114]

We cannot expect too much of competition alone, in other words. Many other factors can get in the way of reducing poverty. But competition can at least give poor consumers more resources so that they have a better chance to help themselves.

5. Competition's effect on poor small business owners and workers, in theory and in practice

5.1 Theoretical effects

In principle, competition should also be able to help the poor in their capacity as small entrepreneurs, wage earners and job seekers. That is not to say that competition will always help the supply side poor, but it certainly can happen. Competitive markets force firms, over time, to allocate society's resources toward activities where they will be most productive and profitable. That process eliminates some firms from the market, but it also enables the survivors to compete better, which will increase macroeconomic growth.

Greater macroeconomic growth, in turn, can help to boost employment. Macroeconomic growth due to more competition could boost wages, too, as output rises. Higher real wages should raise standards of living and thus reduce poverty. Likewise, insofar as greater rivalry encourages innovation, competition can help to create new product markets and businesses, which will present new opportunities for the poor to earn more money. So, if these macro-level effects do happen, we would expect to find empirical support for a causal chain leading from greater competition to greater growth and innovation to higher incomes for the poor.[115]

At the microeconomic level, competition law enforcement could help the poor to earn more by carrying out the usual agenda of blocking anti-competitive mergers, breaking up cartels, and stopping the abuse of dominant positions. For example, a poor entrepreneur might want to start a business in competition with a large, established firm, and he or she might even have an idea for how to be a more

112 Abhijit Banerjee & Esther Duflo, "The Economic Lives of the Poor," 21 Journal of Economic Perspectives 141 (2007).

113 Karnani, supra n.109 at 40-41 (2009) (citing John Lynch, George Kaplan & Jukka Salonen, "Why Do Poor People Behave Poorly? Variation in Adult Health Behaviours and Psychosocial Characteristics by Stages of the Socioeconomic Lifecourse," 44 Social Science & Medicine 809 (1997)); Abhijit Banerjee, Angus Deaton & Esther Duflo, "Wealth, Health, and Health Services in Rural Rajasthan," 94 American Economic Review 326 (2004); Shubhashis Gangopadhyay & Wilima Wadhwa, Changing Pattern of Household Consumption Expenditure, New Delhi: Society for Economic Research & Financial Analysis (2004).

114 Karnani, supra n.109 at 41.

115 One has to bear in mind, though, that when poverty is defined with relative thresholds, macroeconomic growth will not reduce the number of people living in official poverty unless the growth is skewed in favour of the poor.

efficient competitor. If the incumbent is dominant and is blocking small entrants with some type of anti-competitive conduct, competition law enforcement could help. Similarly, a cartel might have the same interest in keeping disruptive entrants out that a single dominant firm has. In both cases, once the competition problem is removed, industry output should increase. That means the demand for labour could increase, too, which means more jobs and/or higher pay.

Anti-competitive mergers also cause market power problems that have the potential to harm poor entrepreneurs. A frequent complaint in both developing and developed countries, for instance, is that consolidation among large supermarket chains and their international distribution systems creates monopsony power that is used against small farmers, resulting in artificially low prices for their produce.[116] A sound merger review system would block transactions that cause a substantial decline in the intensity of competition.

Furthermore, other factors such as overly restrictive regulations may make it unnecessarily difficult for new businesses to compete, thereby taking away opportunities for poor people to find work and/or earn more. Making competition stronger by advocating for the reform of such regulations can give those opportunities back.

Comparing the two basic ways in which the poor can earn a living – either as self-employed small business owners or as wage earners who work for someone else – which group stands to benefit more from increases in competition? In other words, if competition authorities wanted to prioritise poverty reduction, would it make more sense for them to focus on creating and protecting opportunities for small entrepreneurs, or on protecting competition in markets with firms that employ a lot of poor people? That is the sort of question that can keep an econometrician busy for a long time.

For one thing, the percentages of poor people that earn wages as opposed to running their own businesses vary from country to country and sector to sector. In Peru, for example, 69 percent of poor (living on less than US$2 per day) urban households run a non-agricultural business. That figure is between 47 and 52 percent in Indonesia, Nicaragua, and Pakistan. In developed countries, even if we use official national poverty lines instead of the US$2 per day benchmark, the figure would be far lower. In rural areas around the world, the share of poor (living on less than US$1 per day) households that are self-employed in agriculture varies widely, too, ranging from 25 to 98 percent. In Mexico and South Africa, though, very few poor people are self-employed in agriculture. Complicating matters is the fact that many poor households derive income from multiple sources. Sometimes small business owners also work for someone else to earn a second income. For example, using the US$2 per day benchmark, 47 percent of poor urban households in Cote d'Ivoire and Indonesia have more than one type of income. The figure is 24 percent in Mexico, 36 percent in Pakistan, and 20.5 percent in Peru.[117]

Then there is the difficulty of estimating the effects that competition has on things like innovation and per capita GDP growth,[118] the degree to which improvements in those things actually filter down to poor people and make them better off, and the extent to which the poor benefit as entrepreneurs as opposed to wage earners. An additional difficulty is the need for data on how interventions by competition authorities

116 See Brusick & Evenett, supra n.98 at 290-91 (noting complaints of this nature in Thailand, Peru, France and Indonesia). Note that anti-competitive mergers among supermarket chains can also be expected to harm poor consumers because the resulting increase in market power tends to lead to higher retail prices.

117 All of the statistics in this paragraph are from Banerjee & Duflo, supra n.112 at 151-52.

118 The Competition Committee currently is engaged in a stream of work aimed at evaluating the impact of competition enforcement activities on GDP and jobs.

affect the poor microeconomically, again discerning between effects that help small entrepreneurs and effects that help wage earners.

At least one person has an intuitive idea about the answer, though. Arneel Karnani argues that the poor-as-entrepreneurs are romanticised by outsiders just as much as the poor-as-consumers are. There is a tendency among governments and aid organisations, he contends, to generalise the poor as talented, creative entrepreneurs who just need a bit of help with a loan or some skills training before deftly steering their little businesses toward profitability. Karnani wants to disillusion everyone who has that notion. He points out that most microcredit clients are not entrepreneurs by choice. If they could find a job with reasonable wages they would happily take it. Furthermore, there is little evidence that the poor are particularly good entrepreneurs. That should not come as a surprise, he says, because "[m]ost people do not have the skills, vision, creativity, and persistence to be an entrepreneur. Even in developed countries with high levels of education and access to financial services, about 90 percent of the labor force is employees, not entrepreneurs."[119]

Banerjee and Duflo are in full agreement. The reason so many poor people are self-employed is that being an entrepreneur is often easier for them than finding a job offer:

> *You buy some fruits and vegetables or some plastic toys at the wholesalers and start selling them on the street; you make some extra dosa mix and sell the dosas in front of your house; you collect cow dung and dry it to sell it as a fuel; you attend to one cow and collect the milk. These types of activities are exactly those in which the poor are involved.*
>
> *It is important not to romanticize these penniless entrepreneurs. Given that they have no money, borrowing is risky, and no one wants to lend to them, the businesses they run are inevitably extremely small, to the point where there are clearly unrealized economies of scale. Moreover, given that so many of these firms have more family labor available to them than they can use, they do very little to create jobs for others. Of course, this pattern makes it harder for anyone to find a job and hence reinforces the proliferation of petty entrepreneurs.*[120]

Karnani therefore argues that the best way to alleviate poverty is to raise the real incomes of poor people by giving them more opportunities to be steadily employed with reasonable wages. To do that, he says, governments should focus on creating and growing private enterprises in labour-intensive industries with policies that support deregulation, better infrastructure for transportation, and more robust capital markets. Although he does not mention competition policy, one can infer that Karnani would advise competition authorities to worry more about protecting competition in sectors with large (and potentially large) payrolls than in sectors with lots of small-time entrepreneurs.

What about the possibility that more competition actually damages the earning prospects of poor people? One can easily imagine scenarios in which that might happen. Fierce competition on the supply side of labour markets, for example, tends to drive wages down. In product and service markets, intense competition sometimes drives employers to cut costs by, among other things, eliminating jobs or cutting wages. Businesses eventually exit markets entirely when more efficient rivals enter and compete with them, causing near-term job losses. Small farmers, for instance, tend to have a very difficult time competing with large-scale agribusinesses. Competition-driven innovation might also turn out to be harmful to poor entrepreneurs and labourers, at least in the short term. New technologies can eliminate jobs by making older technologies obsolete and by driving small entrepreneurs and old-technology businesses out of markets.

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119 Karnani, supra n.109.

120 Banerjee & Duflo, supra n.112 at 162.

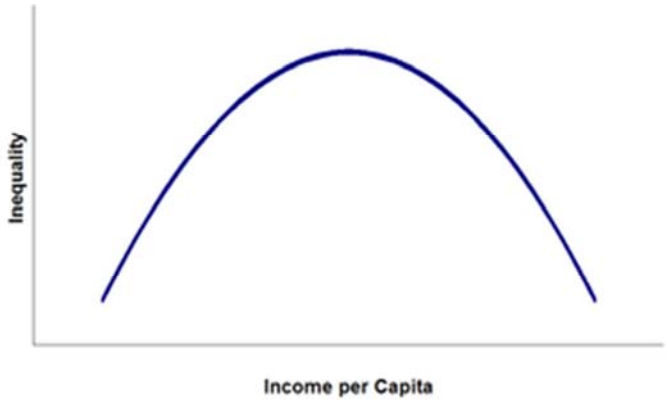
Considering the theoretical effects on real wages for poor, unskilled workers of an increase in foreign competition due to greater international trade only adds to the uncertainty of how competition affects the poor. There are at least eight kinds of potentially significant ways in which international trade can affect poor, unskilled workers, and the net effect is indeterminate.[121] For example, more foreign competition might cause old, inefficient domestic firms to exit and new, more efficient domestic firms to enter. Or existing firms might allocate their resources more efficiently. Either one of those effects could cause wages to rise where productivity increases.

Alternatively, if domestic firms react to more foreign competition by outsourcing to smaller businesses or individuals in the informal sector, the average wage of people who used to work in the formal sector might decline. Then again, the workers might wind up with higher incomes despite the decrease in hourly wages if they work more hours in informal sector jobs.

Even if the net effect of competition on growth, employment, and wages turns out to be positive overall, it is one thing to say that competition drives those beneficial results in general. It is another to say that it reduces poverty in particular. The poor need *inclusive* growth – growth that gives *them* more entrepreneurial opportunities, more jobs, and higher incomes.

Whether or not they get it will depend on a great many things. For example, one should not necessarily expect the effect of growth on poor people in developing countries to be the same as it is on poor people in developed countries. Nearly 60 years ago, the economist Simon Kuznets hypothesised that as a country develops economically, it will trace out an inverted-U shaped curve if income per capita is on the horizontal axis and income inequality is on the vertical axis. That is to say, Kuznets predicted that the poor initially would not receive a proportionate share of income growth, but if the growth continued, inequality would eventually fall.[122]

Figure 5. The Kuznets Curve.



121 Pranab Bardhan, "The Impact of Globalization on the Poor," in Susan Collins & Carol Graham (eds.), Brookings Trade Forum 2004, 271, 275.

122 Simon Kuznets, "Economic Growth and Income Inequality," 45 American Economic Review 1 (1955). The curve could exist because, initially, those who already had money within an economy would suddenly have more good opportunities to invest profitably. The poor, however, would be flocking to cities in search of manufacturing jobs, thus keeping wages down. Kuznets believed that once a certain level of average income was achieved, democratisation would occur, the country could afford to be more of a welfare state, and the benefits of growth would filter down to everyone in society.

Kuznets's particular theory was not necessarily correct. In fact, his hypothesis has been liberally criticised over the years.[123] But the larger point is that context probably matters, so general macroeconomic growth may not automatically translate into poverty reduction.

Getting back to competition, we need to know whether there is evidence – in any setting – that more competition actually does help poor entrepreneurs and workers in practice. Or do the benefits of competition mainly accrue to big businesses and wealthy people?

Moreover, competition may sometimes help the poor as consumers but harm those same people as small business owners or wage earners. Suppose that a decline in competition at some level in the chain of production caused a general rise in food prices. Poor farmers who sell some of their output might be made better off as sellers while simultaneously being made worse off as consumers (with respect to the food they consume that is not self-supplied). What is known about the net change in welfare for the poor in the presence of these mixed effects?

In the next section of the paper, we take a look at what is known about the answers to those questions.

5.2 Actual effects

As was the case with competition and poor consumers, there is not much publicly available data on the direct effect of competition on poor small business owners and workers. This, too, could be a fruitful area of study for competition authorities, as they may be in the best position to examine the effects of their past interventions on poor people's opportunities for earning a better living. There is some helpful information, though, both at the macro (general economy) level and the micro (market-specific) levels.

5.2.1 Actual macroeconomic effects of competition on poverty

At the macro level, we are interested in whether there is a causal chain leading from greater competition to greater GNP growth to poverty reduction. Although the question is by no means settled, there are indications that competition boosts GNP growth, including innovation-driven growth. There is also some evidence that GNP growth alleviates poverty.

5.2.1.1 The link between competition and GNP growth

The effect of competitive markets on macroeconomic growth is a major topic itself. A comprehensive review of that literature would be unwieldy in a paper that focuses on the effects of competition on the poor. But a sample can adequately make the case simply that there is evidence that competition drives economy-wide growth.

- In 2003, the World Bank published a report which found that economies with competitive domestic markets tend not only to have higher levels of income, but higher income growth rates, as well.[124] The report further noted, incidentally, that those same economies tend to have lower poverty rates.

123 Joseph Stiglitz, "Some Lessons from the East Asian Miracle," 11 World Bank Observer 151 (1996) (rapid but equitable growth of East Asian countries defied the Kuznets curve); Klaus Deininger & Lyn Squire, "New Ways of Looking at Old Issues", 57 Journal of Development Economics 259 (1998) (inverted U shape disappears after controlling for historically high levels of inequality); Francisco Ferreira, "Distributions in Motion: Economic Growth, Inequality, and Poverty Dynamics," in Oxford Handbook of the Economics of Poverty, Philip Jefferson (ed.) 428-29, 454-55 (Oxford University Press: 2012) (Kuznets hypothesis not well supported by improved data from developing countries in 1990s).

124 World Bank, Global Economic Prospects and the Developing Countries, pp. 85-86 (2003), available at http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf.

- In 2007, the OECD Secretariat issued a report on the relationship between competition policy and macroeconomic performance.[125] The report surveyed the theoretical and empirical literature and found that policies that enable competitive market forces can raise output per capita by encouraging investment, improving productivity and increasing employment. It used the experiences of certain OECD countries to show how pro-competition reforms create resilient, adaptable economies that grow faster and create more jobs. It also reviewed empirical, long-term evidence showing that eliminating anti-competitive regulation correlates with faster productivity growth because competition speeds the adoption of new technologies.

- Other OECD research has focused on the question of how pro-competitive policies and regulations affect performance and found an empirical connection between strong competition in goods and services markets and better productivity and employment outcomes.[126]

- The UK's Office of National Statistics issued a report in 2007 that identified five main factors in raising productivity (which is generally believed to contribute to GNP growth). One factor was competition and another, innovation, is intertwined with competition (see Part 5.2.3.2. below on "The importance of innovation and innovation policy").[127]

- William Lewis of McKinsey & Company compiled a book's worth of anecdotal examples to make his case that undistorted product market competition is the key factor in determining productivity, which in turn drives prosperity.[128] Lewis and his colleagues spent 12 years studying why some nations remain poor, even after receiving substantial international assistance, while others prosper. Repeatedly, the McKinsey team found evidence that the economies of poorer countries were being slowed down by government policies that interfered with competition. Economic progress, they concluded, depends on increasing productivity, and that cannot happen when policies prevent more efficient companies from replacing less efficient ones.

  A typical problem was that poor countries often protected their domestic firms from foreign competition, even when the foreign companies were more productive. But if they worked for a more productive company, local workers could earn higher wages and local consumers could enjoy lower prices.

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125 Michael Wise, Relationship between Competition Policy and Economic Performance, DAF/COMP(2007)2.

126 See, e.g., OECD, Report on Regulatory Reform, vol. 2, Thematic Studies (1997), available at www.oecd-ilibrary.org/governance/the-oecd-report-on-regulatory-reform_9789264189751-en (stronger competition boosted output in the long term by 0.9% in the US and up to 5.6% in Japan and Spain); (Giuseppe Nicoletti & Stefano Scarpetta, "Product Market Reforms and Employment in OECD Countries", OECD Economics Department Working Paper No. 472 (2005), available at http://dx.doi.org/10.1787/463767160680 (regulations that restrict competition reduce employment; employment could increase 2.5-5 points after shift to pro-competitive policies); Paul Conway, Donato de Rosa, Giuseppe Nicoletti & Faye Steiner, "Regulation, Competition and Productivity Convergence", OECD Economics Department Working Papers No. 509 (2006), available at http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=ECO/WKP(2006)37 (anti-competitive regulation slows productivity growth in sectors where information and communications technologies are particularly important; it also retards process of catching up to productivity leader).

127 Office of National Statistics, The ONS Productivity Handbook at p. 20 (2007), available at www.ons.gov.uk/ons/guide-method/method-quality/specific/economy/productivity-measures/productivity-handbook/index.html.

128 Lewis, supra n.29.

5.2.1.2 The link between GNP growth and poverty reduction

Turning to the link between general economic growth and poverty reduction, many sources express little doubt that a causal relationship exists. For example, a 2011 report by the UK's Department for International Development does not merely state that economic growth reduces poverty; it says there is plenty of evidence that economic growth is the *primary* driver of poverty reduction.[129] The report cites, among other things, an interesting empirical paper by Kraay, who studied changes in poverty in a sample of developing countries during the 1980s and 1990s.[130] Kraay found that nearly all of the variation in long run changes in poverty is driven by growth in average incomes. That is an important result not only because it shows that there is a strong connection between per capita GNP growth and poverty reduction; it also suggests that the positive effects of greater competition on per capita GNP will be shared by the poor.

Earlier empirical work by Kraay and Dollar, incidentally, found that in a panel of 92 developed and developing countries, growth in the incomes of the poor matched growth in average incomes at a rate of roughly one to one.[131] That finding contradicts the Kuznets curve hypothesis. A rising tide, it seems, really does lift all boats, and it does so at a uniform rate. The central message of Kraay's work for governments interested in reducing poverty is that they should adopt policies that promote broad-based growth in their economies. The central message for competition authorities wishing to show that they can help in the fight against poverty, meanwhile, is that if they can demonstrate that their work boosts overall GNP growth, then that is as good as showing that their work reduces poverty.

Yet it is hard to square Kraay's results with today's reality in many countries. The gap between rich and poor has been growing, not shrinking, in over three-quarters of OECD countries, for example.[132] That fact might be less worrisome if more poor people were escaping from absolute poverty than entering it, despite the fact that their incomes are not growing as fast as rich people's incomes. But even after decades of generally positive macroeconomic growth, many countries still have about the same fraction of absolutely poor people that they have had for 30 years or more.

The situation in the US exemplifies how poverty can persist, or even increase, despite generally positive growth over long periods.[133] The US's annual GNP growth rate has been positive far more often than it was negative during the past 50 years. Yet the official poverty rate has remained essentially flat since 1966, fluctuating between 11 and 15 percent. In fact, lately it has been at the high end of that range. In 2010 the US poverty rate was 15.1 percent, representing 46.2 million people. That was the largest number of Americans officially living in poverty in the entire prior period of 52 years for which poverty estimates had been published.[134, 135]

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129 Department for International Development, supra n.17 at 6.

130 Aart Kraay, "When Is Growth Pro-Poor? Evidence from a Panel of Countries," 80 Journal of Development 198 (2006).

131 David Dollar & Aart Kraay, "Growth Is Good for the Poor," 7 Journal of Economic Growth 195 (2002).

132 "Inequality: Why the Struggle Matters," OECD Observer (Q4 2011), p. 7.

133 The US is an especially helpful example because it is one of the few developed countries that uses an absolute poverty line rather than a relative one.

134 Carmen DeNavas-Walt, Bernadette Proctor & Jessica Smith, US Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2010", p. 14 (September 2011), available at www.census.gov/prod/2011pubs/p60-239.pdf. In 2011, the rate dropped slightly to 15.0 percent but the number of officially poor Americans held steady at 46.2 million. Carmen DeNavas-Walt, Bernadette Proctor & Jessica Smith, US Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2011", p. 13 (September 2012), available at http://www.census.gov/prod/2012pubs/p60-243.pdf.

What is going on? While the recent uptick in poverty can be at least partially blamed on the 2008 global financial crisis, that cannot be the only factor at work. If it were, there should have been a meaningful and lasting decline in the poverty rate prior to 2008, during all those years of growth. The answer may have something to do with how income, income growth, and wealth are distributed in the US. Income inequality in the US has been rising steadily since the mid-1970s, when the Gini coefficient was 0.30. In the late 2000s, it was 0.37.[136] Income growth has also been skewing rather steadily in favour of wealthier Americans. During the period 1993-2000, the mean portion of total annual real income growth captured by the wealthiest one percent of Americans was 45 percent. In the 2009 to 2010 period, 93 percent of real income growth went to the wealthiest one percent while the remaining seven percent went to the other 99 percent of the population.[137] Today, a single American family – the Waltons, whose patriarch founded Wal-Mart – owns more wealth than the bottom 40 percent of US citizens.[138]

The "Kraay effect" of average GNP growth on poverty, therefore, is not immutable. It seems that it can be undermined by an income distribution that is significantly skewed and/or becoming more so.[139]

Figure 6 shows the levels of income inequality, represented by the Gini coefficient, in countries around the world as of 2009. Countries with low Gini coefficients, represented by the dark blue end of the colour spectrum, have the lowest degree of income inequality. Poor citizens in these countries have relatively more to gain from macroeconomic growth. Countries with high Gini coefficients, represented by the dark red end of the spectrum, have the highest degrees of income inequality. Poor citizens in these countries have relatively less to gain from macroeconomic growth.

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135 The US is unusual in that its official poverty measurements are based on pre-tax income and do not include the value of non-cash government support (such as public housing, food subsidies, etc.). But starting in 2011, the Census Bureau began to calculate a Supplemental Poverty Measure (SPM) that takes taxes (and tax credits) and non-cash support into account. In 2011, at 16.1%, the SPM poverty rate was higher than the official rate of 15.0% and represented 49.7 million people. In fact, the SPM rate was higher than the official rate in all three of the years for which the SPM has been calculated (2009-2011) and the SPM rate grew in both 2010 and 2011. Kathleen Short, US Census Bureau, "The Supplemental Poverty Measure: Examining the Incidence and Depth of Poverty in the U.S. Taking Account of Taxes and Transfers in 2011" at pp. 10, 16 (December 11, 2012), available at www.census.gov/hhes/povmeas/methodology/supplemental/research/aea2013.kshort.pdf.

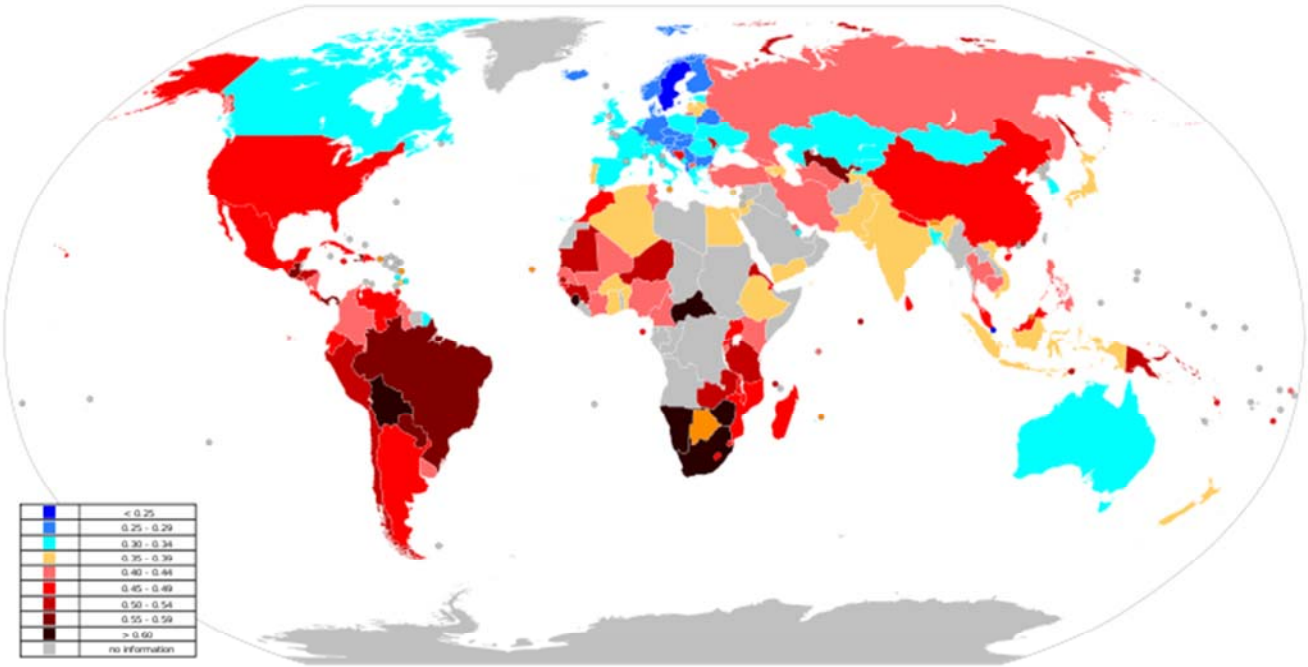
136 The Gini coefficient measures how much the income distribution among individuals or households in an economy deviates from a perfectly equal distribution. A value of zero represents perfect equality, while 1 indicates perfect inequality. The Gini coefficient figures are for the US's working age population (ages 18-65) and take into account taxes and transfers. OECD StatExtracts, available at http://stats.oecd.org/Index.aspx?QueryId=26068.

137 Emmanuel Saez, "Striking It Richer: The Evolution of Top Incomes in the United States," University of California at Berkeley Working Paper (March 2, 2012), available at http://elsa.berkeley.edu/~saez/saez-UStopincomes-2010.pdf; see also Peter Robison, "Top 1% Got 93% of Income Growth as Rich-Poor Gap Widened," Bloomberg (2 October, 2012), available at www.bloomberg.com/news/2012-10-02/top-1-got-93-of-income-growth-as-rich-poor-gap-widened.html.

138 Josh Bivens, "Inequality, Exhibit A: Walmart and the Wealth of American Families," Economic Policy Institute (17 July, 2012), available at www.epi.org/blog/inequality-exhibit-wal-mart-wealth-american/.

139 For further support on this point, see Ferreira, supra n.123 at 435-36 (showing that the growth elasticity of poverty reduction falls with inequality, i.e. the greater inequality is, the weaker the effect of growth on poverty reduction).

Figure 6. Income Distributions around the World in 2009.

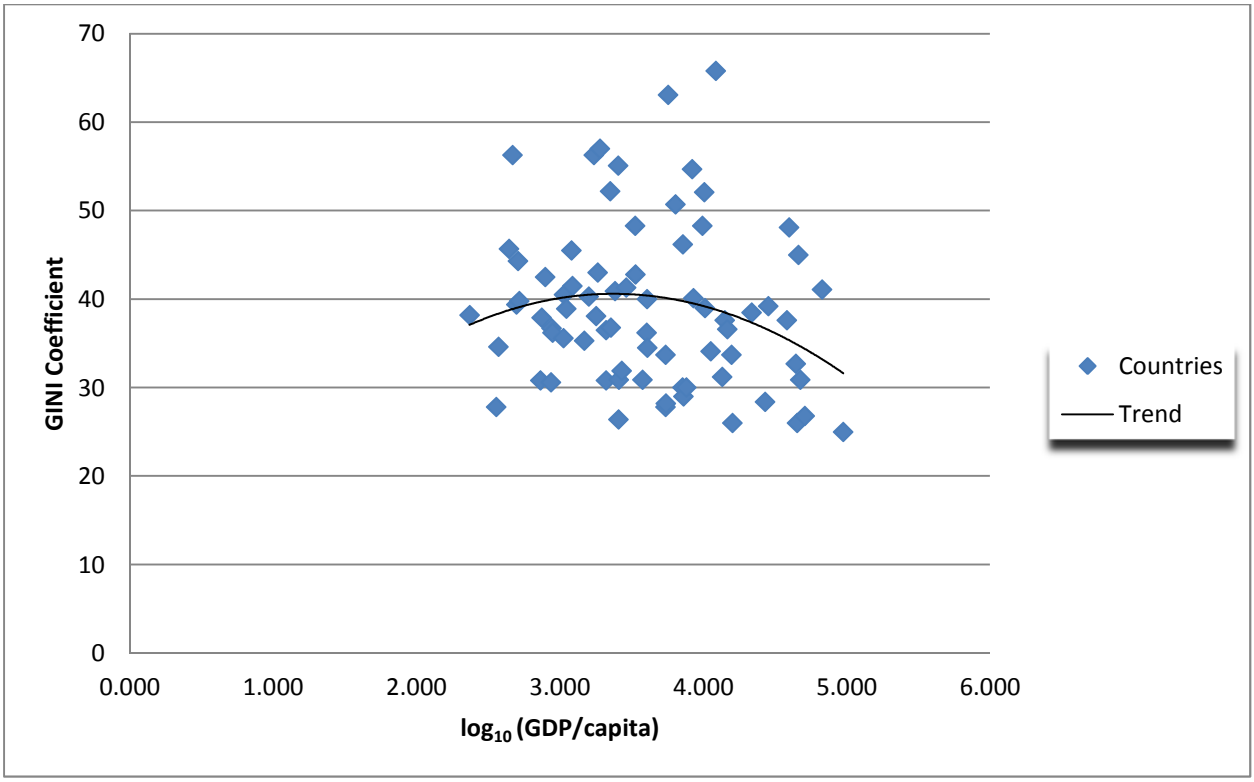


Source: CIA World Factbook (2009).

Figure 7 shows the recent relationship between income and income inequality in a sample of 74 countries.[140] Although the axes are essentially the same as those used to depict the Kuznets curve, this is a different chart because it shows a snapshot of the situation in many different countries, rather than what happens over time in one country. There does not appear to be a very strong relationship between income and income inequality from one country to the next. Countries with relatively low incomes exhibit a broad range of income inequality, as do countries with relatively high incomes.

140 14 of the 74 countries are OECD members. All of the Gini data are from the World Bank (http://data.worldbank.org/indicator/SI.POV.GINI), except for seven values that are from the CIA World Factbook (https://www.cia.gov/library/publications/the-world-factbook/fields/2172.html). Recent Gini data are unavailable for many countries. Therefore, the graph includes only those countries for which data are available during the period 2007-2009. The GDP per capita data are from the database of the United Nations Statistical Division (http://unstats.un.org/unsd/snaama/dnllist.asp) and are also from the period 2007-2009. The Gini and GDP data are from the same year for each country. For better visualisation, we used the common logarithm of the GDP.

Figure 7. GDP per capita vs. GINI Coefficient



Source: OECD, with data from the World Bank, the United Nations, and the CIA World Factbook.

What all this means for competition authorities wishing to make a contribution to poverty reduction – especially those in countries with high Gini coefficients – is that it probably is not enough to rely only on the positive effect that competition has on GNP growth. They will need to target sectors in which the poor earn, or could potentially earn, their livings.[141] The latter will vary substantially from country to country and depend on whether one is talking about the rural poor or the urban poor, but some obvious candidates are farming and farming implements, crop processing and distribution, and industries with high demand for unskilled labour. Other candidates include industries that facilitate small entrepreneurial activity, particularly banking services and mobile telecommunications (see Part 5.2.2.2. for more discussion of those).

5.2.2 Actual microeconomic effects of competition on poverty

5.2.2.1 A lack of competition harms poor entrepreneurs and workers

Earlier, we discussed evidence that competition problems exist in developing as well as developed countries and how those problems have harmed poor consumers. What about the effects on poor entrepreneurs and poor wage earners?

141 To help reduce poverty on the demand side, competition authorities would need to target sectors in which the poor spend most of their money, i.e. essential goods and services.

In a recent article, Frederic Jenny explored the harmful effects of export cartels in primary product markets.[142] Focusing on potash, a key ingredient in fertilisers, Jenny found substantial overall economic harm. Although he does not attempt to estimate the harm done specifically to poor farmers, he does include estimates of total harm done to certain developing countries that import potash. It stands to reason that a significant component of that harm must fall on the shoulders of poor farmers who buy fertilisers, as well as on the governments that subsidise the price of fertilisers.

For example, Jenny notes that India and China are some of the world's largest consumers of potash. India imports all the potash it uses, while China imports about 60 percent of its demand. Jenny estimates that, between 2011 and 2020, China will pay an average overcharge of about US$900 million per year due to the cartelisation of the potash export market. India's situation is even worse, as Jenny forecasts that it will pay an average overcharge of US$1.17 billion per year. He observes that if India continues its annual potash subsidy of US$1.5 billion, between 80 and 100 percent of that subsidy will serve only to pay for the monopoly rent that the potash cartelists are collecting. We can infer that even though poor Indian farmers are not paying for the surcharge directly, they are still being harmed by it. The government's subsidy money could have been used to help poor farmers in other ways if it were not being used to enrich the potash cartel. Or it could have been used to help other poor Indian citizens. Summing up the harm, Jenny calls it "a huge cost for importing countries [that] may have dramatic consequences in developing countries struggling to feed their rapidly increasing populations."[143]

For additional examples showing that the lack of competition causes harm to small entrepreneurs, we refer again to Professor Jenny's compilation of cases from around the developing world.[144] It includes instances of market concentration and price fixing agreements among agricultural products traders. Those two things have a monopsonistic effect on small farmers that reduces their incomes below the level they would be under competitive conditions. This problem is known to harm, for example, coffee growers in Kenya and Latin America, cotton, tea and tobacco growers in Malawi, and milk processors in Chile. Cartels also raise the input prices that farmers pay, as in the potash example above. But Jenny found allegations of cartel formation in fertiliser markets for Kenyan tea growers, as well. In addition, he describes vertical restraints in the beer sectors of Kenya, Zambia and South Africa that impede growth opportunities for small retailers.[145]

5.2.2.2 Three industries in which competition has benefited poor entrepreneurs and workers

- Banking services

  We noted in the discussion on the consumer side of poverty that relatively few poor people in the world are connected to formal banking services. That is true not only with respect to services like savings accounts, but with regard to loans, too – including business loans for small entrepreneurs. An IDB survey, for instance, found that only 3.3 percent of the poor population in Latin America and the Caribbean has access to formal or semiformal credit. Studies by both the European Bank of Reconstruction and Development and the Pacific Economic Cooperation Council have found that the inability to obtain loans is a major obstacle for SMEs in developing and transition

142 Frederic Jenny, "Export Cartels in Primary Products: The Potash Case in Perspective," in Simon Evenett & Frederic Jenny (eds.), Trade, Competition and the Pricing of Commodities (Center for Economic Policy Research: 2012).

143 Id. at 116.

144 Jenny, supra n. 51.

145 Id.

economies.[146] Even in the US, more than 40 million people have no access to financial services.[147]

Yet loans are vital for small entrepreneurs wishing to start and expand businesses. Small businesses, in turn, are vital to employment, which is critical for poverty reduction. In developing countries, small businesses are responsible for nearly 50 percent of all employment.[148] If medium enterprises are included, the figure goes significantly higher. For example, SMEs in South Asia account for over 70 percent of total employment.[149] In Latin America, 98 percent of all businesses are micro, small, or medium size enterprises. They generate 40 to 50 percent of GDP and account for 40 to 60 percent of employment, depending on the country. Furthermore, 70 percent of the region's poorest people either own or work for a microenterprise. As Luis Moreno, the President of the Inter-American Development Bank (IDB) has said, "[t]his suggests that we have a significant opportunity to reduce poverty in the region by making financial services more inclusive."[150]

Moreover, in a 2007 study, Thorsten Beck and two colleagues found that greater financial development (i.e. better-functioning, growing capital markets) not only boosts the incomes of the poor, but that it does so disproportionately.[151] Consequently, improved access to capital reduces income inequality, as well. In particular, the authors showed that about 40 percent of the long run effect of financial development on the income growth of the poorest 20 percent of the population is due to less income inequality. The other 60 percent is the result of financial development's effect on aggregate economic growth. Just to nail the point home, the authors emphasise that financial development reduces the percentage of a given population that is living in extreme poverty (defined as less than US$1 per day).[152] Making improvements in the availability and quality of financial services is therefore an important means of reducing poverty.

Formal financial institutions usually do not try very hard to win the business of poor entrepreneurs. Impoverished small business owners therefore tend to obtain loans, if at all, from informal sources like unregulated moneylenders.[153] Credit from informal sources, however, is

146 EBRD, "SME Finance in the Early Transition Countries: The EBRD's Experience" (2004), available at www.doc88.com/p-008703720102.html; PECC, "Financing Small and Medium Enterprises: Challenges and Options" (2003), available at www.pecc.org/resources/doc_view/206-financing-small-and-medium-enterprises-challenges-and-options.

147 Moreno, supra n.73 at 86.

148 Department for International Development, supra n.17 at 13.

149 Syed Quader & Mohammed Abdullah, "Constraints to SMEs: A Rotated Factor Analysis Approach," Munich Personal RePEc Archive Paper No. 26135, at p.5 (October 2010), available at http://mpra.ub.uni-muenchen.de/26135/.

150 Moreno, supra n.73 at 85.

151 Thorsten Beck, Asli Demirgüc-Kunt & Ross Levine, "Finance, Inequality and the Poor," World Bank Working Paper (26 January 2007), available at http://siteresources.worldbank.org/DEC/Resources/Finance_Inequality_and_the_Poor.pdf.

152 Id.

153 Abhijit Banerjee & Esther Dufo, "The Economic Lives of the Poor," 21 Journal of Economic Perspectives 141, 155-56 (2007); Moreno, supra n.73 at 85-86; Tejerina, Bouillón & Demaestri, supra n.79 at vii; Loïc Sadoulet, "Savings and Deposit Services for the Poor," in Luis Tejerina, César Bouillón & Edgardo Demaestri (eds.), Financial Services and Poverty Reduction in Latin America and the Caribbean, Inter-American Development Bank (2006).

expensive relative to what banks charge,[154] and the cost of financing has a powerful influence on how much a business can grow. Informal credit, being unregulated, also involves making insecure transactions, so it is riskier than formal credit. More competition might bring greater access to formal loans and lower interest rates.

In fact, there already is some evidence that greater competition has improved access to, as well as the terms of, banking services in some parts of the world. First, the United Nations has reported that microcredit interest rates fall quickly in areas where competition in the market increases.[155] Second, IDB President Moreno has pointed out that when financial markets in Latin America were liberalised and foreign banks entered in the 1990s, competition started to thrive. The result was that banks began to look for smaller and smaller sized customers. "This development was highly effective in deepening access to financial services."[156] What is more, competition not only helped to shrink the spreads between savings and loan interest rates, but the banking sector boomed in some countries, such as Colombia. Third, the World Bank has found that the degree of competition in the banking sector is positively correlated with access to financial services for enterprises, especially in poor countries and countries with underdeveloped financial and institutional infrastructures. In particular, competition in those types of countries is associated with more loans to the private sector with lower collateral requirements.[157]

However, Jenny found evidence that competition in many developing countries' banking sectors is weak due to anti-competitive conduct and mergers. The absence of competition has allowed the spread between borrowing and lending rates to be greater than it would otherwise be. "This hinders the prospect for economic development of firms that are too small to have easy access to international capital markets."[158]

Likewise, Khemani notes that in most developing and transition market economies, insufficient competition is responsible for restricting access to capital for new and small businesses. "[D]omestic bankers in many countries have successfully resisted introduction of competition and entry by new domestic and foreign banks."[159] He points out that even amid a major financial crisis, big conglomerates in East Asia were able to dilute reforms and delay their implementation. As in developed economies, lenders and investors naturally believe that their capital will be safer with established, proven businesses. But whereas small and new entrepreneurs in economies with well developed capital markets can find competitive lenders and investors who seek risk (though they expect a premium for it), small entrepreneurs in countries with poorly developed capital markets are likely to find no funding at all, or else dauntingly high interest rates. Eventually, that problem can lead to a lopsided market structure in which a few big conglomerates tower over the economy while a multitude of small businesses fight for survival. These observations confirm that an opportunity exists in the banking sector for more competition to help reduce poverty.

154 Abhijit Banerjee & Esther Dufo, "The Economic Lives of the Poor," 21 Journal of Economic Perspectives 141, 155 (2007).

155 United Nations, supra n.69 at 103.

156 Moreno, supra n.73 at 87.

157 World Bank, supra n.72 at 60.

158 Jenny, supra n. 51 at 123.

159 Khemani, supra n.89 at 61-62.

- Mobile telecommunications services

  There is strong evidence from across the world of the various development benefits associated with mobile phone services, including significant reductions in the cost of doing business, and improvements in connectivity which make it easier for businesses to link up with suppliers, existing customers, and potential new customers. This improves the investment climate, catalyses private sector development, and stimulates growth. Thus a well-performing and competitive mobiles sector, with low prices and wide coverage, can have significant knock-on benefits for the economy as a whole.[160]

  And do any of those good things wind up helping small, poor entrepreneurs and wage-earners? Or do they only help large businesses and well-to-do people? The history of the Indian fisheries sector shows how small primary goods producers can benefit from the entry and development of competitive mobile telecoms services.

  Between 1997 and 2001, mobile phone service began to appear in Kerala, an Indian state with a large fishing industry. Robert Jensen's analysis shows that when fishermen and wholesalers there started to use mobile phones, the resulting improvement in access to market information enabled them to greatly reduce variations in fish prices and totally eliminate waste. Consequently, both the fishermen's and consumers' welfare increased.[161] Because fishing is so vital to the economy in Kerala, those increases were felt by many, many people. Over one million people are directly employed in the fisheries sector in Kerala, and more than 70 percent of adults there eat fish at least once per day.

  Prior to the entry of mobile service operators, fishermen at sea had no way of knowing what the current prices were at any of the various markets along the coast. Furthermore, they usually had to choose just one market per day to go to because of both high transportation costs (the markets were, on average, about 15 kilometres apart) and the limited number of hours that the markets were open. Storage was very costly, so most fishermen simply sold their catch in their own local market. That meant that quantities in a given market were heavily dependent on the amount of fish that happened to be caught nearby. Consequently, prices tended to vary greatly from market to market, and while boats docked at some markets were dumping their catches for lack of interested buyers, buyers at other markets were going home empty-handed because there were not enough boats there. If the fishermen could have known where the best prices were while they were still at sea, they could have earned substantially more for their catches and sold all they had. And when the supplies increased, consumers in those markets would have saved money as prices declined.[162] Simply put, the market was hugely inefficient.

  But by 2001, more than 60 percent of the fishing boats in Kerala, as well as most of the fish wholesalers and retailers there, had mobile phones. Jensen conducted a microlevel survey and found that both price dispersion and waste declined markedly because the availability of market information was so much better. The boats were systematically heading toward the markets where they could get the best price for their catches. Jensen also found that the fishermen's profits

160 Ellis & Singh, supra n.86 at 74.

161 Robert Jensen, "The Digital Provide: Information (Technology), Market Performance, and Welfare in the South Indian Fisheries Sector," in Philip Jefferson (ed.), Oxford Handbook of the Economics of Poverty 879 (Oxford University Press: 2012).

162 Id. at 881-82.

increased by an average of eight percent and consumer prices dropped by four percent.[163] While those gains might not seem huge, they were permanent improvements rather than one-off bonuses.

Not only fishermen, but producers and consumers of other perishable primary goods (e.g. milk, eggs, fruits and vegetables) throughout the developing world are increasingly benefiting from mobile technology in the same ways that Kerala's fishermen and consumers have benefited.[164] These are gains that would never have happened without the competition and innovation from mobile telecoms companies.

Note that the Kerala example shows competition working at two different levels. Upstream, competition between mobile companies and other communications providers resulted in innovation, entry and affordable services. That, in turn, allowed more competition downstream in the fish wholesale markets, where imperfect information had been preventing competition among wholesale buyers as well as among fishermen. Once that imperfection was corrected, the waste and non-competitive pricing that had been the norm was eliminated, resulting in welfare gains for both fishermen and consumers.

- The poultry sector in Zambia

In describing the recent history of the poultry sector in Zambia, Thulasoni Kaira provides another example of how competition can create more opportunities for small entrepreneurs.[165] Poverty is widespread in Zambia, with 64 percent of the population living on less than US$1.25 per day.[166] Zambia's poultry sector, however, has been a success story. Its output rose from 16 million birds in 2000 to 26 million in 2007, and it is one of the country's biggest employers.[167] Competition law enforcement has been instrumental in the industry's growth.

In 1999, the country's largest day-old chick supplier, Hybrid, agreed to sell one of its farms and a processing plant to Galaunia Holdings, its largest customer. The sale was conditioned on an exclusive dealing agreement requiring Galaunia to buy day-old chicks only from Hybrid, and on Galaunia's promises not to raise any poultry on the acquired farm and not to enter the chicken hatchery business. For its part, Hybrid promised not to set up a poultry processing plant in competition with the one that Galaunia acquired. Hybrid had only one serious competitor at the time (Tamba Chicks) and was considered dominant by Zambia's Competition Commission, while Galaunia was the largest single buyer of day-old chicks – four times larger than its nearest competitor.

The arrangement between the two companies not only led to higher prices for day-old chicks, it prevented Tamba Chicks from selling to the largest chick buyer. As a result, Tamba began to have problems paying its bills. Sensing an opportunity, Hybrid arranged a loan for Tamba but

163 Specifically, Jensen found that the mean coefficient of variation of the price across markets in Kerala dropped from 60 to 70% to 15% and under. Waste, which had averaged 5 to 8% of each catch, was totally eliminated after mobile phones appeared. Id. at 883.

164 Id. at 881 & n.2, 920.

165 Thulasoni Kaira, "The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia," in Hassan Qaqaya & George Lipimile (eds.), The Effect of Anti-Competitive Business Practices on Developing Countries and their Development Prospects 133 (United Nations: 2008).

166 As of 2006, the last year for which data are available. CIA World Factbook, available at https://www.cia.gov/library/publications/the-world-factbook/geos/za.html.

167 Kaira, supra n.165 at 161.

forced it to give Hybrid the right to buy Tamba first if Tamba ever wanted to sell its business, which it eventually did. The Commission nullified all of those agreements as violations of the Competition and Fair Trading Act. When Hybrid nevertheless made a bid for Tamba, the Commission blocked it. Instead, a new entrant acquired Tamba and not only remained in operation but outcompeted Hybrid, gaining a market share of 50 percent versus Hybrid's 40.

That competition has been crucial downstream. As noted above, the industry grew substantially after 2000. Eventually, more than ten significant firms were competing with Galaunia, with new firms entering at the rate of nearly one every year. Kaira notes that increasing demand has spurred large chicken producers, struggling to fulfil orders, to sign contracts with small-scale farmers. The result has been exceptional growth for both the formal and informal chicken farmers.[168]

5.2.3 Other conditions affect competition's ability to help poor entrepreneurs and workers

We have noted that the proper functioning of competition policy, and its degree of success in helping poor consumers, depends not only on the quality of a country's competition authority and its competition law, but on other framework conditions, as well. The rule of law must be respected, for example. Government must be reasonably transparent and free of corruption. Courts and police forces have to function well. The trade regime cannot be too protectionist. And there needs to be some political and macroeconomic stability. Those and other framework conditions also affect competition policy's ability to help poor entrepreneurs and poor wage earners.

5.2.3.1 Undue influence: close relationships between firms and government officials

Just as corrupt, symbiotic relationships between powerful businesses and government officials can harm poor consumers, they can harm poor entrepreneurs. The incumbent-protecting tactics mentioned in Part 4.2.5.1, after all, are designed and implemented with the specific purpose of keeping potential competitors out of markets. When those potential entrants are poor entrepreneurs, they suffer because the competitive process is not working and therefore not giving them opportunities they would otherwise have. If public procurement officials direct contracts to favoured, established businesses, for instance, instead of selecting a winner through a legitimate, competitive bidding process, governments miss out on an obvious opportunity to encourage less established entrepreneurs and fight income inequality. If the newcomers could have operated more efficiently than the protected incumbent, then the governments also miss out on a chance to save money. Furthermore, to the extent that the protected incumbent inflates its prices, output will be reduced, which also hurts employment.

Entry deterring strategies that use burdensome regulations, such as those requiring frivolous permits, expensive application fees, or extensive paperwork, can be especially effective against small, poor entrepreneurs. That is largely because they have fewer resources than larger, more established firms, so meeting the requirements drains a larger proportion of a small business's budget and attention. As an example, consider that in Uganda, prospective entrepreneurs must face 18 different procedures that take nearly a month and more than 90 percent of per capita annual income to complete before they can legally go into business. In the UK, by comparison, starting a business involves six procedures that take 13 days

168 Kaira, supra n.165 at 161-66.

and less than one percent of average annual income to complete.[169] Studies show that cumbersome regulations for starting a business are correlated with corruption.[170]

Evidence that regulations have a substantial restraining effect on small entrepreneurs is provided by a study carried out by Suresh Moktan in Bhutan. He interviewed and received questionnaire responses from 168 micro and small enterprise owners and managers about the factors that impede their growth. The results indicated that the most significant constraints were restrictive government regulations, inadequate access to capital, and poor infrastructure.[171] A survey of SMEs carried out in Bangladesh reached similar results, finding that burdensome regulatory restraints were second only to high lending rates in constraining SME growth. The authors found that

> *[w]hile SMEs in Bangladesh may not be deliberately discriminated against by legal or administrative regulations, they do remain susceptible to unequal treatment due to dissimilarity in economic capacities, transition phases, resource potential, location reasons, lack of well-disposed connections, and so forth. Such biases result in the distortion of a competitive environment for business in which the major brunt is often confronted by fragile micro and cottage enterprises, which then could lead to the proliferation of informal business.*[172]

Operating their businesses informally, i.e. without complying with the laws, interferes with the ability of small enterprises to grow, hire more people, and compete effectively with the bigger, more established, formal firms. Such businesses are therefore in a no-win situation to some extent: either they operate legally and remain constrained by regulations that are much more burdensome on them than on larger businesses, or they operate illegally and remain constrained by the need to stay "under the radar" of law enforcement. Competition authorities can do a great deal to boost competition and improve the fortunes of small, poor entrepreneurs by identifying unnecessarily anti-competitive regulations and advocating their removal or revision.

To assist governments with the task of reducing unnecessary regulation, the OECD has developed a Competition Assessment Toolkit.[173] The Toolkit provides a general methodology for identifying unnecessary State-imposed restraints and developing alternative, less restrictive policies that still achieve government objectives. Designed for use by officials at all levels of government, and requiring no specialised training in economics or competition policy, the Toolkit consists of a series of simple questions to screen for laws and regulations that have the potential to unnecessarily restrain competition. In particular, the Toolkit facilitates the evaluation of draft new laws and regulations, for example, through regulatory impact assessment programmes; the evaluation of existing laws and regulation, whether in the economy as a whole or in specific sectors; and can assist government bodies engaged in development and review of policies, such as ministries that develop laws or the competition authority in its evaluation of competitive impacts of regulations.

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169 Department for International Development, supra n.17 at 18.

170 World Bank, Doing Business in 2004 at p. 18 (2004), available at www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB04-FullReport.pdf.

171 Suresh Moktan, "Development of Small and Medium Enterprises in Bhutan: Analysing Constraints to Growth," 14 South Asian Survey 251 (2007).

172 Quader & Abdullah, supra n.149.

173 See www.oecd.org/daf/competition/competitionassessmenttoolkit.htm

5.2.3.2 The importance of innovation and innovation policy

One framework condition that has the potential to strengthen competition's poverty-fighting effects is innovation policy. Innovation is responsible for most of the increase in material standards of living that has taken place since the industrial revolution.[174] New and improved products, services, and manufacturing processes are the main engines of economic growth. In fact, it is widely believed that innovation's dynamic effect on consumer welfare far outweighs the static effects on which competition policy often focuses. Yet competition itself can be a key driver of innovation, so there can be – at least in principle – a chain of causation connecting competition to innovation, innovation to growth, and growth to poverty reduction.

This part of the paper briefly discusses the first link – the one in which competition drives innovation. The existence of that relationship remains controversial. While some scholars firmly believe that competition leads to more innovation, others have argued that the most innovative companies are the ones that face little or no competition. This is an old debate among economists, and it still fuels a great deal of theoretical and empirical work. The question of how, exactly, competition affects innovation seems to have no universal solution. Instead, the answer requires a host of conditions, exceptions, and caveats. What seems certain, at least, is that competition is capable of both promoting and deterring innovation. On the one hand, strong competition can encourage companies to innovate so as to keep up with, get ahead of, or remain ahead of their competitors. On the other hand, some degree of market power may stimulate innovation by making it easier to recover costs and earn profits. Policymakers are left with the complex task of creating an environment in which the rewards for innovation are sufficient to encourage it, but where there are also competitive pressures that encourage firms to create, use and circulate innovations. Finding the optimal degree of competition is further complicated by the fact that innovation processes vary considerably across industry sectors and types of inventions.[175]

If it is possible to tease one central, reasonably well-accepted finding from the empirical literature in this area, it would probably be the idea that there is an inverted U-shape relationship between market concentration and research and development ("R&D") intensity when the former is plotted on the horizontal axis and the latter on the vertical axis. In other words, there is growing support for the proposition that concentration and R&D intensity generally have a positive relationship at low levels of concentration, with R&D activity reaching a peak at a moderate level of concentration, after which the relationship becomes negative and R&D intensity shrinks as concentration continues to rise. To the extent that market concentration is a good reflection of the degree of competition, and that R&D intensity is a good reflection of innovation, the message here is that the most fertile environment for innovation is a market with a moderate amount of competition.[176]

An important nuance – particularly in the context of competition policy and small entrepreneurs – which is revealed by empirical studies concerns the difference between the kinds of innovation that large incumbents typically pursue and what smaller challengers typically attempt. The former group tends to focus on developing inventions that build on or extend the status quo technology, whereas smaller firms and entrants are more likely to concentrate on disruptive innovation that can alter the nature of the market. Because new technologies that change the elements necessary for success may reconfigure the state of competition, they are often welcomed as a strategic opportunity by marginal competitors while being treated as a threat by the leading firms. That is often true even if the leading firms are the ones who created the new technology. In those cases, the incumbent simply shelves the technology, having patented it, kept its existence secret, or taken other measure to prevent competitors from using it. Consequently, breakthrough or disruptive inventions are often brought to market by small start-up firms. The implication

174 OECD, Going for Growth (2006) at 56.

175 OECD, Competition, Patents and Innovation (2007), DAF/COMP(2007)40, pp. 42-43.

176 Id. at 46.

for competition enforcers is that innovation is most likely to thrive in market environments that support a variety of firm sizes and feature low barriers to entry for innovative entrants.[177]

A key conclusion that follows from the inverted U-shape hypothesis and the greater inclination of small, entrepreneurial start-up firms to come up with breakthrough innovations is the need to implement effective competition law enforcement. The inverted U-shape suggests that, in general, moderate amounts of concentration create the kind of market environments that are most conducive to competition. Most competition enforcement occurs in relatively concentrated markets; that is, markets that tend to have significant potential for greater competition and therefore increased innovation. Accordingly, by performing their usual enforcement duties well and deterring established firms from using restrictive trade practices to thwarting potential entrants, competition authorities will protect opportunities for innovation and growth.

Of course, competition enforcement does not exist in a policy vacuum. Competition's ability to bring about growth-inducing and potentially poverty-reducing innovation is affected by other elements of a country's overall policy approach to innovation. Education, tax, trade, and intellectual property policies, for example, will all have substantial influences on the nature and amount of innovation that occurs. If a country encourages innovation with a group of sound, innovation-friendly framework conditions, competition law enforcement and policy will be more likely to encourage creative entrepreneurs to invest in bringing their ideas to the marketplace.

The OECD recently published a major study on policies that promote innovation. The OECD Innovation Strategy is the culmination of a three-year, multidisciplinary and multi-stakeholder effort.[178] It provides analysis and policy guidance on a broad range of issues from education and training policies, to policies that provide business environments and infrastructures that are conducive to innovation, to policies that foster the creation and diffusion of knowledge. It can support government efforts to develop effective innovation strategies and to achieve economic and social objectives. It advocates an approach which takes into account the interplay of different policy domains and brings them together through supportive mechanisms for governance at the local, regional, national and international levels.

177 Id. at 51.

178 OECD, The OECD Innovation Strategy: Getting a Head Start on Tomorrow (2010). Executive summary, key findings, and table of contents available at: www.oecd.org/sti/theoecdinnovationstrategygettingaheadstartontomorrow.htm.

Box 1. Two Recent Examples of Innovation Helping the Poor[†]

1. *A Solar Powered Lighting and Charging System*. Last April, a company called Azuri Technologies (UK) introduced a solar-powered light and charging system to the residents of Kokete, Kenya. Like many other Kenyan villages, Kokete is not on an electricity grid. People who live there had to buy paraffin for lamps if they wanted to work or study after dark. They also had to spend hours travelling to and from the nearest charging station if they wanted to use mobile phones to communicate. Those conditions created a poverty trap for people living in Kokete: They could not afford to build power lines to their homes, and the lack of power kept them poor.

Azuri's solar charger, called Indigo, is dismantling the trap. It converts and stores enough solar power to run two LED lights and a phone charger for eight hours each day. Schoolchildren are now able to continue their studies after dusk. Parents save money on paraffin and can communicate more often with people outside of Kokete. And no one has to breathe paraffin fumes anymore.

How can poor villagers afford Indigo units, and how can Azuri turn a profit? They do it with a business model similar to the one mobile service providers pioneered for millions of low-income people. Customers do not buy Indigo units up front. Instead, they buy pay-as-you-go scratch cards, which they consume as they need power, just like prepaid mobile phone customers use scratch cards to pay for mobile talk time. Indigo users validate their scratch cards via SMS from a mobile phone. They then receive a one-off passcode, enter it on the Indigo's keypad, and the unit starts to operate for a fixed period (typically a week). After a while of using the scratch cards, customers own their Indigo unit and can enjoy free power. Some people in Kokete are already planning to use bigger Azuri systems to start businesses – an option that the company calls "pay as you grow."

There are still more than one billion people in the world who have no access to electricity today. The market for Indigo, and its potential to help reduce poverty, is therefore very large. This example illustrates how an innovation can help the poor as consumers and as entrepreneurs simultaneously. It also illustrates how innovation can take the form not only of a new product, but of a new business model that spills over into other markets.

2. *A Fresh Milk Chiller*. Milk is an important source of protein in India, where much of the population is vegetarian. In fact, India is the largest producer and consumer of milk in the world. Most of that milk is produced by small dairy farmers, who typically own four or five cows. The farmers bring buckets of fresh milk twice a day to collection centres, where trucks whisk it to the nearest chilling station before it spoils. But the electricity supply is not always steady and the refrigerators are not always reliable, so a huge amount of milk -- 30 percent -- is lost due to spoilage.

An entrepreneur named Sam White went to India in 2007 to talk to dairies there about a solar powered refrigeration device his partner Sorin Grama was developing. Solar powered refrigeration was not steady enough for the milk business, White kept hearing. Dairies need a more reliable system, but the conventional refrigeration firms were not providing anything. So Grama designed a chiller with a thermal cell similar to a rechargeable battery; it draws power from the grid at night when it is readily available, stores it, and then the cell goes on stand-by during the day. Farmers pour their milk into the chiller during the day. If power from the grid goes off, the thermal cell instantly steps in and keeps the milk cold. Farmers who buy White and Grama's chillers, called Promethean Power Systems, no longer need expensive diesel generators, which were necessary for backing up older generation chillers. The farmers not only save money on generators, they earn more because more of their milk stays fresh.

[†]Both examples are described in TIME magazine (17 September, 2012), pp. 40-42.

5.2.3.3 The importance of effective laws and courts

In a new book, Professors Robert Cooter and Hans-Bernd Schäfer argue that effective laws and legal institutions are instrumental in the fight against poverty. Conversely, they say, when laws and legal

institutions are missing or ineffective, innovation – and thus poverty alleviation – will be inhibited.[179] Sound laws as well as an efficient court system are necessary for key investments to be made and for inefficient firms to exit in a timely, smooth fashion, but not all countries have such laws and courts in place yet.

Whether in Silicon Valley or in developing countries, well-drafted contract, property, and business organisation laws are necessary for inventors, creditors and partners to have enough confidence in each other to launch an innovative business venture. The innovator has to be able to trust the financier with an idea, and the financier has to be able to trust the innovator with the money. But governments cannot simply pass good laws and then expect magical things to start happening immediately, the authors note. It takes time for laws to evolve into solid institutions that adequately protect venture investments and profits.

The poorest countries in the world tend to have weak capital markets, so entrepreneurs often turn to friends and relatives for capital. Cooter and Schäfer show that, historically, when societies start from a condition of lawlessness and then implement secure property rights, there can be a growth spurt that is based mainly on "relational" finance, i.e. borrowing from family members. Being rather limited in most cases, family financing arrangements tend to keep business ventures small and local. No modern countries have become wealthy by relying only on relational finance.

Instead, countries have to expand their citizens' financing opportunities with private finance systems, such as commercial bank loans. To do that, countries need laws that effectively control behaviour, not just wishful, idealistically worded laws that do not actually bind people to behave responsibly. Laws are as effective as the sanctions that support them, the authors explain. People need to believe that failing to obey laws will make them worse off than complying. Once they believe that, financing and all the innovation and growth that comes with it can proceed. This is really not a new idea. The World Bank, for instance, made the same point in a 2009 publication called Banking the Poor.[180]

The point here is that competition can create incentives and opportunities for small entrepreneurs to bring their ideas to markets, but without a reliable legal system in place, the business transactions that are necessary to turn ideas into actual market entry will be less likely to occur.

6. Are "Pro-Poor" government interventions better than competition?

Whether the stated motive is to fight poverty, stabilise prices, help domestic businesses grow, or something else, governments are sometimes tempted to interfere directly in markets rather than entrust them to the forces of competition. The interventions may take the form of imposing price controls or trade barriers, granting subsidies, or setting up government-owned businesses to serve "poor" markets, to name a few examples. Even when well-intended, though, interventionist policies usually are not superior long term alternatives to liberalised, competitive markets. As one speaker noted at last year's Global Forum on Competition, interventions like price controls might initially improve the lives of poor consumers who have difficulty affording necessities, but the strategy is ultimately likely to backfire because it interferes with the signalling effect that prices have on market participants.[181]

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179 Robert Cooter & Hans-Bernd Schäfer, Solomon's Knot: How Law Can End the Poverty of Nations (Princeton University Press: 2011).

180 See World Bank, supra n.72 at 58-59 (noting that the degree to which creditors can credibly enforce contracts plays an important role in reducing credit risks for banks, which affects the ease of access to finance).

181 Bibek Debroy, contribution to session on Competition and Commodity Price Volatility at OECD Global Forum on Competition (2012), DAF/COMP/GF(2012)3.

Price caps, for example, usually reduce the incomes of farmers and therefore tend to reduce their incentives to produce more food, which is exactly what would have helped poor consumers. A viable strategy to stabilise and reduce food prices must somehow involve finding a way to increase agricultural production, not decrease it. Another problem is that price caps do not only reduce prices for poor consumers, they reduce prices for *all* consumers – even those who can afford higher prices. Price caps therefore divert resources toward people who do not actually need help.[182] Furthermore, price caps may result in shortages due to the reduced incentive to produce more of the item. It does little good to keep an item's price lower if the item is not actually available for purchase. Subsidies for agricultural inputs and outputs are similarly distortive and inefficient because the lion's share of the aid winds up going to large farmers who are least in need of assistance.[183]

Even worse, these interventions have a snowball effect that makes them more and more costly to maintain. Suppose a government decides to subsidise the price of bread. That will encourage more consumption, as intended, but the greater demand will also put upward pressure on the price of bread, meaning that the government will have to spend even more on subsidies to keep the effective price constant.

That is exactly what happened in Mexico when the government subsidised the price of tortillas, which account for more than half the daily calories and protein of the poor in that country. The tortilla subsidy became more and more of a financial burden on the government. In 1994, it was projected to cost US$1billion per year within two years unless the subsidy was limited. It was, gradually, and the costs came down. Price controls, which had also been in effect, were gradually lifted and then removed altogether in 1999.[184]

Granted, when people are starving, letting retail food prices remain too high for them to afford is an unacceptable short run outcome. But over time, the signals that high prices send to both consumers and producers are vital for positive change, and some types of "pro-poor" market interference (e.g. price controls) can cause shortages, which do not help starving people, either. One way or another, shortages will cause rationing until production is increased or alternative products are found and consumed. A high price is one type of rationing mechanism. It has some efficiency benefits compared to the alternatives, but we may not like the distributional effects of how it does its job, i.e. it cuts out the poor. So we might prefer to use price controls together with enforced rationing instead, especially in the short term. If a government simply controls prices but lets people buy as much as they want at those prices, the rationing will be achieved when shops run out of the item in question at some point during the day. New costs will appear in the form of long queues. Sometimes an intermediate solution appears, as when shopkeepers do the rationing, allowing people to buy only a certain amount of bread, etc. But one way or another, a good in short supply must be rationed.

In sum, high prices tell consumers that certain products are relatively expensive to produce, motivating them to find cheaper alternatives. At the same time, high prices tell producers that they should invest in increasing production. These responses will jointly move the market toward a new equilibrium with more food and lower prices. If prices are held artificially low, though, consumers and producers will respond differently and the result will eventually be shortages.

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182 Debroy, supra n.181 at 5 (citing Joachim von Braun, "Rising Food Prices, What Should Be Done?", IFPRI Policy Brief (April 2008), available at www.ifpri.org/sites/default/files/publications/bp001.pdf).

183 Scott Davenport, contribution to session on Competition and Commodity Price Volatility at OECD Global Forum on Competition (2012), DAF/COMP/GF(2012)1 at p. 5.

184 "Mexico's Economy: Monopolies and Tortillas," The Economist (19 January 2007).

Some countries have laws that require agricultural products to be sold to marketing boards that are governed by grower representatives or that set prices for staple foods. These laws implicitly centralise the determination of prices and quantities with mandatory, state-sanctioned frameworks that would be illegal if undertaken by private businesses on their own. There is a danger that such arrangements are subject to capture by the larger growers.

At a general level it is partially understandable why countries sometimes decide to put open competition on hold in agricultural markets. In many developing countries, property rights remain uncertain, agricultural industries may not yet be part of the taxation system, and rural populations may not yet be able to fully participate in education or have access to medical and other basic services. So there may simply be other urgent priorities. Carefully sequencing the order of market reforms is important.[185] But waiting to implement a competition law, to let markets work with minimal interference from the State, and to develop a culture of competition has real costs, too. The sooner competition is allowed to work, the sooner its benefits will accrue.

7. Mixed effects on poverty

Some essential goods are both consumed and produced by poor people. When the poor are on both the demand and supply sides of a market, competition can have mixed effects on poverty. For example, greater competition in the market for corn might move poor consumers' welfare in one direction while moving poor farmers' welfare in the opposite direction. Imagine that there is an increase in competition in the corn market that results in lower wholesale prices. Poor consumers who buy corn-based products may benefit. But those lower prices may also reduce the incomes of poor farmers who grow corn. Alternatively, an increase in wholesale corn prices would make the farmers better off, but it might harm consumers. Farmers who supply part of their own demand for corn and buy the rest would experience simultaneous and opposing welfare effects from price changes in the corn market.

Does this mean that whenever there are poor people on both the demand and supply sides of a market, the overall effect of competition on poverty is indeterminate? Is it therefore impossible to claim that competition policy can help to reduce poverty in such markets?

The answer to both of those questions seems to be no, at least with respect to most staple food markets. (Staple foods are highly relevant, since in many countries poor people not only grow and sell these products but also spend the majority of their income on them.[186]) Ivanic and Martin studied the impact on poverty of higher staple food prices in nine low-income countries. Although the effects varied by commodity and by country, net poverty increased much more frequently and substantially than it declined.[187] One can infer that lower food prices – a generally expected consequence of greater competition – would reduce net poverty more frequently and more substantially than they would increase it.

In fact, one can further infer that Ivanic and Martin's results would be stronger in cases where the lower prices are caused specifically by greater competition. The reason is that poor farmers often do not

185 Nicolas Taylor & Michal Petr, OECD DAF/COMP/GF(2012)2/REV1, Background Note for session on Competition and Commodity Price Volatility at 2012 Global Forum on Competition, at p. 20.

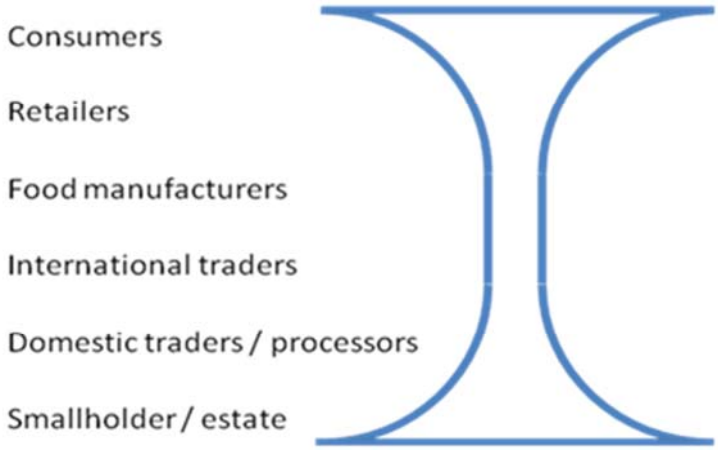
186 Maros Ivanic & Will Martin, "Implications of Higher Global Food Prices for Poverty in Low-Income Countries," World Bank Policy Research Paper no. 4594 (2008) at pp. 1-2 (stating that the poorest consumers spend about 75 percent of their income on staple foods) (citing J. Cranfield, P. Preckel & T. Hertel, "Poverty Analysis Using an International Cross-Country Demand System," Policy Research Working Paper Series 4285, The World Bank (2007)).

187 Ivanic & Martin, supra n.186. at 1-2. The staple products in the study included wheat, rice, maize, sugar, and poultry.

enjoy much of the benefit of higher food prices anyway. That means they have less to lose when prices decline, so the consumer welfare gains will be offset by a smaller amount. As the 2012 GFC clarified, where market power exists on the supply side of staple food markets, it is usually in the form of either a large agribusiness that pays poor people wages to work the company's farmland or a large firm acting as a middleman between a large number of small, poor farmers on one side and small shops that distribute the goods on the other. The large firms in the middle have most of the leverage, so they extract most of the available profit.

This hourglass shape represents a common situation in wheat, rice, poultry, coffee, and many other markets:

Figure 8. Common Bottlenecks in Agriculture



Source: OECD

Higher or lower food prices in these markets will not alter the incomes of the poor on the supply side very much.[188] Consequently, most of the welfare effects of lower staple food prices caused by greater competition will be felt by poor consumers, who will benefit, rather than by poor farmers.

8. What can competition authorities do to help reduce poverty?

First and foremost, they can continue to do their jobs. That means enforcing competition laws, working to improve them as needed, lobbying for more resources where appropriate, and – critically – using advocacy to create a culture of competition in their economies.

That culture should extend beyond the private sector to encompass the public sector, too. "The competition agency can play an important role in calling attention to anti-competitive and unproductive state measures and their costs to society. It should probably be the nation's 'strongest public voice on promoting competition and articulating the competition perspective.'"[189] Because so many different policies affect competition, part of the authority's attention should be focused on considering how policies that are largely or wholly formed in other parts of the government – like trade policy, industrial policy,

188 Taylor & Petr, supra n.185 at 15.

189 Fox, supra n.54 at 233 (quoting Mark Dutz & R. Shyam Khemani, Competition Law & Policy: Challenges in South Asia 28 (2007)).

state ownership, regulation, investment promotion, and anti-corruption – affect competition. When the effects are harmful (or expected to be harmful), the competition authority should let its concerns be known.

In particular, competition authorities can explain to their colleagues in other parts of the government the distortive harm that interventionist policies like subsidies and price controls can cause. If the government is contemplating taking over the supply of some essential good or service – unless there is clear evidence that the government's intervention is critical (e.g. there are insufficient transport options for moving food where it is desperately needed) – the authority can point out that governments are not better at running businesses than the private sector and that their intervention may only wind up causing shortages and deterring private firms from entering and solving the problem.

Likewise, competition authorities may find it useful to remind government agencies that promote subsidies, tariffs or import quotas that market exit is a normal, healthy, and necessary part of the competitive process. Propping up inefficient, unviable firms distorts that process and can lead to wasted government expenditures, product shortages, or higher prices. In addition, it can lead to lost opportunities for small, domestic entrepreneurs who might otherwise be able to enter, compete, and earn a better living.

People sometimes argue in favour of subsidies and trade protectionism by saying that letting companies fold is cruel or unjust. It is unavoidable that jobs will be lost when firms close down, so there are very real human costs whenever a business fails. But competition creates winners as well as losers. Furthermore, artificially keeping inefficient firms alive interferes with economic growth, which is a necessary ingredient for poverty reduction. Governments wishing to help people who lose their jobs when subsidies are cut would do better to put the money saved into creating or improving social safety nets. Beneficial programs for displaced workers who are impoverished or in danger of falling into poverty include temporary income support, vocational training, and job placement services to help people make the transition from one line of work to another where there are better employment prospects.

It is not only subsidies and trade policies that can retard efficient exit, though. Sound bankruptcy laws and an efficient court system are also necessary for smooth market exit to occur, but not all countries have such bankruptcy laws and courts in place yet. Where appropriate, a competition authority could advocate the necessary measures to correct any deficiency in that regard.

Moreover, competition authorities can work to persuade regulatory bodies to take the competition effects of their policies into account and to eliminate unnecessarily anti-competitive regulations. One way to do so is to implement a process for impact assessment that examines the competition implications of regulations. The OECD's Competition Assessment Toolkit was specifically designed to help governments to do that.[190]

Of course, competition officials offering advice in some of these circumstances will be doing so in rather sensitive political contexts, so they will have to strike a careful balance between sound competition policy advice and ensuring that they do not come across as uncaring or out of touch with the reality of what impoverished citizens are going through. Indeed, competition officials can emphasise that a primary reason for offering their advice is the welfare of those citizens.

But what can be done in situations where those things are not adequate?

One such situation can occur when there are cosy relationships between influential firms and government officials. Strong vested interests will fight hard to prevent pro-competitive changes from taking place. To overcome them, Ellis and Singh suggest that competition authorities consider aiding or

190 See www.oecd.org/daf/competition/competitionassessmenttoolkit.htm

even setting up interest groups that would benefit from pro-competitive reforms. Such groups could include consumers (both household and commercial) who would gain from lower prices, as well as recent and potential entrants who have been restricted by current policies but remain interested in participating in a market. Both consumer groups and business associations might already exist, so the agency might need only to support them rather than establish them. That support could include coordinating the groups' efforts, publicising the problems at issue and providing evidence that pro-competitive reforms would help consumers. With the authority's help, such groups might succeed in counterbalancing the political forces that maintain the status quo.[191]

Brusick and Evenett note that such endeavours will probably be quite challenging, but that amassing large groups of interested individuals and businesses is the right approach:

> [I]njecting the discipline of competition and limiting the exercise of market power into economies where vested interests have strong links to policy makers is unlikely to be easy in developing countries (and in industrialized countries for that matter). . . . Proponents of such measures ought to marshal a wide base of support within society and not solely focus on the important technocratic details that these measures entail.[192]

9. Conclusion

For competition to benefit the poor, a good competition law is not enough. A good competition authority is not enough, either. A culture of competition has to take root in a country, not only among sellers and buyers, but among courts, politicians, and government agencies. Competition needs a supportive policy environment and adequate framework conditions to work properly. There has to be a genuine market economy in which governments take the competitive effects of legislation and regulations into account. Not least of all, local realities have to be acknowledged, not only in terms of institutional capabilities but with regard to the skills and vulnerabilities of the poor population.

To understand the actual effects of competition on poor consumers, small business owners, and workers more thoroughly, more empirical research is needed. The welfare of poor people before and after the level of competition changes in markets – whether because of an intervention by the competition authority, normal entry or exit, or something else – has to be systematically analysed over time, in several countries and in several product/service markets. This would be a fruitful area of study for academics, competition authorities, or international organisations.

At this point, although there is evidence that competition is beneficial for macroeconomic growth, it does not seem clear that macroeconomic growth is necessarily inclusive; the poor can be left behind and the struggle against poverty can stagnate, depending on the severity of income inequality in a country. Therefore, if competition want to reduce poverty, they are likely to have the greatest effect when focusing on markets in which poor people spend most of their income (essential goods and services), on markets that facilitate small entrepreneurs' success (banking and communications services), and on labour-intensive sectors that employ the poor.

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191 Ellis, supra n.88 at 2; Ellis & Singh, supra n.86.

192 Brusick & Evenett, supra n.98 at 294.

BÉNIN

-- Version française --

Introduction

La concurrence, désigne une confrontation des entreprises dont chacune cherche à augmenter sa part de marché, le plus souvent au détriment des autres. Chaque entreprise exposée au risque de perdre des parts de marché, est incitée à faire le meilleur usage des ressources qu'elle mobilise et à proposer aux acheteurs des prix aussi attractifs que possibles.

L'objectif de cet exposé est de montrer la manière dont la concurrence peut permettre de faire baisser les prix des biens et services essentiels pour les populations pauvres d'une part, et la contribution des autorités de concurrence à la réduction de la pauvreté d'autre part.

Le développement mettra l'accent sur les objectifs de la politique de la concurrence et montrera comment l'atteinte de ces objectifs contribuera à la réduction de la pauvreté.

1. Objectifs

La politique de la concurrence a pour but fondamental d'empêcher les détournements de profits issus du libre jeu du marché au seul bénéfice d'une minorité d'opérateurs dominants et au détriment de l'intérêt général.

Au nombre des objectifs de la politique de la concurrence, nous pouvons énumérer entre autres :

- protéger les consommateurs ;
- lutter contre l'inflation ;
- promouvoir le développement économique ;
- créer les conditions d'une concurrence saine et loyale entre les entreprises ;
- favoriser le libre accès au marché.

2. Poids de la pauvreté

La pauvreté, de nos jours, constitue une préoccupation majeure pour les gouvernants. Malgré la croissance économique, les progrès de la réduction de la pauvreté ont été faibles. D'après les statistiques les plus récentes, l'incidence de la pauvreté au niveau national est estimée à 35 % en 2009 contre 37 % en 2006. Ce chiffre agrégé masque de fortes disparités entre zones rurales et urbaines, entre régions et entre femmes et hommes.

La pauvreté ressort à 29,8 % en zones urbaines contre 38,4 % en milieu rural ; elle se chiffre à 36,2 % dans les foyers ayant à leur tête un homme, et à 30,4 % lorsque le chef de famille est une femme.

Le poids de cette pauvreté constitue un frein au développement vu la proportion de la population concernée en milieu urbain comme rural. En parlant de la pauvreté, il importe de faire ressortir l'insuffisance ou l'inexistence de revenus permettant de subvenir aux besoins vitaux.

3. Contribution de la concurrence à la réduction de la pauvreté : Cas du Benin

L'augmentation de la productivité suscitée par la concurrence est cruciale pour la croissance économique et la réduction de la pauvreté. Des décennies de recherche économique ont confirmé les effets positifs de la hausse de la productivité sur les ménages pauvres à trois niveaux:

- la baisse des prix pour les consommateurs,
- la hausse des revenus pour les producteurs et
- l'effet d'entraînement de la croissance sur l'ensemble de l'économie à mesure que la demande en biens et services augmente.

Les objectifs de la politique de la concurrence concourent tous à la réduction de la pauvreté.

En effet, le premier objectif de la politique de la concurrence est de protéger le consommateur afin de lui garantir un choix plus libre et plus large que possible des biens et services dont il a besoin, à des coûts plus intéressants et de lui assurer un bien être dans la qualité de ces biens. Ainsi, elle prohibe toute action susceptible de :

- limiter l'accès au marché pour le libre exercice de la concurrence par d'autres entreprises ;
- limiter ou contrôler la production et les investissements pour le progrès technique.

Un autre objectif de la politique de la concurrence est la lutte contre l'inflation. Dans le libre jeu de la concurrence, les prix des biens et services sont librement déterminés. La politique de la concurrence offre la possibilité de réglementer les prix dans les secteurs où la concurrence par les prix est limitée en raison soit des situations de monopole ou de difficultés durables d'approvisionnement. Elle permet ainsi de lutter contre les hausses excessives des prix qui amenuisent le pouvoir d'achat des populations.

3.1 Agriculture

De tous les secteurs de l'économie, la production agricole est celle qui contribue le plus fortement à faire reculer la pauvreté.

En prenant le cas des pays en développement à forte dominance agricole, l'expansion des marchés de ces produits devrait normalement offrir des possibilités nouvelles d'amélioration de leurs revenus pour les populations rurales pauvres dont les moyens d'existence reposent sur l'agriculture.

Toutefois, si la croissance et la transformation du secteur ont créé des opportunités, il n'est pas certain qu'elles puissent être pleinement exploitées par les personnes vivant dans la pauvreté et dans des zones marginalisées. Du fait de l'évolution rapide de la demande en produits alimentaires dans certaines parties du monde en développement, le secteur de l'agriculture est appelé à produire le plus possible et à moindre coût et dans le respect du libre jeu de la concurrence.

L'accent mis, entre autres, sur la quantité, le prix et le respect du jeu de la concurrence a créé un biais en faveur de la production intensive à grande échelle parce que les dysfonctionnements du marché sont maîtrisés.

L'agriculture représente un moyen d'existence important pour un grand nombre de femmes, d'hommes et d'enfants en milieu rural qui vivent dans la pauvreté. Il remplit un certain nombre de fonctions différentes, depuis la création de revenus et la fourniture d'intrants dans les systèmes de production mixtes jusqu'à l'amortissement des chocs environnementaux et économiques. Les décideurs politiques doivent prendre en compte les multiples fonctions que remplit l'agriculture dans les moyens d'existence et la réduction de la pauvreté.

Les petits producteurs ont besoin de soutien pour tirer parti des opportunités offertes par la croissance du secteur et maîtriser les risques associés à une concurrence accrue et à un rapprochement avec les chaînes de valeur modernes.

Il faut, en ce moment, des innovations fortes et soutenues dans les systèmes agricoles nationaux, régionaux et mondiaux et une stratégie reliant le changement politique et institutionnel, le développement des capacités, l'innovation technologique et les investissements qui prennent en compte l'amélioration de la production afin de pouvoir supporter la compétitivité.

Les décideurs politiques doivent tenir compte de l'écart entre les forces des grandes entreprises et celles des petits producteurs en termes de capacités d'adaptation au changement. Certains petits producteurs ne pourront pas rester compétitifs dans un secteur qui se modernise rapidement et devront renoncer à leur activité, du fait de l'augmentation du coût d'opportunité de la main d'œuvre familiale, ce qui risque de remettre en cause l'objectif poursuivi à savoir la réduction de la pauvreté à travers la création d'emplois et l'augmentation des revenus.

Les décideurs politiques doivent également apprécier et préserver la fonction de filet de sécurité que remplit l'agriculture pour les vulnérables en matière :

- de santé et de sécurité alimentaire;
- d'accès aux capitaux et aux crédits pour financer l'investissement;
- d'accès aux services et aux marchés d'intrants et de produits;
- d'amélioration des infrastructures de transport et de communication.

La capacité d'adaptation aux changements de contexte et de conditions est cruciale pour l'avenir des petits producteurs. Cette capacité ne se limite pas aux moyens financiers, techniques et aux infrastructures; elle implique également la mise en place de procédures et de réseaux qui, conjugués aux politiques, permettront d'utiliser à des fins productives la technologie et d'autres formes de savoir et d'information pour pouvoir être compétitifs et restés dans la course.

Certains petits producteurs ne parviendront pas si ces conditions ne sont pas remplies à rester compétitifs du fait de la concentration croissante de la filière et de son rapprochement des circuits modernes de transformation et de commercialisation.

En produisant, la recherche des débouchés pour son écoulement est une autre manche de la situation d'où la concurrence.

La concurrence en économie désigne la présence de plusieurs acteurs qui souhaitent accéder à une ressource limitée, par exemple des agents économiques utilisant simultanément une même matière première ou présents simultanément sur un même marché. Elle correspond à une situation de libre confrontation entre l'offre et la demande sur un marché.

La forte demande en produits alimentaires d'origine agricole et les systèmes de transformation et de commercialisation de plus en plus complexes offrent de réelles possibilités de croissance et de réduction de la pauvreté à tous les stades de la filière.

Face à ces nouvelles perspectives de commercialisation et de revenus alternatifs, les conditions de la concurrence, les préférences des consommateurs et les normes commerciales évoluent rapidement, ce qui pourrait entamer la capacité des petits agriculteurs.

Le Bénin a des avantages comparatifs considérables en matière agricole et, du fait de sa situation géographique, pour son commerce et ses échanges qui peuvent contribuer à la réduction de la pauvreté. Il importera donc de tirer parti des avantages comparatifs de l'agriculture en diversifiant et en redynamisant la filière du coton représentant plus de 60% des recettes d'exportation, tout en positionnant le Bénin comme une économie rentable, transparente et bien gérée dans un climat des affaires attrayant pour les investissements qui viseront de plus en plus les marchés régionaux en général et celui du Nigéria en particulier.

3.2 Télécommunications

En plus de l'agriculture, les télécommunications, pour ne citer que ces deux, par rapport à la concurrence jouent un rôle important dans la réduction de la pauvreté vu le nombre de personnes qui interviennent dans le circuit de distribution des produits GSM.

Au départ, il n'existe qu'un seul opérateur économique en matière de service GSM. Aujourd'hui, le secteur des télécommunications au Bénin est composé :

- de l'Opérateur de télécommunications fixes : BENIN TELECOMS SA. Il s'agit de l'opérateur historique, société d'Etat, qui exerce encore dans ce secteur. Les procédures sont actuellement en cours en vue de l'ouverture de son capital social aux privés ;

- des Opérateurs de télécommunications mobiles : SPACETEL BENIN SA (MTN), ETISALAT BENIN SA (MOOV), GLO MOBILE BENIN (GLO), BELL BENIN COMMUNICATIONS (BBCOM) et BENIN TELECOMS MOBILE SA (LIBERCOM) qui sont :

  - fournisseur d'Accès Internet : BENIN TELECOMS SA ;

  - fournisseurs de Services Internet : Bénin Télécoms SA, Isocel Télécoms, Connecteo Bénin, Pharaon Services Plus, Communitec, OTI, Firsnet et le Campus Numérique Francophone (pour la Communauté Universitaire).

A travers le nombre de cinq intervenants dans le secteur, les consommateurs obtiennent des services à moindre coûts. Ceci constitue le fruit de l'installation de plusieurs opérateurs évoluant dans le même secteur.

Mieux, chacune des sociétés de téléphonie mobile exploitent plusieurs personnes et ceci entraîne la réduction de la pauvreté à travers les activités diverses y découlant.

3.3 Microfinances

L'objectif de lutte contre la pauvreté a été à l'origine de la création des institutions de microfinances. Le Gouvernement du Bénin, à travers le Ministère en charge des Microfinances, octroie des crédits aux

femmes à des taux d'intérêt intéressants. Le nombre important de ces institutions est un atout dans le domaine de la concurrence par l'allègement des documents à fournir avant l'obtention du crédit demandé.

A cet effet, le secteur des microfinances mérite une attention en ce qui concerne la réduction de la pauvreté dans le monde en général et au Bénin en particulier. L'accès aux crédits au niveau des institutions bancaires est très difficile pour une catégorie de personnes compte tenu des conditions exigées.

Ainsi, pour permettre à cette catégorie de subvenir à leur besoin en menant une activité, le développement des microcrédits est devenu une préoccupation de certains pays dont le Bénin. Ces microcrédits permettent à certains béninois de démarrer ou de faire prospérer leur activité.

Il faut noter que la Microfinance fournit aux pauvres des services leur permettant de protéger, de diversifier et d'accroître leurs sources de revenus. De petits crédits pour tirer parti d'opportunités, palier un manque de liquidités ou le recours à des comptes d'épargne simples et sécurisés sont autant de moyens de briser le cercle vicieux de la pauvreté.

La microfinance est un instrument efficace pour accéder à l'autosuffisance, et permettre aux plus démunis de devenir acteurs et responsables de l'amélioration de leur vie. La concurrence se matérialisant par la diversification des produits constitue une opportunité pour les pauvres. Elle, de nos jours, permet à des populations vulnérables de mieux résister aux aléas de la vie et de développer leurs microentreprises, en l'associant à d'autres politiques de développement comme celle agricole, peut accroître davantage sa contribution à la lutte contre la pauvreté.

4. Conclusion

De l'analyse faite à travers les trois (03) secteurs retenus à savoir l'agriculture, les télécommunications et des microfinances, une concurrence loyale contribue à la création d'emplois voire la réduction de la pauvreté du moment où le nombre de personnes qui y interviennent reçoivent en contre partie des rémunérations qui leur permettront de subvenir à leurs besoins.

BENIN

-- English version --

Introduction

Competition means a confrontation of enterprises where each seeks to increase its market share, usually at the expense of others. Each enterprise is exposed to the risk of losing market share and is thus driven to make the best use of the resources it can mobilise and to offer buyers the most attractive prices possible.

The purpose of this paper is to show how competition can serve to lower the prices of essential goods and services for poor people, and how the competition authorities are helping to reduce poverty.

This paper will stress the objectives of competition policy and will show how the achievement of those objectives contributes to reducing poverty.

1. Objectives

The essential purpose of competition policy is to ensure that the profits resulting from the free play of market forces are not siphoned off for the sole benefit of a minority of dominant market players, to the detriment of the public interest.

Among the objectives of competition policy we may cite the following:

- Protecting consumers.
- Fighting inflation.
- Promoting economic development.
- Creating conditions for healthy and fair competition among enterprise.
- Promoting free market access.

2. The burden of poverty

Poverty today constitutes a major concern for governments. Despite economic growth, progress in reducing poverty has been weak. According to the most recent statistics, the incidence of poverty nationwide was estimated at 35% in 2009, versus 37% in 2006. This aggregate figure in fact conceals sharp disparities between rural and urban zones, between regions, and between men and women.

The poverty rate stands at 29.8% in urban areas, and 38.4% in the countryside. It is 36.2% in households headed by a man, and 30.4% when the head of the family is a woman.

The burden of poverty constitutes an obstacle to development, given the proportion of the population affected in urban and rural areas alike. When speaking of poverty it is important to highlight the inadequacy or nonexistence of income for meeting basic needs.

3. The contribution of competition to poverty reduction in Benin

The increase in productivity brought about by competition is crucial for economic growth and poverty reduction. Decades of economic research have confirmed the positive impact that higher productivity can have on poor households at three levels:

- Lower prices for consumers.
- Higher revenues for producers, and
- The spillover effect of growth in the economy as a whole as demand for goods and services rises.

The objectives of competition policy are all related to poverty reduction.

Indeed, the first objective of competition policy is to protect consumers by guaranteeing them the freest and the broadest possible choice of needed goods and services at the lowest price, and to ensure the welfare-enhancing quality of those goods. Consequently, it prohibits any activity that might:

- Limit the free play of competition by restricting market access for other firms;
- Limit or control production and investment in technical progress.

Another objective of competition policy is to combat inflation. In the free play of competition, the prices for goods and services are freely determined. Competition policy offers the possibility of regulating prices and sectors where price competition is limited because of monopoly conditions or persistent supply problems. In this way competition policy restrains excessive price increases that would undermine people's purchasing power.

3.1 Agriculture

Of all sectors of the economy it is agriculture that contributes the most to reducing poverty.

In the case of developing countries where agriculture is dominant, the expansion of markets for these products should normally offer new possibilities for improving the incomes of the rural poor whose means of livelihood depend on agriculture.

However, while the growth and transformation of the agriculture sector have created opportunities, it is not certain that they can be fully exploited by people living in poverty and in marginalised areas. With the sharp growth of demand for food products in certain parts of the developing world, the agriculture sector must now strive to produce the greatest possible output at the lowest cost, with due regard for the free play of competition.

The emphasis placed on quantity, prices and the play of competition, among other aspects, has created a bias in favour of large-scale, intensive farming as market failures have been brought under control.

Agriculture represents an important source of livelihood for many rural women, men and children living in poverty. It fills a number of different functions, from the creation of income and the supply of inputs for mixed production systems to the cushioning of environmental and economic shocks.

Policymakers must take into account the many functions that agriculture fulfils in securing the means of subsistence and reducing poverty.

Small farmers need support in order to seize the opportunities offered by growth in this sector, to cope with the risks associated with increased competition and to come to terms with modern value chains.

Today there is a need for bold and sustained innovations in national, regional and global agricultural systems and a strategy for linking political and institutional change, capacity development, technological innovation and investments in ways that will enhance productivity in support of competitiveness.

Policymakers must take into account the gap between the relative capacities of large enterprises and small producers for adapting to change. Some small producers will not be able to remain competitive in a sector that is modernising swiftly and they will have to abandon farming in light of the increased opportunity cost of family labour. This in turn could frustrate the objective of reducing poverty through creating employment and raising incomes.

Policymakers must also appreciate and preserve the safety net function that agriculture plays for the most vulnerable population groups in terms of:

- health and food security;
- access to capital and credit for financing investment;
- access to services and to markets for inputs and products;
- improving transportation and communication infrastructure.

The capacity to adapt to shifting contexts and conditions is crucial for the future of small producers. This capacity has to do not only with financial and technical means and infrastructure but also involves the introduction of procedures and networks that, together with appropriate policies, will allow technology and other forms of knowledge and information to be put to productive use so that farmers can become competitive and stay in the race.

Unless these conditions are met, some small producers will not be able to remain competitive because of the growing concentration in the sector and its absorption into modern circuits of transformation and marketing.

A further aspect of the competitive challenge facing farmers is to find outlets for their products.

In economic terms, competition implies the presence of various players seeking to access a limited resource, for example economic agents making simultaneous use of the same raw material or attempting to sell simultaneously on the same market. This represents a situation of free confrontation between supply and demand on the market.

The strong demand for food products of agricultural origin and the increasingly complex systems of transformation and marketing hold real possibilities for growth and for poverty reduction at all stages.

Given these new prospects for marketing and alternative incomes, it is clear that the conditions of competition, consumer preferences and commercial standards are rapidly evolving, and this could undermine the capacity of small farmers.

Benin has considerable comparative advantages in agriculture, thanks to its geographic location and its trading relations, and these can help to reduce poverty. It will be important, then, to build upon the comparative advantages of agriculture by diversifying and revitalising the cotton industry, which accounts for more than 60% of export proceeds, while positioning Benin as a profitable, transparent and well-managed economy with a business climate that is attractive for the investments that will be increasingly focused on regional markets in general and the Nigerian market in particular.

3.2 Telecommunications

In addition to agriculture, there is at least one other sector – telecommunications – where competition plays an important role in reducing poverty, given the number of people involved in the distribution of GSM products.

Initially there was only one operator offering GSM service. Today, the telecommunications sector in Benin comprises:

- The fixed-line telecommunications operator: BENIN TELECOMS SA. This is the historic carrier, a government-owned corporation, which is still active in the sector. Procedures are currently under way to open its capital to private investors.

- Mobile telecommunications operators: SPACETEL BENIN SA (MTN), ETISALAT BENIN SA (MOOV), GLO MOBILE BENIN (GLO), BELL BENIN COMMUNICATIONS (BBCOM) and BENIN TELECOMS MOBILE SA (LIBERCOM), which are :

  - Internet access provider: BENIN TELECOMS SA ;

  - Internet service providers: Bénin Télécoms SA, Isocel Télécoms, Connecteo Bénin, Pharaon Services Plus, Communitec, OTI, Firsnet and Campus Numérique Francophone (for the University Community).

With five carriers now operating, consumers can obtain service at lower cost. This is tangible evidence of the benefit of having several operators established in the same sector.

Better yet, each of the mobile telephone companies employs many people, and this is helping to reduce poverty through the various attendant activities.

3.3 Micro-finance

It was the goal of reducing poverty that inspired the creation of micro-finance institutions. The Government of Benin, through the Ministry of Micro-Finance, grants credits to women at attractive interest rates. The significant number of micro-finance institutions is an asset when it comes to competition as it alleviates the burden of documentation that must be provided in order to obtain a loan.

To this end, the micro-finance sector deserves special attention as a tool for reducing poverty in the world as a whole and in Benin in particular. Access to bank credit is very difficult for a certain category of individuals, given the conditions required.

Thus, to allow this category to meet their needs for running a business, the development of microcredit has become a real concern for some countries including Benin. These micro-credits are allowing some citizens to launch or expand their business.

It must be noted that micro-finance offers services to the poor whereby they can protect, diversify and expand their sources of income. Small loans for taking advantage of opportunities or for filling a liquidity gap, or the use of simple and guaranteed savings accounts can be the means of breaking the vicious circle of poverty.

Micro-finance is an effective tool for becoming self-sufficient, and it empowers even the poorest people to take active responsibility for improving their lives. The competition that occurs with the diversification of products constitutes an opportunity for the poor. Today micro-finance is helping vulnerable groups to cope better with the vicissitudes of life and to develop their micro-enterprises, and when it is associated with other development policies such as those for agriculture it can do even more for combating poverty.

4. Conclusion

From this analysis of the three sectors selected – agriculture, telecommunications and micro-finance – it is clear that fair competition contributes to job creation and to poverty reduction as well, provided the people involved receive in return a remuneration that will allow them to meet their needs.

BRAZIL

1. Introduction

The economic progress of countries has frequently been measured by their income growth. In the last decade, however, much attention has been rightly devoted to the type and quality of the growth experienced by countries. Today, it is widely recognized that the gross domestic product (GDP) should not be the only tool to measure the welfare of a country, since its growth is not always related to the improvement of the living conditions of the majority of the population. A country's income growth rates do not mean much if they are not related to the reduction of inequality, the increase of social mobility and the creation of opportunities to the poorest.

Brazil has recently obtained major successes in translating income growth into reduction of poverty and inequality. Different studies show that the improvements in the social arena obtained by Brazil in the last years have been unprecedented. The income of the poorest has experienced a significant expansion, leading to a great reduction of poverty rates, as well as to a major fall in the inequality index such as the "Gini coefficient". According to a recent research, while the Brazilian GDP grew in average 5.1 % over the last five years, the gains in living conditions in the country corresponded to those normally obtained by a country whose economy expanded averagely more than 13 % per year.[1]

Several political, economic and institutional reforms explain the inequality reduction and the distributive gains achieved by Brazil in the last decades. Since 1988, Brazil experiences a stable democracy, where different political groups establish a fruitful debate over the country's future and alternatives. In this time, inflation was controlled and markets were reformed to allow private investments, reduce barriers to international trade, induce competitions and introduce transparent regulation. In the social area, the minimum wage was highly increased and new models of welfare programs were implemented, which proved very effective in reducing poverty.

As a part of the market reforms, a new competition law was enacted in 1994, which introduced merger control in Brazil and reshaped the Brazilian Administrative Council for Economic Defense (CADE) as an independent agency with broad powers to deal with conducts that posed danger to the competitive structure of markets. Since then, Brazilian competition policy has grown in importance and achieved several accomplishments. The anti-cartel program, which relies on the use of advanced investigative tools, such as dawn raids and leniency, is internationally respected. The recently adopted pre-merger notification system has proven to work well, with the review timing being in line with the best international practices.

Brazilian competition law is aligned with other public policies in that it rests on a genuine confidence in the market system as a mechanism that creates wealth and enhances the overall efficiency of the country's economy. And as one that must be controlled not to allow that concentration and abuse of economic power result in the decrease of opportunities to small entrepreneurs, which could jeopardize the

[1] Douglas Beal, Enrique Rueda-Sabater, and Teresa Espirito Santo. "Introducing the BCG Sustainable Economic Development Assessment: From Wealth to Well-being". 27 November 2012. Available at https://www.bcgperspectives.com/content/articles/public_sector_globalization_from_wealth_to_well_being/.

promise of social mobility that is central to a market economy. A competition authority may contribute in different ways to the creation of an environment that improves the living conditions of the poorest, as we are able to perceive from CADE's recent experience.

2. Competition enforcement as a tool for protection of poor consumers

This section presents a few Brazilian cases that had relevant impact in the life of the poorest in Brazil, particularly in the field of essential goods and services. First, it describes a pending case in the cement market, which substantially affects, among other matters, a public housing policy for the poorest. Then, it analyses the extent of the negative effects of retail fuel cartels and it highlights a cartel case that affected the public health sector. Finally, it makes reference to a recent dawn raid in the salt market that has an indirect impact in basic provisions.

2.1 Cement market

The first example concerns the cement market, considering that anticompetitive practices that lead to higher prices of building materials may affect infrastructure investments as well as housing. To highlight the importance of this market, an international cartel in the sector was investigated by many countries, including the EU, Germany, France, UK, Poland, South Africa, Pakistan, Egypt, Taiwan, Korea, Romania and Argentina.

In Brazil, the cement market has been subject of a deep anticompetitive investigation from the former Secretariat of Economic Law ("SDE") of the Ministry of Justice. The investigations started back in 2006 and concluded for the existence of a substantial cartel that resulted in an increase of construction costs in general, including housing. This is a key-sector in Brazil, considering that: (i) cement is an essential product to civil construction; (ii) demand for cement remained high in the past two decades; and (iii) Brazil still has a "housing debt" to work on.

SDE calculated that the federal governmental program for housing to low-income families ("Programa Minha Casa Minha Vida") represented a demand of 11 million tons of cement (233 million cement bags of 50kg each), which totalized approximately R$ 6,3 billion (around US$ 3,15 billion). The case is still awaiting trial at the Brazilian Competition Tribunal, the current administrative decision body of the Brazilian Administrative Council for Economic Defense (CADE).

2.2 Retail fuel cartels

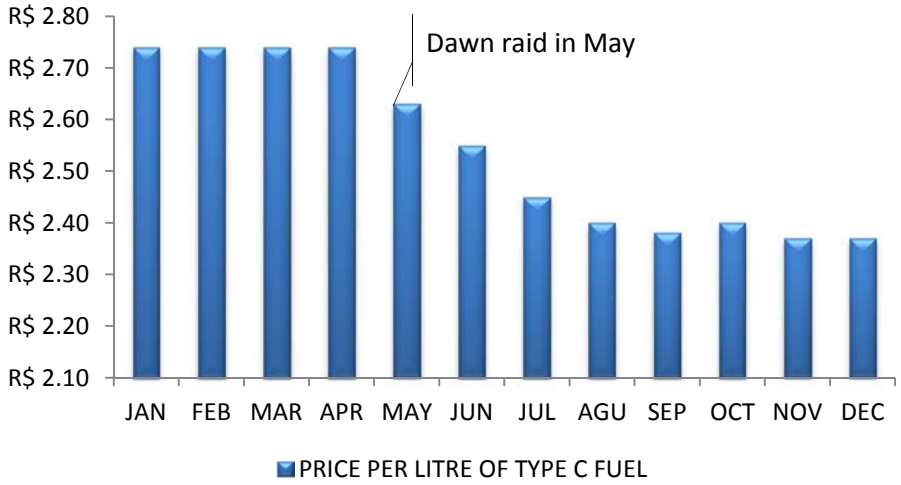
The retail fuel market is also interesting for the study of the relationship between competition and poverty, particularly in some countries, which remain highly dependent on its highway network for cargo and people transportation. In Brazil, highway network represents for 62% of total cargo transportation of the country, and even greater in regard to agriculture related products.[2] Among other possible reasons, this dependence is a legacy of a traditional public policy that favored the construction and development of roads and high-ways, rather than trains, subways and alternative transportation means. Henceforth, high prices of fuel have a direct impact on the day-to-day life of the poor people, since transportation costs affect directly the final prices of basic goods as well as bus tickets and inter-state bus tickets.

One particular case illustrates the positive impact of competition enforcement in this sector for consumers in general, which includes the poorest for the abovementioned reasons. A dawn raid carried out

[2] Cf. Brazilian Institute for Applied Economic Research (IPEA). Available at: **Error! Hyperlink reference not valid.**, pages 33-34 (last access on August 2012).

in 2007 uncovered an important gasoline cartel in the city of João Pessoa, capital of the State of Paraiba. The effects on prices – before and after the cartel – can be easily noticed in the graphic below:

Table 1. Price per litre of fuel (type C)



Fuel prices dropped from R$ 2,74 to an average of R$ 2,40 per liter – more than 10% difference. Considering an average of 8 million liters of fuel consumption per month in the city, multiplied by the R$ 0,34 cents savings per liter from the difference between price before and after the cartel, a general saving of around R$ 2.720.000,00 (over 1 million Euros) for the city is reached.

In addition, a strong competition advocacy effort has been made in Brazil during the last decade, particularly in the fight against cartels. Among these efforts is the institution of a National day of fight against cartels, which uses the retail fuel cartels as an example to easily expose the negative effects of this anticompetitive practice for consumers and for the country as a whole.

2.3 Industrial and medicinal gas markets

In 2003, the former Secretariat for Economic Law (SDE) started an investigation on a cartel among the main players in Brazil's industrial and medicinal gas markets. And it conducted dawn raids that collected vast amounts of evidence against the companies. After the investigative proceeding, SDE sent the case to CADE with a recommendation for condemnation. CADE found companies guilty and set fines for 25% of each company's revenue in 2003. White Martins Gases Industriais Ltda's fine was doubled because it had already been previously found guilty of an anticompetitive practice.

This was an extremely important case for competition enforcement in Brazil due to the high fines imposed and the market involved. On the one hand, CADE's decision raised the importance of private law suits for reparation of damages caused by cartels. On the other hand, it highlighted the negative impact of the cartel to the Brazilian health sector, since the products involved in the cartel were used to carry out medical treatments. It had a direct impact on the costs of patients and hospitals, disabling the use to other patients and treatments. The decision also indicated that the market affected by the cartel plays a role on the definition of the amount of fines.

2.4 Salt market

CADE's General Superintendence held in September 2012 a dawn raid of documents and electronic material in an investigation against an alleged salt producers' cartel in the state of Rio Grande do Norte.

The action had operational support of Federal Highway Police (PRF) from the states of Rio Grande do Norte and Rio de Janeiro.

The operation took place in the cities of Mossoró, Natal and Rio de Janeiro. There were nine search and seizure warrants against companies and union headquarters - seven of them in Mossoró, one in Natal and one in Rio de Janeiro, where the groups kept commercial offices.

The searches are based on Cade's request granted by the Federal Court in Natal, Mossoró and Rio de Janeiro, because of union public statements affirming that the companies constantly met to discuss product price and production quantities - which in theory constitutes cartel. An economic study done by Cade showed that, since the start of such meetings between the companies, the price of salt increased to levels close to what they would be if there was a monopoly in the sector. It was noticed that, since 2008, the price of salt for human consumption to the final consumer is 50% higher than the inflation rate in the period, according to the Brazilian National Consumer Price Index (INPC).

Salt production companies allegedly involved in the cartel account for about 80% of national production, which explains the significant impact a cartel in the sector has on the prices of salt – raw material for chemical and pharmaceutical industry – and salt for human consumption.

3. Competition policy as a tool for economic and social inclusiveness

Competitive markets are vital mechanisms for the creation of wealth and the reduction of poverty. Competition creates the right incentives for companies to make better products, reduce its prices and invest in innovation. Competitive markets are also key elements to social mobility in a country, since they allow companies to enter freely in new markets and small entrepreneurs to develop their ideas and to contest the incumbents.

The existence of a market economy, however, does not guarantee by itself that the forces of competition will be in the right place to promote innovation and to drive firms to make their business more efficient. Markets may be controlled by one or few companies, which can use their power to obstruct the entry of new competitors and to charge supra-competitive prices. Small companies may be dependent on essential facilities controlled by dominant firms and are usually vulnerable to conducts that foreclose markets.

A sound competition policy must address these concerns, contributing to the creation of inclusive markets through the leveling of the economic playing field. Competition enforcement must impede that dominant companies create artificial restraints and, when they do, it must be able to unblock the paths to effective and fair markets, allowing younger firms to develop themselves and to compete on the merits of their business.

In its history, CADE has recurrently showed its commitment to the combat of unreasonable market restraints that endanger the environment to entrepreneurship and innovation, which is fundamental to the success of new companies and small firms. In 2009, CADE considered illegal a reseller loyalty program implemented by the largest Brazilian brewing company, because it found that the program could squeeze competitors out of the market through the creation of artificial barriers and the elevation of rivals' costs.

More recently, CADE reaffirmed its concern with the maintenance of an economic environment that favors investments in innovation, when it analyzed a case that was initiated after the Brazilian National Association of Automotive Parts Manufacturers (ANFAPE) complained about the policies that some major vehicle manufacturers adopted in the market of auto-parts. ANFAPE claimed that the car manufacturers were attempting against competition by initiating legal proceedings to block the entry and hinder rivalry in the market of automotive parts. On the other side, the manufacturers argued that their actions merely

represented a legitimate enforcement of valid intellectual property rights regarding the industrial designs on external auto-parts. Although the Secretariat of Economic Law (SDE) of the Ministry of Justice had decided, after a preliminary analysis, to close the case, arguing that the registrations held by the car makers was legitimate, CADE determined that a deeper investigation was needed to confirm that the car makers were not abusing their dominant position.

In its decision, CADE recognized that the main goal of intellectual property law is to promote innovation, but noted that in some situations the misuse of patent rights can lead to great damages to competition, not only by reducing the welfare of consumers, but also by compromising the incentives to research and development that IP law is supposed to guarantee. Although the proceeding is still pending further investigation and a final decision by CADE, it is clear that the mere existence of valid intellectual property rights will not be accepted as an excuse for dominant firms to implement practices that illegally obstruct the activities of competitors, harming competition and diminishing the economic space for smaller entrepreneurs to develop their products and ideas.

4. Conclusions

This paper addresses the relation between competition and poverty in Brazil. Providing a general framework of the topic as well as a historical approach on the liberalization of the Brazilian markets during the 1990s, it describes a few competition cases that had a great impact on poor consumers, such as cement for housing, fuel for transportation and industrial gas used to health care. In addition, it also examines competition policy as a tool for the maintenance of a favorable environment to entrepreneurship and innovation, which seems essential to enable small business and to promote job creations through the concept of inclusiveness, before reaching these final remarks.

Aside from the important role that competition policy and enforcement can play for poverty reduction, this study highlights the value of a constant evaluation of the impact of competition policy. It enables the quantification of the benefits of competition enforcement and advocacy activities to consumers, particularly the poorest for purposes of this research. As suggested by OECD, this exercise is becoming increasingly widespread because of the mounting pressure on competition authorities, as well as regulators in general, to be more transparent and accountable.

CONGO

-- Version française --

1. Contexte socio-économique

La République du Congo, avec une population d'environ 4 millions d'habitants, a fait des progrès non négligeables sur les plans économique et social, ainsi qu'au niveau des reformes juridiques, au cours de ces dix (10) dernières années.

Ces progrès sont remarquables entre autres par :

- une balance commerciale excédentaire, dont 84% des exportations sont constituées du pétrole et 6,5% de bois;
- un taux de croissance d'environ 6% du PIB, l'un des plus élevés d'Afrique subsaharienne ;
- un PIB per capita d'environ 3500 $ an ;
- L'atteinte du point d'achèvement de l'Initiative des Pays Pauvres Très Endettés (PPTE), à partir de la mise en œuvre du document final de la stratégie de réduction de la pauvreté ;
- La construction des infrastructures de base, notamment la route reliant les deux capitales politique et économique du Congo : Brazzaville – Pointe-Noire ;
- L'amélioration des infrastructures de base à travers la mise en œuvre de la politique de municipalisation accélérée tournante qui consiste à célébrer la fête de l'Indépendance dans chaque Département.

Cependant, l'économie congolaise reste bipolarisée par la juxtaposition du secteur informel et du secteur formel ou structuré, où le fonctionnariat est dominant avec 78.200 travailleurs sur un ensemble de 125.137 en 2007.

La majorité des fonctionnaires est employée dans les secteurs de l'éduction, de la défense et de la sécurité. Ils représentent 68% de l'ensemble des fonctionnaires.

A l' exception des salaires des forces armées et des magistrats, les salaires du secteur public sont restés constants entre 1992 et 2011:

- 146.000 FCFA (222,40 €) le salaire élevé de la catégorie I;
- 97.000 FCFA (147,75 €) le salaire élevé de la catégorie II;
- 75.000 FCFA (114,25 €) salaire élevé de la catégorie III.

Une nouvelle grille salariale des fonctionnaires a été instituée en 2011 dont l'entrée en application a commencé progressivement en 2012.

Entre 2003 et 2007, sur 12.260 entreprises régulièrement créées, 28 (0,23%) grandes entreprises comptaient plus de 20 employés, 154 (1,25%) entreprises moyennes comptaient 6 à 20 employés, et 12.076 (98,5%) entreprises de petite taille employaient moins de 5 travailleurs.

D'autre part, depuis 1994, la République du Congo a entrepris une série des reformes législatives afin d'avoir une économie performante et compétitive, parmi lesquelles:

- Adoption de la loi n°6-94 du 1er juin 1994 portant réglementation des prix des normes commerciales constatation et répression des fraudes. Celle-ci consacre le régime général de la liberté des prix des biens et services, c'est-à-dire qu'ils sont déterminés par le libre jeu de la concurrence, tout en prévoyant quelques régimes d'exception, dont les plus usuels sont l'homologation et la taxation de prix.

- Adoption de la loi 6-2003 du 18 janvier 2003 portant Charte d'investissement, qui concède indistinctement des avantages spécifiques aux opérateurs économiques sans porter atteinte à la concurrence.

- Par ailleurs, avec l'assistance de la CNUCED et l'appui de l'Union Européenne par le projet Renforcement des Capacités Commerciales et Entrepreneuriales, le Ministère du commerce et des approvisionnements a élaboré deux projets de loi, l'un sur la concurrence et l'autre sur la protection du consommateur, qui sont soumis à l'examen des institutions nationales. Le projet de loi sur la concurrence prévoit la création d'une « Autorité Nationale de la Concurrence » et le deuxième projet prévoit la création d'un « Comité National de la Protection du Consommateur».

- Dans cette orientation, l'Autorité Nationale de la Concurrence sera un organe décisionnel alors que le Comité National de la Protection du Consommateur sera un organe consultatif. L'Autorité Nationale de la Concurrence travaillera en collaboration avec la Direction générale de la concurrence et de la répression des fraudes commerciales, et les agences de régulation sectorielle de la concurrence.

Devant ce contexte socio-économique mitigé et des reformes juridiques en perspective, que peut-on espérer de l'application du droit de la concurrence pour lutter contre la pauvreté dans un pays où :

- Les secteurs de l'Agriculture, de l'élevage et de la pêche contribuent au PIB à hauteur de 9,3%, alors que 50% de la population tirent leurs moyens de subsistance du secteur agricole informel ;

- Le taux de chômage concernant la tranche d'âge de 25 à 35 ans est de 34,2% ;

- Plus de 50% de la population vit au dessous du seuil de pauvreté, et l'accès à l'eau et à l'électricité est encore difficile à une bonne partie de la population ?

2. Définition de la pauvreté et mise en évidence des causes

La pauvreté caractérise la situation d'individus, des groupes démunis, de grande précarité de manque de biens essentiels à la vie, ou d'accéder avec beaucoup de sacrifices aux ressources jugées essentielles pour une communauté donnée.

Il s'agit des biens et services fondamentaux tels que : l'eau, l'électricité, les soins médicaux, les produits alimentaires de 1ère nécessité, le logement décent.

Cette définition prend également en compte la catégorie de personnes auparavant solvables, devenues pauvres suite aux aléas de la vie, mais dont les besoins vitaux à satisfaire ne seront pas identiques aux pauvres complètement démunis.

Pour lutter contre cet état de pauvreté, la baisse des prix des biens et des services est nécessaire, mais elle n'est pas une condition suffisante. La problématique du pouvoir d'achat de l'individu parait plus déterminante pour lutter contre la pauvreté. Car une baisse de prix exagérée empêche les entreprises à réaliser des bénéfices nécessaires pour garantir leur survie.

Les causes de la pauvreté sont multiples, pour le cas du Congo, on peut citer entre autres:

- Le chômage chronique ;
- Le manque d'instruction ;
- L'absence d'entretien d'infrastructures routières pour désenclaver l'arrière pays ;
- L'apathie humaine ;
- Le manque de revenu stable à certaines couches de la population;
- La sous exploitation du secteur agricole ;
- Le désinvestissement dans les secteurs utilisant une main d'œuvre abondante de manière durable ;
- Les conflits socio - politiques ;
- Les catastrophes techniques et naturelles;
- Les contreperformances des entreprises qui les obligent à la fermeture et liquidation ;
- Les prix très élevés des biens et services de large consommation etc.

3. Effet de la concurrence sur le marché des biens et services essentiels, en théorie.

La concurrence suscite l'entrée sur le marché de nouvelles entreprises qui participent à une augmentation de la production de biens et service et/ou de leur importation.

Aussi longtemps que ces entreprises réalisent des profits, une augmentation considérable de l'offre entrainera une baisse des prix et une présence des biens et services de qualité, à condition que le marché soit accessible, transparent, fluide pour plusieurs vendeurs et acheteurs.

La concurrence devrait donc favoriser l'entrée sur le marché des nouveaux acteurs en vue d'une croissance tout en empêchant les ententes, les fusions et les abus des positions dominantes.

Outre les actions judiciaires et administratives, les actions de sensibilisation et d'information des consommateurs et des professionnels doivent être menées par les structures en charge de la concurrence. L'accent devra être porté sur la qualité, la sécurité des produits et leurs prix.

Car certaines pratiques affectant les consommateurs peuvent réduire l'intensité concurrentielle, telle que l'utilisation des procédés déloyaux, des publicités trompeuses, etc.

Le renforcement de la concurrence exclu les ententes même verticales, conclus entre les entreprises d'une même filière afin de sécuriser et/ou contrôler les approvisionnements ou les circuits de distribution.

Certains économistes ont montré que les restrictions verticales (ententes verticales) amélioraient le bien être (hausse du surplus des consommateurs et/ou du surplus des producteurs). Et qu'en l'absence d'entente, chaque firme applique son taux de marge de façon à maximiser son profit. Il résulte de ce fait, une hausse du prix payé par le consommateur et un faible niveau de sa satisfaction (quantité vendue inférieure).

4. Effet de la concurrence sur le marché des biens et services, dans la pratique.

Notre expérience s'appuie sur le marché de la téléphonie mobile.

Dans ce secteur, nous dénombrons actuellement, quatre opérateurs : AIRTEL, MTN, WARID et AZUR.

L'entrée sur le marché de chacun s'est faite progressivement, le jeu de la concurrence a commencé à se jouer dès l'entrée sur le marché du second opérateur. Ce qui a eu pour effet, une faible baisse de prix de la communication.

Grâce à l'Agence de Régulation des Postes et des Communications Electroniques (ARPCE), un tarif plancher a été fixé à 60 FCFA/mn (0,09€).

Le dernier entrant, dans sa stratégie offensive a procédé pendant près de deux mois à une baisse de prix, en pratiquant le prix de 7FCFA /mn (0,01€), qualifié de prix promotionnel. Ce tarif a été qualifié de prix prédateur par l'ARPCE.

Ainsi, par l'intervention de l'Agence de Régulation des Postes et des Communications Electroniques, cette pratique fut réprimée. L'opérateur s'est vu dans l'obligation de se conformer à la réglementation.

L'impact lié au renforcement de la concurrence sur ce marché est très perceptible. Avec un prix plancher de 60 FCFA la minute, les tarifs sont à la portée des revenus même les plus modestes.

Dans le même temps, les prix des téléphones portables connaissent une baisse considérable jusqu'à 10.000 FCFA (15,23€) pendant les phases de promotion. Les consommateurs ont facilement accès à ce bien qui n'est malheureusement pas toujours de meilleure qualité. Le taux d'acquisition de téléphone par les ménages est passé de 38,0% en 2005 à 92,0%.

Le renforcement de la concurrence sur ce marché a profité effectivement aux consommateurs victimes de la pauvreté.

La politique de la concurrence étant encore balbutiante et moins structurée dans notre pays, les autorités en charge de la concurrence n'ont pas toutes les prérogatives pour prendre toutes les mesures qui s'imposent.

5. Marchés concurrentiels, contrôles ou intervention des pouvoirs publics en faveur des pauvres

L'interférence des pouvoirs publics sur les marchés, dans le souci de lutter entre la pauvreté, en imposant les contrôles de prix ou autres contraintes aux entreprises privées, ne favorise pas la compétitivité, l'innovation et la croissance.

En effet, les grands principes devant favoriser la pratique de la concurrence sur le marché sont de ce fait abandonnés. Les décisions stratégiques des entreprises liées à l'augmentation de la quantité et l'amélioration de la qualité se stoppent.

Par conséquent, l'offre stagne et les prix demeurent élevés et l'accessibilité de ces produits aux consommateurs pauvres demeurera problématique.

Les pouvoirs publics devraient veiller à la fixation des prix des produits par les entreprises au moyen du libre jeu de la concurrence. Cependant compte tenu des spécificités économiques de chaque pays, des régimes d'exception devraient être prévus à cause des prédominances des monopoles de fait ou des oligopoles dans certains secteurs d'activités jugés sensibles.

Pour tenter de juguler certaines imperfections du marché, le Congo applique souvent deux régimes d'exception, l'homologation des prix des produits de 1ère nécessité importés et la taxation des prix des biens et services de large consommation, qui impactent sur le pauvre. Ceux-ci s'appliquent sur : viande, poisson frais et salé, volaille, farine, tomate, huile, sel, riz, tôle ondulée, fer à béton, bières, médicaments, carburant, course de taxi et de minibus, prestations d'aconage et manutention portuaire.

6. Effet de la concurrence sur les pauvres, les petits entrepreneurs et les demandeurs d'emploi, la théorie.

Une pratique de la concurrence a pour effet l'augmentation de l'offre des biens et services sur le marché.

En situation de concurrence, tant que les entreprises anciennes réalisent des profits, des nouvelles entreprises, attirée par les profits réalisés par celles qui y sont présentes, vont entrer sur le marché. Les petites entreprises se développent grâce aux profits réalisés, augmentent l'offre des biens et services et créent des emplois durables.

La création d'emplois est un élément non négligeable de la lutte contre la pauvreté. L'obtention d'un emploi ou d'un meilleur emploi est un facteur lié à l'amélioration de la situation économique d'un individu.

A terme, les entreprises compétitives augmentent la quantité des produits offert, améliorent la qualité et diminuent les prix, augmentant ainsi le pouvoir d'achat des consommateurs dont les pauvres.

Les jeunes entreprises sont plus vulnérables à une mauvaise régulation de la concurrence. Un renforcement de la concurrence lié à des politiques inadaptées peut occasionner leurs faillites et freiner la création d'emplois.

7. La pratique de la concurrence au service de la lutte contre la pauvreté.

Si l'autorité de la concurrence désire lutter contre la pauvreté, il serait utile de se concentrer d'avantage sur le secteur du commerce de détail que sur des maillons de la chaine de production. En effet, les circuits de distribution organisés par le commerce de détail créent parfois des taux de marge très élevées et renchérissent les prix des produits offerts aux consommateurs finaux.

Pour le cas d'une épicerie du village en position de monopole, l'intervention des pouvoir publics est certes relativement limitée. Cependant, il peut être conseillé à l'épicier de ne pas dépasser un seuil de prix plafond des produits mis en vente, au regard se sa marge bénéficiaire.

Dans ce cadre, le Ministère du commerce et des approvisionnements est confronté à l'application du décret sur la distribution de 1986, qui prévoit un circuit court, de l'**importateur** (grossiste) au **détaillant** et de celui-ci au **consommateur final**, afin d'éviter les surcoûts dus à l'allongement de la chaîne de distribution. Mais, l'incrustation entre l'importateur et le détaillant d'une catégorie des commerçants appelée « demi-grossistes », non prévue dans ce décret, qui exigent une marge bénéficiaire supplémentaire

illégale, surenchérit les prix des produits alimentaires congelés, importés à 90% et soumis au régime d'homologation des prix.

Pour protéger la couche sociale la plus vulnérable, le Ministère du commerce et des approvisionnements a mis en place une politique visant à maintenir les prix bas par le circuit importateur-détaillant.

En somme, au regard des limites des théories survolées, la concurrence semble ne pas être une panacée à la pauvreté. Alors, quelles peuvent êtres les approches complémentaires pour résoudre les problèmes de pauvreté dans les pays en développement, où en majorité les secteurs d'agriculture et de l'élevage sont délaissés et ne bénéficient pas de subvention, en sus le secteur informel occupe plus de la moitié de la population? Comment impacter significativement la croissance sur l'emploi, un des piliers de la lutte contre la pauvreté et faire jouer la concurrence pour une meilleure diversification de l'économie dans l'hypothèse où les reformes législatives sur la concurrence énoncées ci-haut sont adoptées?

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CONGO

-- English version --

1. Socio-economic background

The Republic of Congo, with a population of approximately 4 million, has made significant progress in economic and social affairs as well as legal reform over the past ten years.

This progress is evidenced by:

- A trade surplus, with 84% of exports derived from oil and 6.5% from lumber;
- GDP growth of around 6%, one of the highest rates in sub-Saharan Africa;
- GDP per capita of approximately USD 3 500 per year;
- Successful culmination of the Heavily Indebted Poor Countries Initiative (HIPC) with implementation of the final Poverty Reduction Strategy Paper;
- The construction of basic infrastructure, including the road connecting Congo's political and economic capitals (Brazzaville – Pointe-Noire);
- Improvements to basic infrastructure through the implementation of the rotating accelerated decentralisation policy which consists in hosting celebrations to mark the country's independence in each *département*.

However, the economy remains polarised by the juxtaposition of the informal sector and the formal or structured sector, the latter being dominated by the civil service, which accounted for 78 200 employees out of a total of 125 137 in 2007.

The majority of civil servants are employed in the education, defence and security sectors, which together account for 68% of the public payroll.

With the exception of pay for the armed forces and magistrates, public sector salaries remained constant between 1992 and 2011:

- XAF 146 000 (Central African CFA francs) (EUR 222.40) for the top salary in category I;
- XAF 97 000 (EUR 147.75) for the top salary in category II;
- XAF 75 000 (EUR 114.25) for the top salary in category III.

A new salary scale for civil servants was drawn up in 2011 with a view to a gradual roll-out starting in 2012.

Between 2003 and 2007, among the 12 260 registered businesses, 28 (0.23%) large companies employed more than 20 people, 154 (1.25%) medium-sized firms had between 6 and 20 employees, and 12 076 (98.5%) small enterprises employed fewer than 5 workers.

Furthermore, since 1994 the Republic of Congo has undertaken a series of legislative reforms with a view to building an efficient and competitive economy. These include:

- The enactment of Law No. 6-94 of 1 June 1994 on price regulation, trading standards and fraud detection and prevention. This law enshrines the general regime of free pricing for goods and services, *i.e.* prices are set by free market competition, although the law does provide for several derogations, the most common being price approval and the taxation of prices.

- The enactment of Law No. 6-2003 of 18 January 2003 on the Investment Charter, which grants specific advantages indistinctly to economic operators without jeopardising competition.

- Moreover, with the assistance of UNCTAD and support from the European Union through the Commercial and Entrepreneurial Capacity-Building Project (PRCCE), the Ministry of Trade and Procurement has drawn up two draft bills – one on competition and the other on consumer protection – which have been submitted to national institutions for review. The draft bill on competition provides for the establishment of a "National Competition Authority" and the second for the creation of a "National Consumer Protection Board".

- Under this legislation, the National Competition Authority will be a decision-making body, while the National Consumer Protection Board will be an advisory body. The National Competition Authority will work in collaboration with the General Directorate of Competition and Fraud Prevention, as well as with sectoral competition regulation agencies.

Against this background of mixed socio-economic conditions and planned legal reforms, we may ask how far the application of competition law can combat poverty in a country in which:

- The agriculture, livestock and fisheries sectors account for 9.3% of GDP while 50% of the population derive their livelihood from the informal agricultural sector;

- The unemployment rate for those aged 25-35 is 34.2%;

- Over 50% of the population are living below the poverty line, and access to water and electricity is still difficult for a significant part of the population.

2. Defining poverty and highlighting its causes

Poverty is the situation in which individuals or groups of disadvantaged and highly vulnerable people find themselves when they lack essential goods or have to make great sacrifices in order to obtain those resources that are judged to be essential for a given community.

These resources are basic goods and services, *i.e*. water, electricity, medical care, basic foodstuffs and decent housing.

This definition also encompasses previously solvent people who have become poor as a result of misfortune in their lives, but whose vital needs are not exactly the same as those living in absolute poverty.

Lowering the prices of goods and services is an essential, but not the only, condition for combating these conditions of poverty. Considerations of individual purchasing power seem more pertinent for combating poverty insofar as too great a drop in prices would prevent enterprises from making the profits they need to survive.

There are many causes of poverty, and in Congo these include:

- Chronic unemployment;
- Lack of education;
- Lack of maintenance to the road infrastructure to open up remote areas;
- Apathy among the population;
- Lack of a stable income for certain segments of the population;
- Under-exploitation of the agricultural sector;
- Disinvestment in sectors that remain heavily labour-intensive;
- Socio-political conflicts;
- Natural and technical disasters;
- Underperforming enterprises which are forced into closure and liquidation;
- Very high prices of consumer goods and services, etc.

3. Impact of competition on the market for essential goods and services - in theory

Competition encourages new enterprises to enter the market, and these firms increase the output and/or imports of goods and services.

As long as these enterprises continue to make profits, a significant increase in supply will lead to lower prices and better quality goods and services, provided that the market is accessible, transparent and free of bottlenecks for multiple sellers and buyers.

Competition should therefore encourage new players to come into the market to stimulate growth while avoiding cartels, mergers and abuses of dominant positions.

In addition to legal and administrative measures, the competition authorities should organise campaigns aimed at informing consumers and businesspeople to make them more aware of the issues at stake. The emphasis should be placed on quality, product safety and prices.

Certain practices affecting consumers may reduce competitive intensity, such as the use of unfair procedures, misleading advertising, etc.

Strengthening competition prevents enterprises in the same sector from forming cartels or even vertical agreements so as to secure and/or take control of supply chains or distribution channels.

Some economists have demonstrated that vertical restraints (vertical agreements) can actually improve the general well-being (greater consumers' surplus and/or producers' surplus). They have also shown that when there are no concerted practices, each company sets its own margins to maximise profits. This results in higher prices for consumers and low satisfaction for enterprises since they sell less.

4. Impact of competition on the market for essential goods and services - in practice

Our experience is based on the mobile telephone market.

There are currently four operators in this sector: AIRTEL, MTN, WARID and AZUR.

Each operator entered the market gradually, and competition came into play as soon as the second enterprise began its operations. This resulted in a slight fall in call charges.

Thanks to Congo's telecommunications and postal regulatory authority (*l'Agence de Régulation des Postes et des Communications Electroniques - ARPCE*), a price floor for calls of XAF 60 per minute (EUR 0.09) was introduced.

The last operator to join the market, as part of its aggressive strategy, dropped its call charges for almost two months to XAF 7 per minute (EUR 0.01), which it described as a promotional price. The ARPCE ruled that this was predatory pricing.

By stepping in, the ARPCE halted this practice and the operator was forced to comply with the regulation.

Stronger competition has had a very noticeable effect on the market. With the minimum call price set at XAF 60 per minute, rates are affordable even for the least well off.

At the same time, prices of mobile telephones fell substantially, dropping to XAF 10 000 (EUR 15.23) during promotional campaigns. Consumer can now easily afford handsets which are, alas, not always of the best quality. Latest figures show that 92% of households now own a mobile telephone, up from 38% in 2005.

Stronger competition in this market has actually benefited consumers living in poverty.

Since competition policy is still in an early and less structured phase in our country, the authorities tasked with overseeing competition do not have the full range of powers they need to take all the necessary measures.

5. Competitive markets, public regulation and intervention to help the poor

Attempts by the public authorities to intervene in the markets to combat poverty by enforcing price controls or other constraints on the private sector do nothing to boost competitiveness, innovation and growth.

Indeed, the guiding principles that are needed to spur competitive practices in the market are neglected. And enterprises cease taking strategic decisions to increase output and improve quality.

As a result, supply stagnates, prices remain high and products remain largely out of reach for poor consumers.

The public authorities should ensure that the prices of goods sold by enterprises are set via the mechanism of free competition. However, given the specific economic conditions of each country, derogations should be allowed where *de facto* monopolies or oligopolies exist in certain sectors deemed sensitive.

In an attempt to correct certain market imperfections, Congo often applies two derogation regimes – price approval for imported essential items and taxation of the prices of common consumer goods and services – which impact the poor. These measures are applied in respect of meat, fresh and salted fish, poultry, flour, tomatoes, cooking oil, salt, rice, corrugated iron, reinforcing steel, beer, medicines, fuel, taxi and minibus fares, stevedoring and cargo handling services at ports.

6. Impact of competition on the poor, small entrepreneurs and jobseekers - in theory

Competition increases the supply of goods and services in the market.

In a competitive environment, as long as existing enterprises make a profit, new ones will be drawn to the market by the prospect of earning profits themselves. This allows small enterprises to grow, increase the supply of goods and services and create lasting jobs.

Creating jobs is a significant aspect of the fight against poverty. Getting a job or moving to a better one is a key factor in improving an individual's economic outlook.

In the long term, competitive enterprises increase the quantity of goods available in the market, improve quality and cut prices, thus increasing the purchasing power of consumers, including the poor.

Young enterprises are more vulnerable to poor regulation of competition. The introduction of stiffer competition as a result of inappropriate policies may force them out of business and hamper job creation.

7. Using competition to combat poverty

If the competition authority wishes to combat poverty, it would be useful to focus more closely on the retail sector rather than links in the production chain. Indeed, distribution channels set up by retailers often generate very high margins and increase the price of goods for final consumers.

For the example of a village grocery shop with a local monopoly, there is admittedly little that the public authorities can do to intervene. Nevertheless, in light of the shop owner's profit margin, they may advise him not to sell goods above a given price ceiling.

In such a case, the Ministry of Trade and Procurement is faced with the implementation of the 1986 decree on distribution which provides for short channels between the **importer** (wholesaler) and the **retailer,** and between the retailer and the **final consumer**, to avoid the additional costs generated by the longer distribution chain. However, there is a category of traders known as "semi-wholesalers" who are solidly entrenched between importers and retailers. These traders, overlooked by the decree, demand an additional illegal margin which raises the price of frozen foodstuffs (90% of which are imported) that are subject to the price approval regime.

To protect the most vulnerable segment of society, the Ministry of Trade and Procurement has introduced a policy with a view to keeping prices low through the importer-retailer channel.

In conclusion, in light of the theories outlined above, competition does not seem to be a panacea for poverty. So what additional approaches could be considered to solve the problems of poverty in developing countries where the agriculture and livestock sectors are largely neglected and deprived of subsidies; and furthermore, where more than half of the population works in the informal sector? How can growth be engineered to significantly boost employment, one of the main weapons in the fight against poverty, and foster competition in order to diversify the economy, assuming that the competition law reforms outlined above are adopted?

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CROATIA*

In many policy areas, including competition policy, could be assessed measures and tools aimed for the reduction of poverty. This paper is aimed to explore the impact of the free market competition on the poor. However, it shall consider the impact of the competition on poverty reduction for the benefit of two sides: the consumers, as the demand side and the small entrepreneurs, as the supply side. In further parts there shall be given the answers to the questions and points for consideration in relation to the legal background and ways of implementation of the Competition Act (2009) of the Republic of Croatia.

1. Defining poverty and identifying its causes

The starting point for the identification poverty or, better said impoverishment, could be the fact, that due to the economic crisis many people have lost their jobs, or suffered decrease in their incomes in other ways, which caused lessening of the buying power on their side. That fact lead towards the lessening of the goods and services that they could afford to themselves and their families, and to the difficulties when they wish to achieve some essential goods and services for lower prices. At the other hand, more difficulties were caused because, at the same time, some essential goods, such as food (bread, milk, meat) and the services, such as utilities (electricity, gas, water supply etc), have increased in their prices. The question is how is the best way for the competition policy to be involved in order to improve this situation. In further text is going to be provided some observations from the perspective of the implementation of competition law and policy in order to improve the described situation on the market.

2. Competition's effect on markets for essential items, in principle

The fair and effective competition policy shall be directed in combating monopolies on the market, which could have private or public origins. Such monopolies could be damaging for the small entrepreneurs, as well as other entrepreneurships which are weaker than them. The vital role of the competition law and policy implementation is to work towards the establishment of the free and fair competition on the market, whereas many business initiatives could compete, and by lowering the prices of their products as well as increasing the quality of the produced goods and services achieve greater benefits for the consumers and improve their welfare and living standards. By the notion of competition policy, there should be understood the set of measures and implementing tools that go beyond just prosecuting the cases in order to cease the infringements of the competition law, but also the instruments of the competition advocacy, in order to help the various groups of market participants, such as business community, government ministries, consumers and wider public, to better understand the goals and achievements on the progress of the public welfare in general under the framework of fair and free competition on the market. The vital role, however shall play the competition agency as the leading agent for the establishing this state of welfare.

Specifically, the actions which could the Agency undertake in preventing the damaging effects of the anticompetitive behavior and the infringements of the competition rules, relate to the conducting procedures for the protection of the free market competition.

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According to the Competition Law, there shall be prohibited all agreements between two or more independent undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market, and in particular those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Within the meaning stated above, agreements particularly refer to contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements).

However, certain categories of agreements shall be granted exemption from general prohibition, stated above, and consequently shall not be prohibited if they, throughout their duration, cumulatively comply with the following conditions:

- they contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit,
- they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
- they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services in question.

Finally, agreements that prevent, restrict or distort competition within the meaning as described above, and which do not fulfil the conditions to be exempted, shall be *ex lege* void, by which, the undertakings – parties to the agreement bear the burden of proof of demonstrating that the agreements are compatible with the CL.[1]

Furthermore, another important role of the Competition Agency is combating the abuses of market power coming from the dominant position and resulting from the restrictive practices. Namely, an undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers and this is particularly the case when an undertaking:

1. has no significant competitors in the relevant market, and/or

[1] CL; Art. 8.

2. holds a significant market power in relation to its actual or potential competitors, and particularly relating to the following:

   – its market share and a period of time in which this market position has been held, and/or,
   – its financial power, and/or,
   – access to sources of supply or to the market itself, and/or,
   – connected undertakings, and/or,
   – legal or factual barriers for other undertakings to enter the market, and/or,
   – the capability to dictate market conditions considering its supply or demand, and/or,
   – the capacity of foreclosure against competitors by redirecting them to other undertakings.

Within the meaning of the CL, an undertaking which holds more than 40% of the market share in the relevant market may hold a dominant position, and two or more legally independent economic entities may hold a joint dominant position if they act to a considerable extent independently of their competitors and/or customers and/or consumers on the relevant market.

Any abuse by one or more undertakings of a dominant position in the relevant market is prohibited, based on the CL, particularly involving the behaviour which consists of:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.[2]

Perhaps the most important role of the Competition Agency in the establishing the free and fair market competition and therefore achieving the welfare for the consumers, and at the same time, protecting the small businesses, lies in the regulation of the concentrations. Namely, a concentration between undertakings shall be deemed to arise where a change of control on a lasting basis results from:

1. merger association of two or more independent undertakings or parts thereof;

2. acquiring control or decisive influence of one or more undertakings over one or more other undertakings, or of one or more undertakings or a part of an undertaking, or parts of other undertakings, in particular by:

   – acquisition of the majority of shares or share capital, or
   – obtaining the majority of voting rights, or
   – in any other way in compliance with the provisions of the Company Law and other rules.

[2] CL, Art. 12. and 13.

Acquisition of control pursuant to stated above, may be effected through transfer of rights, contracts or by other means, by which one or more undertakings, either separately or jointly, taking into consideration all legal and factual circumstances, acquire the possibility to exercise decisive influence over one or more other undertakings on a lasting basis. However, the creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity shall also constitute a concentration within the meaning of the CL. The detailed rules and criteria for the assessment of concentrations are set in Government's Regulation.

Furthermore, there shall be kept in mind that the concentration shall not be deemed to arise within the meaning of the CL, if:

1. credit institutions or other financial institutions or investment funds or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis (not longer than 12 months) securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking. The 12 month period may be extended by the Agency upon request, where such institutions or companies can show that the disposal was not reasonably possible within the period set;

2. acquisition of shares or interest which is the result of internal structural changes in either the controlled or controlling undertaking (such as merger, acquisition, transfer of legal title etc.);

3. control is acquired by an office-holder or administration officer – relating to bankruptcy, liquidation or winding up – according to the national Bankruptcy Law and the Companies Act.

Finally, the creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity where such a joint venture has as its object or effect coordination of the competitive behaviour of the undertakings that remain independent which leads to significant impediment to competition shall not constitute a concentration and shall therefore be appraised as an agreement, based on the corresponding rules of the CL. By concluding this part, there should be mention that the concentration of undertakings which would significantly impede effective competition in the market, in particular where such a concentration creates or strengthens a dominant position of the undertakings parties to the concentration shall be deemed incompatible with competition rules and therefore prohibited[3].

3. Competition's effect on markets for essential items, in reality

The ways how the competition agency can intervene in market circumstances in order to achieve the benefits for the consumers and entrepreneurs mostly severe affected by the poverty, but also for the sake of other market competitors, is through efficient and fair implementation of the competition law and policy. The Croatian Competition Law (2009; furthermore: CL; the Law) provides the protection of the free market competition.

Firstly, the CL lays down the competition rules and establishes the competition regime, regulates the powers, duties, internal organisation and proceedings carried out by the Croatian Competition Agency (furthermore: CA; the Agency), entrusted with the enforcement of the Law. The scope to application of the Law is related to all forms of prevention, restriction or distortion of competition (hereinafter: distortion of

[3] CL, Art. 15. and 16.

competition) by undertakings within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia.[4]

Secondly, the CL applies also to undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest, those having the character of a revenue-producing monopoly, or, which are by special or exclusive rights granted to them allowed to undertake certain economic activities, insofar as the application of the Law would not obstruct, de facto or de jure, the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.[5]

Concluding this part it is possible to establish that the Agency would and shall intervene in all cases when it would be put into the consideration whether some kind of anticompetitive behaviour had caused the violation of the Competition Law, and therefore, damaged the welfare of the consumers or caused damage for the other entrepreneurs on the market.

4. Competitive markets versus "pro-poor" government controls/interventions

Croatian Competition Agency is frequently advised in relation to issue the expert opinions which are aimed for the assessment of possible anticompetitive impacts outstanding from the various measures consisted in laws and regulations before they are adopted in governmental procedure, and sent to the Parliament. This is the most efficient tool of the competition advocacy, because the Agency could react already in early stage and comment on the draft law which could harm the consumers or the competition. The requests for providing the legal opinions come most frequently already from the ministries, when such acts, i.e., laws and bylaws are already in preparatory stage.

The legal base is constituted in the provision the CL, i.e. , the Agency issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns. Furthermore, the central administration authorities or other state authorities may be requested to communicate to the Agency draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with this Act, if it finds that they may raise competition concerns. Finally, the Agency issues expert opinions assessing the compliance of the existing laws and other legal acts with this Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and statements relating to the development of the comparative practice and case law in the area of competition law and policy to the state and local authorities. [6]

5. Competition's effect on poor, small entrepreneurs and job seekers, in principle

Effective enforcement of the Competition Law shall contribute to the state of more competition on the market, which could provide positive effects on consumers' welfare, help small entrepreneurs and other kinds of undertakings, through improving the protection of the free competition on the market, which shall guide to the greater level of the entrepreneurs' protection against the hard core cartels and other kind of damaging infringement of competition.

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4 Croatian Competition Law (2009); Art. 1 and 2.

5 CL; Art. 3., Par. 4.

6 CL; Art. 25.

6. Competition's effect on poor, small entrepreneurs and job seekers, in reality

Competition Agency had issued many expert opinions in the domain of the competition advocacy, where it demonstrated that the various associations of the entrepreneurs shall not be allowed to fix the minimum prices. In most cases the opinions of the Agency were honored, and the fixation of the prices abolished. In the remaining situations, where the opinions were disregarded, Agency had started the investigations before the open the cases in order to assess the anticompetitive infringements of the CL, and establish the unlawful agreements among the entrepreneurs. For example, the Agency had issued the expert opinion that the taxi drivers should be given more flexible conditions and easier access to the market, by abolishing the strict rules on numerus clausus for certain areas (City of Zagreb, City of Dubrovnik and City of Rijeka). This resulted in more market entrants, and more businesses competing for the customers, which brought to the reduction of prices. Now in the area of the City of Zagreb, instead of one taxi association (in which were associated taxi drivers, and which tended to discuss the prices and business conditions among their members), operate 3 or 4 more taxi companies, with more vehicles, and the prices are reduced. The other case was when the association of the Chamber of Commerce, discussed the prices of the bread products, and established the uniform price for their members to sell the bread. After the conducting the proceeding against the infringement of the CL, the Agency had declared the existence of the infringement, by contracting unlawful agreement among the entrepreneurs and fined the violation of the CL. These two cases, among many other demonstrate how effective can be the full enforcement of the competition law in combating the infringements of the competition which damage consumers and small businesses.

7. Competition policy toward poverty - Conclusion

The competition policy shall in any case be directed towards the helping the poorest consumers, as well as the consumers in general in achieving their rights to receive goods and services under fair terms and fair prices. Furthermore, the competition policy shall also be directed towards the helping small businesses in order to achieve the fair play on the market, and to be capable to enter the market and to be secured from the private and public monopolies which could ruin their businesses, by imposing the unfair trade and business conditions. The primarily role of the competition agencies shall focus on these two goals, in order to fight the poverty and to achieve the economic welfare for both, consumers and businesses which are present on the market.

CZECH REPUBLIC

1. Introduction

Located in Central Europe the Czech Republic is a small open economy that has since 1990s undergone a major economic transformation into a functioning market economy based on principles of free and undistorted competition. As a member of the European Union the Czech economy is significantly dependent on the exports and imports within the European market and also on the international trade with other non-EU countries.

The following contribution is focused on the relation between poverty reduction and competition in the context of the Czech Republic. The text describes competition effects on markets with essential items, the impact of competition policy on small entrepreneurs and job seekers from the Czech perspective (i.e. Czech Office for the protection of Competition). Finally it deals with the competition law enforcement towards small and medium-sized enterprises (SME) in the Czech Republic.

2. Defining poverty and identifying its causes

From the methodological point of view, in the Czech Republic as a relative measure of poverty, the "at-risk-of-poverty" threshold seems to be the most suitable as it has been used by European Union since 2001.[1]

The at-risk-of-poverty threshold is set at 60 % of the national median equalized disposable income after social transfers. The advantage of this measure is its objectivity and possible comparability with other countries as it takes into account the differences in the living costs in different countries. The other reason for using this measure is the assumption that people whose income fall below the nation's average are more at risk of being excluded from the benefits that are considered standard in society.

Relative disadvantage of the "at-risk-of-poverty" threshold may lie in a fact that the measure does not reflect how far below the threshold the people are, for how long their income has been so low, what was the reason for falling below the poverty line or if they possess and use other assets (the non-monetary income is excluded).

By this threshold the *income deprivation* can be measured. In the Czech Republic, 9 % of people were at risk of poverty (in terms of this indicator) in 2010 which was one of the lowest shares among EU member states.

In terms of income poverty, the price reduction of essential items can have a positive effect on the improvement of poor people's living standards. Poor people's expenses on essential items form much bigger proportion of their income than it is for people whose income is higher (expenses on essential items can be insignificant for them in comparison with their income). With respect to this fact, prices of essential items are crucial for poor people and their decrease can help them to escape poverty.

[1] http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-10-030/EN/KS-RA-10-030-EN.PDF

As for the factors causing the poverty, it is generally considered that poverty in developing countries is most often caused by poor quality or lack of education, health, economics and government.

For purposes of the Czech Republic and European Union, more specific causes of poverty can be mentioned[2]:

- Unemployment
- Low level of education
- Size and type of the family
- Gender discrimination
- Disability or ill-health

3. Competition in the markets for essential items

3.1 Improving the living standards through efficient competition

In general, competition should force companies to compete for the customers by offering the best quality for affordable prices. For poor consumers the lowest possible price is the crucial aspect of increasing their ability to afford all the necessary items and therefore to improve their living standard.

Effective competition in the market is expected to move the prices towards production costs or even to lower level for a short period of time. Efficient competition also forces undertakings to compete for the customers in the sense of improving the quality of their goods and services and production effectiveness to facilitate the most competitive prices. As for the poor the price of all necessary goods or services is the most important aspect of improving their living standard, efficient competition in the market for essential items should be an indivisible part of improving the welfare of poor consumers.

Effective competition also strengthens innovation and development which could facilitate possible further expansion of competitors which brings more jobs and opportunities for the poor to be employed or start their-own business and increase their income.

3.2 Provision of essential items through the protection of competition

One of the competition policy´s objectives is to create conditions for better affordability of the essential items. Efficient competition should lead to the quality improvement of goods or services and improvement of production effectiveness which facilitates competitive prices. Lower and affordable prices are in most cases essential for the poor.

Besides the protection of competition there is also a specific legal provision focused on protection of food suppliers in the Czech jurisdiction the *Act on Significant Market Power in the sale of Agricultural and Food Products and abuse thereof*[3].

The Act is focused on the sensitive relation between suppliers of agricultural and food products and their customers which are retail chains. The Office started its activity in this area with a large market analysis in order to understand this specific area. The outcome of the analysis underlined problematic issues maintaining in this sector and pointed out other potential problems. General objective of this

2 http://www.eapn.eu/en/what-is-poverty/causes-of-poverty-and-inequality

3 The English version of the Act: http://www.uohs.cz/en/legislation.html

initiative is to maintain the protection of the farmers and food producers against unfair treatment of the retail chains as fair conditions will enable them to compete effectively, expand their business and increase their income.

The effective and efficient growth and development of number of farmers and food producers is significantly important for the employment in rural areas where the job opportunities tend to be constrained. Open and efficiently competitive environment provides better conditions for employment and also for the new market entrants that could help to create new job opportunities crucial for some of the unemployed to escape from the poverty.

3.3 Possible negative effects of competition on poor consumers

The protection of competition is focused on maintaining the competitive behavior of undertakings which tends to decrease the prices towards the production costs which increases the welfare of consumers. However examples of the procompetitive regulations, which at the end made the poor consumers worse off, may occur.

Competition advocacy efforts are often focused on strengthening the market economy and related deregulation of specific industries or privatization of state owned enterprises. The aim of deregulation is to create the competitive environment with all the related benefits for customers. In case of essential sectors (goods or services) governments tend to regulate the functioning of these markets and prices of related goods or services.

In the Czech Republic this was the case of regulated rents for housing[4]. The change of legislation should have deregulated the prices of rents, brought competition to this area and moved prices towards market levels. In particular, the related provision created the possibility for the owners to unilaterally change (increase) the rent by a specific amount even without the consent of the renter. The provision had entered into force in 2006 and the prices began to move in 2007. In December 2012 the rent regulation ended in all regions of the Czech Republic.

The aim of this provision was to establish the effective and efficient competition in the relevant market but in fact competitive prices turned out to be higher. Most of the owners tended to increase the prices and due to the nature of the deregulation´s provisions the renters could not protect themselves against unilateral change of the housing contracts. Therefore the procompetitive deregulation at the end resulted in the increase of prices and had a negative impact on consumers. The poor ones were obviously harmed the most.

4. Competition enforcement in the markets for essential items

There are no available data showing the impact of decisions of the Office for the Protection of Competition (hereinafter referred to as "the Office") on consumers or specifically on the poor population. Generally, when drafting the decision the Office seeks to eliminate the anticompetitive behavior or practices that worsen the consumers´ benefits resulting from the competitive markets. Therefore by focusing on the increase of the welfare of consumers the poverty reduction could be supported by the Offices´ decisions.

[4] After the year 1990 the rents were regulated for all rental housing however regulation was not applied on newly built houses.

4.1 Food Market

The Office has conducted several investigations in the food sector and intervened in the market of bakery products and in the poultry market. Short summaries of the cases and related sanctions are mentioned below. It is of course to be bear in mind that despite the fact the competition authority does not represent a price regulator; significant impacts on prices and thus consumers are derived from the Office's decisions, influencing possible improvement of living standards of poor.

- Producers of bakery products were fined of total amount CZK 120 million (approx. USD 6.5 million) for concerted practices when fixed prices of bakeries products. The existence of cartel agreement was confirmed but the decision was remand to the first instance for new assessment of fine. The new decision imposed a fine of CZK 53 million (approx. USD 2.9 million) in August 2006.

  Fixed price is often above the competitive level which makes the consumers and particularly the poor ones worse off. Therefore the Office´s investigation and final decision ensured that the prices would be set on the competitive level which is beneficial for the consumers´ welfare.

- Producers of poultry were fined of total amount CZK 14 million (approx. USD 0.8 million) for distortion of competition. Companies agreed on joint strategy of price setting of their products in December 2006. Poultry is one of the cheapest meats in the Czech Republic so the potential long-term price increase of this commodity would have a negative impact on the poor consumers.

4.2 Energy market

In the Czech Republic the energy supplies could be considered as essential services and the significance of competition (and related customer benefits) in this area is worth mentioning when talking about improvement of the living standard of poor consumers. The Office supports provisions related to liberalization and improvement of the level of competition in the energy market as consumers could benefit the most from efficient competition in this sector. Despite the fact that the Czech market had been completely liberalized after the market transformation in 1990s the Office has intervened in the energy market mainly to prevent the abuse of dominant position for there hasn't been sufficient number of undertakings at all levels of energy market and former incumbents still tend to dominate particular sectors.

The aim of promoting competition in the energy market from the consumer perspective is to create competitive environment in the energy supply sector and provide consumers with the possibility to choose a supplier who offers the best services for the lowest price.

The Office supports directives related to unbundling which is an indivisible part of liberalization and establishment of effective competition in the energy market. The energy market was one of the sectors where a monopolistic structure maintained and introduction of competition was perceived as beneficial mainly for end consumers who would be able to choose a supplier offering the best services for the lowest price. As was already mentioned competitive environment forces undertakings to compete for the customers by offering the lowest possible price for their services and the price is exactly what the poor consumers care about.

4.3 Dependence of the competition enforcement

Smooth competition law enforcement is strongly dependent on other policies, government activities and other aspects, such as:

- functioning of regulated industries,
- presence of state owned enterprises and its behavior in the markets,
- legal framework for the protection of competition,
- scope of competence of the competition authority (CA) and its decision independence,
- functioning of courts and
- sanctions for non-complying with the CA decision;

5. Competition's effect on poor, small entrepreneurs and job seekers

5.1 Job seekers

According to the standard social theory, the likelihood of escaping poverty is higher in households with positive employment changes. On the contrary, the most likely to enter poverty are individuals living in households where one or more members have lost a job. Therefore the competition policy should be focused on employment growth. The low unemployment rate means that also the low-skilled workers/ workers with lower wages will be able to get a job/ work additional hours which leads to poverty reduction (decrease in income deprivation). The main tool for poverty reduction is a market creating new jobs and a labor market that is open, functional and flexible.

As the probability of falling into poverty is also influenced by the level of education or gender, we regard the "equal opportunities programs" as an appropriate tool for helping people to overcome their disadvantage in labour market.

5.2 Small entrepreneurs

Small and medium enterprises (SMEs) are considered to be a stabilizing element of the economics. They increase the market dynamics, increase competitiveness of production, adapt quickly to market requirements, develop new technologies, create new employment opportunities, etc.

The possibility to use this potential is dependent on the market environment. SMEs have to face to several restrictive conditions such as:

- Worse access to credit
- Shortage of reserve funds for temporary unsuccessful periods of time
- Limited access to advertising and company presentation in media
- Bureaucratic restrictions, requirements of the state and other institutions (complex accounting, number of procedures, etc.)
- High barriers to enter
- Weak position in the public tenders
- Sensitivity to unexpected changes of inflation or unemployment rates

The elimination of these restrictive conditions and support of SMEs is a common state policy that can be applied in several forms, for example:

- **State interventions:** The state intervention should lead to competitive environment that enables the development of SMEs, growth of per capita income and thus poverty reduction. It is important to highlight that a state should not deform the market environment and enterprise equality by its intervention. The intervention/support in this sense is a tool that is used to equalize opportunities, not to give preferential treatment to SMEs to the detriment of large companies.

- **Local interventions:** SMEs operate mostly locally, in the regions where the large companies or foreign investments do not head for. SMEs a have very positive effect on the development of those regions and small towns, especially on the unemployment reduction and competitive environment maintenance. Not all regions are however attractive for business. Those regions should artificially set reasonable conditions for SMEs in order to attract them, such as various reliefs and benefits.

- **National legislation, The Office for the Protection of Competition:** The supervision of the compliance with competition law is in the hands of the Czech central administrative body – Office for the Protection of Competition. The Office is responsible for the support of competition and its protection against prohibited restrictions by creating conditions that favour and protect competition and by supervision of public procurement. These competencies help to maintain effective competition that generates economy growth, competitiveness and employment which are the essential tools for alleviating poverty.

6. Competition's effect on poor, small entrepreneurs and job seekers, in reality

Some of the examples that could affect the poor people in the Czech Republic are described in the text below. Despite the fact that there are no statistics showing that these examples in reality helped some of them to escape poverty, we consider that they had a potential to do so by creating convenient conditions for small entrepreneurs and unemployed people.

6.1 Job seekers

- **Mergers:** The Office takes into account during the assessment of concentration between undertakings its impact on employment. However, the protection of the labor market should not be used as the only justification for the competition infringement as this would constitute the inefficient allocation of resources (surplus employees decreasing efficiency). Nevertheless as a supporting argument this reason can be considered.

  As an example, the approved merger of two food producers in 2000 can be mentioned. One of the reasons that the Office stated in favour of approval of this concentration of undertakings was its positive impact on the employment. The merging companies agreed to maintain a steady and permanent employment throughout the year reducing the effects of seasonal production.

- **Public Procurement Procedure:** In 1999, the Czech government approved a National Employment Plan that included a requirement to use the public contracts to ensure the employment of job seekers, particularly those who are difficult to place in the labour market. Specifically, it was stated that the use of public funds should ensure also other societal goals (primarily employment) than only the efficient use of financial resources. The suggested application of this requirement in practice was a consultancy with a respective labour office initiated by contracting authority.

The similar initiative is implemented also in Europe Growth Strategy 2020[5] within European Union. The initiative focuses on adjustment of public procurement procedures in order to integrate social considerations into them. The contracting authority can impose a specific condition on tenderer such as the obligation to recruit unemployed persons or to implement, during the execution of the contract, measures that are designed to promote equality between men and women or ethnic or racial diversity. As the Czech Republic is a member state of EU, it is very likely that it will be affected by this initiative as well and the initiative will help to decrease the unemployment and subsequently the poverty.

- **Operational Programs ("OP"):** Several operational programs in the Czech Republic are focused on reducing unemployment by active labour market policy, professional education and integration of socially excluded groups back into the society (OP Education for Competitiveness, OP Equal Opportunities for Women and Men, OP Integration of socially excluded groups in the labour market).

All examples stated above have a common goal to decrease unemployment in the Czech Republic. As the unemployed people are more likely to fall below at-risk-of-poverty threshold, it is probable that the interventions helped some of the people to escape poverty. Also the interventions aimed to decrease the unemployment that is caused by social factors can be assumed that they had a positive effect on poverty reduction. Unfortunately, there is no evidence for this statement.

6.2 Small entrepreneurs

In 2011, the share of the small and medium-sized enterprises (SMEs) was 99 % in the Czech Republic. They employed 61 % of all people working in enterprises. The similar situation can be observed in most of the EU countries (more than 99 % of all European businesses are SMEs).

The goal of the government policy that is focused on support of SMEs is mainly the elimination of restrictive conditions. Some of the tools that have been used for this purpose in the Czech Republic are:

- **Single Registration Form:** A form designed both for legal and natural persons in order to simplify the process of starting up and conducting a business in the Czech Republic. It replaced different forms that entrepreneurs had to fill in before starting up and even when conducting the business at trade licensing offices, revenue authorities, competent social security administration, employment offices, and health insurance companies. Requirements of these authorities have been integrated into a single form which is more entrepreneur-friendly and makes the administration for entrepreneurs easier.

- **Corporate income tax:** The tax was gradually decreased from 35 % (in 1999) to 19 % (in 2012). The goal of tax reforms was to support enterprises, their investments and growth. The low corporate income tax attracts also foreign investments which has a positive effect on employment.

- **Czech national programs to support SME's business:** They are focused on supporting entrepreneurs in form of guarantees for bank loans and interest free loans for start-ups in the capital city of Prague and allowance and grants to entrepreneurs throughout the country.

[5] http://ec.europa.eu/internal_market/publicprocurement/other_aspects/index_en.htm

- **Regional programs:** Ministry of Industry and Trade has in its scope the programs which goal is to support SME's business in the Czech Republic regions. E.g. INOSTAR, a program that provides guarantees for loans of new entrepreneurs in two regions of the Czech Republic. The main objective of the program is to allow new entrepreneurs to get credit for the realization of their innovative projects.

- **Public procurement law enforcement:** The Office ordered by its decision to the government agency CzechInvest to complete a tender for choosing an operator that should provide small businesses and entrepreneurs with telecommunication services discounted by 60 %. The discount will be subsidized by EU Operational Program Enterprise and Innovation.

7. Czech competition policy towards poverty

The competition law and policy should be focused on protection of competition and applied on all undertakings. However in the Czech Republic the legal framework provides the Office with the competence to prioritize when deciding the initiation of particular proceeding.

7.1 Prioritization

The prioritization means the competence of the Office not to initiate the proceedings if the impact of the conduct under consideration on competition is not significant. The Office takes into account the character of the infringement, the importance of relevant market and number of harmed consumers. In practice it should apply to vertical agreements of undertakings with the market share lower than 1 %. Therefore in practice the competition law enforcement is slightly different towards small/poor entrepreneurs.

The possibility to prioritize is quite common in a lot of European jurisdiction and provides competition authorities with the possibility to focus their resources on fighting such competition infringements that have more significant impact on the market and on the welfare of consumers.

Competition enforcement should be focused on protection of competition and related possibility to enter the markets. Sanctioning of undertakings with dominant position or significant market power could seem as a focus on more significant market player or large producers but ensuring conduct in compliance with competition law provides at the same time competitive environment for smaller entrepreneurs.

8. Conclusion

The contribution attempted to list the factors that have detrimental effect on the poverty, specifically in the Czech Republic. By defining these factors it was possible to determine the competition tools that enable to eliminate the impact of these factors and thus decrease the poverty rate. The contribution focused on three main groups affected by the poverty: consumers, job seekers and SMEs.

From the perspective of the Czech Republic (Czech Office for the Protection of Competition), it is possible to presume that in general there is an inverse relationship between the competition and poverty. More efficient competition means better conditions and the possibility of living standard improvement for the poor.

EL SALVADOR

1. Defining poverty and identifying its causes

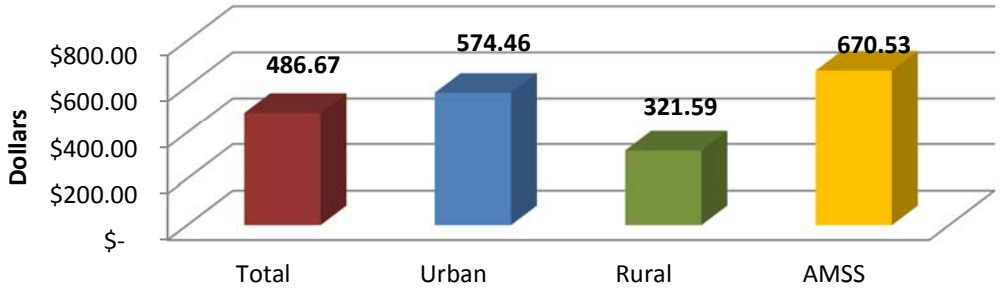
In El Salvador, the measurement and definition of poverty is through the method of poverty line as a parameter taking the value of the Basic Food Basket (CBA). This means that the poverty rate is directly related to income, classified in extreme poverty, households in which their income is less than the cost of the CBA and relative poverty, households are those whose incomes is less than the cost of the extended CBA (dressing , house, healthy, education etc.) It is relevant to mention that El Salvador does not create the extended CBA, for this reason we assumed that is equal to twice the value of the CBA.

CBA/Sector	Urban (Type of household with 3.72 members)	Rural (Type of households with 4.24 members)
CBA	$182.60	$143.90
CBA extended	$365.20	$287.70

Source: Its own elaboration based on data of the Household Survey Publications Multipurpose publication. (EHPM) 2011

The average monthly income in 2011, was for a total of $486.67, the urban $574.46; the rural $321.59 and for the Metropolitan Area of San Salvador, up to $670.53.

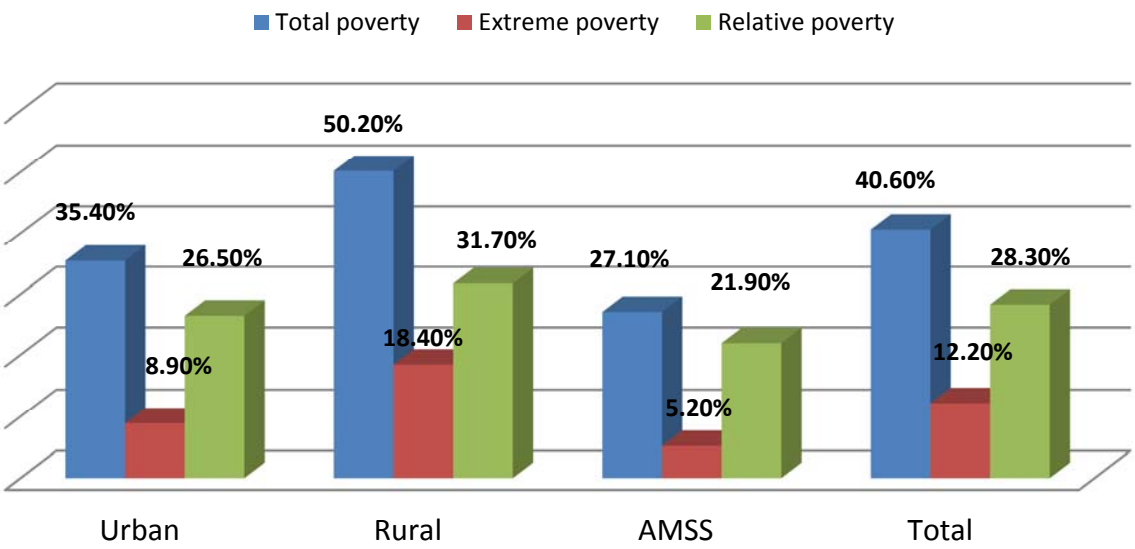
El Salvador: Average Monthly income 2011



Source: Its own elaboration based on data of the Household Survey Publications Multipurpose publication. (EHPM) 2011

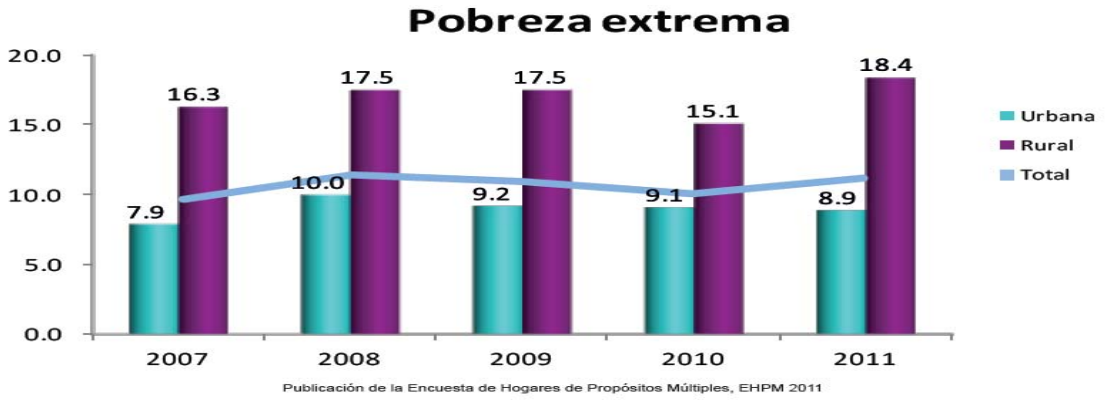
According to these data, nationally 40.6% of households in poverty and of these, 12.2% are in extreme poverty and 28.3% in relative poverty. The graph below shows the percentages of poverty nationally, in urban, rural and in the Metropolitan Area of San Salvador (AMSS).

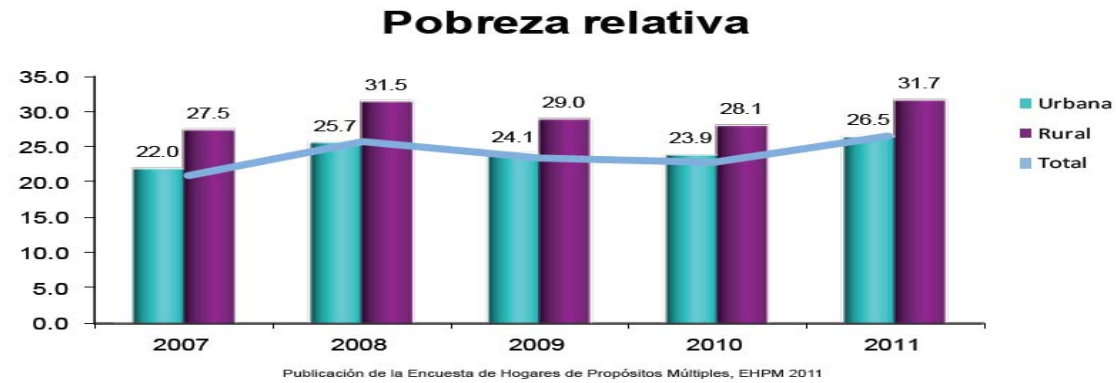
El Salvador: Proportion of households in poverty 2011



Source: Its own elaboration based on data of the Household Survey Publications Multipurpose publication. (EHPM) 2011

The following table shows the evolution of poverty in rural and urban areas from 2007 through 2011.





1.1 Is this a correct measurement method?

According to the United Nations Development Programme (UNDP) data[1], the methodology of measuring poverty used in El Salvador has become an obstacle for building an economy based on the welfare of people. This phrase is explained because a sustainable measure should contain statistical information on the multiple dimensions relevant for welfare, for example the security level, the standard of living, income, level of education received, health, social security, employment status of others. The definition of poverty taken only on the income variable prevents the onset of social and public policies on human development.

1.2 The new methodology of measuring poverty: Multidimensional poverty

In July 2010, Oxford[2] University and the United Nations Development Programme (UNDP) launched at a policy forum in London, a new poverty measure that gives a "multidimensional" picture in order to deepen the understanding of this phenomenon and create public policies to eradicate poverty.

Poverty measured by the Multidimensional Poverty Index (MPI) defined as: "The Measure to portray the many deprivations faced by the most severely disadvantaged. The MPI reflects the incidence of multidimensional deprivation, and its intensity, how many deprivations people experience at the same time. Also, can be used to create a comprehensive picture of people living in poverty, and permits comparisons both across countries, regions and the world and within countries by ethnic group, urban or rural locations as well as other key household and community characteristics[3]…"

According to this guideline, El Salvador government supporting by the UNDP, have been developing a new method to the poverty measure. This method it´s in it phase of qualitative research, preliminarily established as basis for measuring the dimensions housing, employment and leisure. As preliminary data, in El Salvador has estimated a Multidimensional Poverty Index at the household, national 61.1%.

In the dimension associated housing as privation the following[4]:

- Tenure (No property rights acquired).
- The quality of the materials: the roof stands
- Endowment for rest furniture (chairs and bed)

It builds the idea of decent housing:

- All basic services: electricity (private connection), water (pipe inside the house) and toilet (bath washable).
- Clearly separate spaces (two-story house)
- A garden with flowers and greenery
- Brick wall or concrete block, and ceramic floor. The roof in good condition is associated with the minimal of housing.

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1 Human Development Report 2010 El Salvador. http://hdr.undp.org/fr/rapports/national/ameriquelatinecaraibbes/elsalvador/INDH_El_Salvador_2010.pdf

2 UNDP. Data and statistics. http://hdr.undp.org/es/estadisticas/ipm/

3 UNDP. FAQs about the Multidimensional Poverty Index (MPI) http://hdr.undp.org/en/media/FAQs_2011_MPI_ES.pdf

4 Source: Preliminary findings. Systematization of 8 focus group. UNDP El Salvador. 2012.

In the work dimension, people in poverty consider work only the paid work (employment) rather than subsistence activities they undertake. In rural areas, for example, do not call work to farm work every day assuming you do not report income. Nor do they consider the job work from home.

In the work dimension deprivations are associated with the following:

- Lack of a fixed salary (monthly payment)
- Work instability (work few days a year)
- Do not have the training necessary to work
- Do not have work experience

The entertainment dimension refers to the opportunity for fun and entertainment and to have physical space for these activities. In turn, the fun opportunity is related to the lack of time to develop that, because of the subsistence labor (domestic crops, washing clothes, watering poison, firewood, etc.). Additionally in rural areas, they do not have adequate space for recreational activities and in the urban by discrimination.

1.3 What factors cause poverty?

Under the method of measuring poverty based on income currently used in El Salvador, poverty is caused by lack of income to purchase the CBA. The direct factors that affect lack income are employment representing the source of household income and education level as the possibility to earn income.

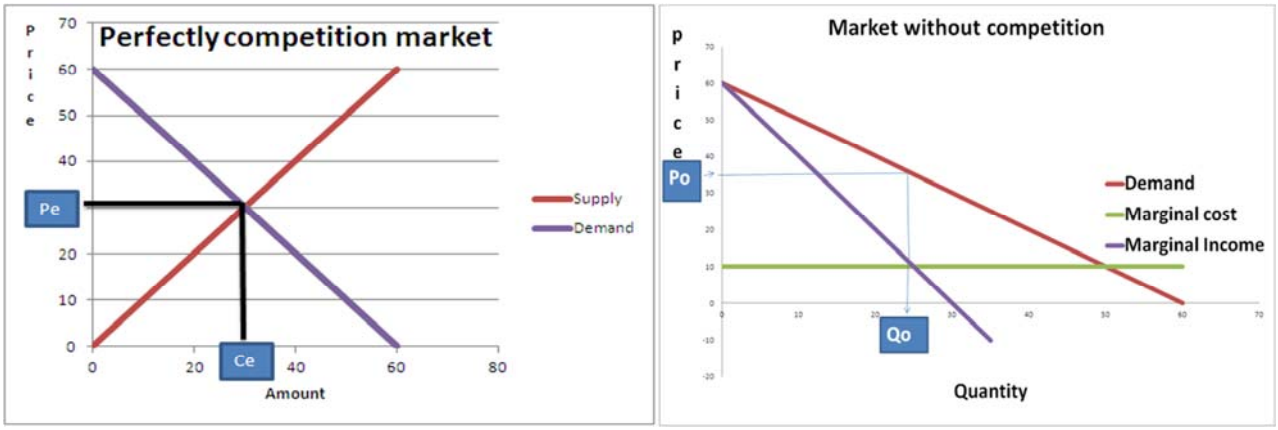
The formal jobs are associated with higher average incomes and lower poverty rates. Thus, it is determined that unemployed population, 23% are in extreme poverty and 35.1% in relative poverty. Underemployed population, 16.8% are in extreme poverty and 31.2% in relative poverty. Finally, people categorized with decent work representing only 6.3% of poverty.

As for the low level of education, "The incidence of income poverty is inversely related to the education of the people." The Human Development Report of UNDP El Salvador has estimated that poverty rates are zero for the population with university education (about 17 to 18 years of schooling) unlike with zero education population, whose poverty rate is 57%.

2. Competitions effect on markets for essential items, in principle

According to economic theory, it is desirable market where demand and supply are in equilibrium. In a competitive market, the equilibrium point is the result of decisions of millions of consumers and producers. The equilibrium prices (Pe) and the equilibrium quantity (Ce), provide the greatest welfare of society as a whole, ie efficiency.

In a market with no competition (monopoly or oligopoly), reduces the level of production and also increase the prices of goods or services they produce. In the market for essential goods and services, consumers have few or no options to purchase a substitute product and purchasing power will decline further due to the price increase. This distortion will produce shortages and reduced units consumed, since the price increase translated to economic inefficiency.



Competition is not a one-dimensional phenomenon where only the prices offered are valued, but also technological innovation and increased product quality. The work pro competition, making the Superintendence of competition, is designed to protect market efficiencies in order finally to preserve consumer welfare and not to replace the pure competitive process.

The main problem of an anti-competitive market is not in the price increase, but limiting the production of that good or service essential. A higher price creates distributive problems. As for limiting production, market shortages will cause even higher prices that may not acquire the poorest. According to UNDP data; 2007 and 2008 a consequence of the food prices increase, this produce an higher prices and extremely and relative poorest.

The premise is that competition improves market conditions for consumers who are in poverty: In 2012, the Competition Superintendence rejected a merger in the telephony market. This refusal was an incentive for one of the operator's involved, who announced an increased investment by an amount between $ 40 and $ 50 million in the country, increasing jobs and promotions in the telephony sector. We show, according to this case, that competition improves the conditions of the population, in a sector that accounts for 4.13% of the market basket.

3. Competition effect on markets for essential items, in reality

The goods considered essential, according to the CBA are[5]:

French bread, (wheat flour), tortillas, (rice, meats, grease, eggs, fluid milk, fruits, beans, vegetables and sugar. The essential services are: electric energy, potable water, gas en sanitary infrastructure[6].

Based on the National Household Income and Expenditure Survey (ENIGH), then presents the importance of certain goods considered important in the economy of all consumers. The CBA represents the area of food and soft drinks with a structure on annual consumption of 19.8% of the consumption structure of Salvadoran consumers.

5 Basic Food Basket (CBA) 2011-2012. http://www.digestyc.gob.sv/index.php/servicios/en-linea/canasta-basica-alimentaria.html

6 Human Development Report El Salvador 2010: From poverty and consumerism to the welfare of the people. UNDP 2010

National household Income and Expenditure Survey 2005-2006	
Entry	**Relative structure of annual consumption**
Food and non-alcoholic Beverage	19.8%
Alcohol, drugs and snuff	0.4%
Clothing and footwear	4.6%
Housing, water, electricity, gas and other fuels	22.0%
Furniture, household equipment and routine household repair	6.3%
Health	4.3%
Transportation	12.1%
Communication	4.1%
Recreation and culture	5.7%
Education	3.4%
Restaurants and hotels	7.0%
Miscellaneous goods and services	10.2%

Source: National Household Income and Expenditure Survey 2005-2006

According to the CBA, the Competition Superintendence (SC) has been sanctioned anticompetitive practices and ordered the realization of market studies on competition conditions issuing policy recommendations that seek to strengthen an improve the conditions of competition in the following markets:

a) Wheat Flour

b) Sugar

c) Rice industry

d) Gas and other fuels

e) Electric sector

a) Wheat Flour market [7]

In the year 2008, the SC initiated disciplinary proceedings against MOL S.A and HARISA SA, who accounted for 97.82% of the market for wheat flour. After extensive investigations both economics agents were sancionated for being material, legal and economic evidence on market division of the wheat flour in the whole country, showing a degree of rivalry that showed maximum stability in the market.

Impact: The lack of rivalry in the market reduces incentives to innovate and invest in more efficient technology. The market division agreement allowed the increase in prices of wheat flour[8]. In a market with inelastic demand, no substitutes, the price increase lowers the purchasing power of buyers in relation to

[7] Wheat flour market, MOLSA-HARISA final resolution. http://www.sc.gob.sv/uploads/SC-005-O-PA-NR-2008_040908_1200.pdf

[8] Daily New: "The World". The price of wheat flour in the local market rises. http://elmundo.com.sv/el-precio-de-harina-de-trigo-sube-en-el-mercado-local

other essential goods and services, directly affecting household consumption. Also be an input affects, increases the price of their end products. The administrative chamber of the Supreme Court of Justice outlawed the procedure, because, in their opinion, the search warrant issued by the judge in civil and commercial matters was incomplete. Currently this Office has begun a process under the Constitutional Chamber of the Supreme Court of Justice (CSJ) against the judgment delivered by the Administrative chamber of the Supreme Court of Justice.

b) Sugar market

In 2010, the SC initiated an infringement ex-officio procedure on the market for wholesale distribution of bulk white sugar, against Sugar and Derivatives Distribution, SA de CV (Dizucar), operator with a market share of 75%. Dizucar was sanctioned by evidence found differentiated pricing and discriminatory restriction on the sale of the product, concluding that this economic agent committed the practice of abuse of dominant position. It is currently under study by the Administrative Chamber of the Supreme Court of Justice.

The SC has estimated that in 2010, the product of the anticompetitive practice by DIZUCAR, Salvadoran households overpaid an estimated $ 12,483,372.32 in buying sugar for consumption.

c) Study on the characterization of agribusiness rice and competitive conditions in El Salvador [9]

The rice sector in El Salvador is protected by treaties and agreements, including those for the administration of tariff quotas based on the FTA (TLC) between The United States, Dominican Republic and El Salvador, the DR-CAFTA, the trade policy of the Central American Tariff System SAC and El Salvador agreements with third countries.

Such protection imposes barriers to entry of new competitors, leading to a highly concentrated market. The Superintendence of Competition felt that the agribusiness rice and producers overpaid approximately $ 8.8 million, according to the agreement price of paddy rice. This amount is transferred to the overpayment made by final consumer for payment of rice for consumption.

d) Study on conditions of competition in the field of liquefied petroleum gas and other fuels

According to the National Household Income and Expenditure Survey (ENIGH 2006), the area of housing, water, electricity, gas and other fuels accounts for 22% of household spending Salvadorans. In this respect the SC sancionated in the fuel sector an abuse of dominant position

The process was initiated by complaint against Shell Company in El Salvador, SA (Shell) and Esso Standard Oil, SA Limited (ESSO). These operators were sancionated for zoning sector price of gasoline. This anticompetitive practice significantly distorted prices of gasoline. Besides, being an input product, has a direct productive activities, industrial, commercial or service and ultimately affected all impacted on the basic food basket.[10]

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9 Study on the characterization of agribusiness rice and competitive conditions in El Salvador. http://www.sc.gob.sv/pages.php?Id=262

10 Final resolution. Competition Superintendence against SHELL y ESSO. http://www.sc.gob.sv/uploads/SC-004-D-PA-R-2006_011007_1100.pdf

e) Electric sector

In 2006, there was the presentation of the electricity sector study.[11] In 2008, an electricity distribution company was sancionated for being who abused their dominant position by preventing a competitor interconnection to its network.

Despite the achievements made in the detection and punishment of anticompetitive practices in the market for essential goods and services, it is important to mention that all operators sanctioned such practices lawsuits have been filed before the Administrative Chamber of the Supreme Court of Justice (CSJ), alleging the illegality of decisions handed down by the SC. Up to now, the Administrative Chamber of the Supreme Court of Justice, has not yet ruled on the legality or illegality thereof, making it impossible to measure the impact of the SC resolutions have resulted in these markets.

4. Competitive markets versus pro-poor government controls/interventions

According to the Salvadoran government's economic policy, **interventions in economic activity should be exceptional**. State intervention in the competitive market process has been embodied in strategic sectors of the economy that cuts across all economic sectors of the national market, for example in the field of electricity, liquefied gas, telephony, the sector finance, medicine and others. State intervention is outlined as such from social policies and fiscal policies aimed at protecting agriculture, industry, investment and finally to the most vulnerable population in terms of poverty through the imposition of tariffs, taxes and subsidies.

Although the state intervenes on behalf of the most vulnerable population and economic theory states that such intervention distorts the market, in order to protect and promote competition, the Superintendence of Competition has legal authorization to order studies and to issue opinions and recommendations about draft laws and state policies that may block or impair the competitive process. Some examples are found in the rice market and market of Liquefied Petroleum Gas (LPG).

The study in the rice market, issued important recommendations to increase competition in the sector. As already mentioned the rice market is protected to encourage domestic production and protect food security however, represents high barriers to entry, restrictions on international trade and therefore restricted to the competitive process.

4.1 Subsidy liquefied petroleum gas (LPG)

In El Salvador, the State provided a generalized subsidy to Liquefied Petroleum Gas (LPG) for over thirty years, until 2010. Although subsidies are intended social welfare, the LPG, presented problems to rationalize public spending and targeting.

In 2008, the LPG subsidy represented $ 140 million of public spending, increasing the burden on public spending and thus affecting the fiscal deficit, so it became necessary to rationalize. This rationalization was addressed through the targeting of the subsidy, according to World Bank data, it was established that this subsidy was regressive, meaning that higher income strata are benefiting and reached only 26% of poorest households. According to Human Development Inform (HDI El Salvador 2010), the LPG subsidy not addressed to the poor because 20% of the poorest households do not use propane, In contrast, they cook with wood.

[11] Presentation of the electricity sector study. http://sc.gob.sv/pages.php?Id=172

In 2011, the program began targeting and rationalization of public spending LPG subsidy. In order to identify potential recipients to receive the LPG subsidy were implemented various strategies for the creation of databases that have enabled the socioeconomic characteristics of families and businesses, and their consumption structure in electricity. The new subsidy is available to those households in their electric bill have consumed an average of 199. 99 kWh in the last twelve months[12] and those households that have electricity, the poorest strata of society, i.e. the poorest strata of the Salvadoran population.

4.2 Drugs sector

The health sector represents an expense of 4.3% of total household income, according to the National Household Income and Expenditure Survey (ENIGH) 2005-2006, health and pharmaceutical expenditure includes expenditure on medical and hospital services.

Given that health spending of Salvadoran households is representative and based on the studies, recommendations and opinions relating to drug industry adopted or issued by the SC, the Board of Directors adopted a common position in order to improve access to drugs, the quality and availability in the market, making the following recommendations:

1. Reforming intellectual property laws authorizing parallel imports;

2. Reforming intellectual property laws in order to regulate compulsory licenses on terms more favorable to competition.

3. Reforming the Regulation of Proprietary schools eliminating import control of responsible professional medicine CSSP records;

4. Avoid the introduction of news and unnecessary entry barriers to new competitors, such as preventing holders of pharmacies and other health establishments duly authorized that have a directly importing drugs;

5. Promote competition by implementing proactive policies of generic substitution, such as the adoption of rules to promote the prescribing and generic use, implementation of monitoring mechanisms to ensure the efficacy and safety of generic drugs, and performing information campaigns to professionals and the public;

6. Remove practices and drug laboratories consisting fund, grant or give seminars, royalties or other perks to doctors in any form to be submitted;

7. Implement policies grounded in international quality standards in the field of medicine, such as funding for the conversion of industrial companies to international standards, including technological transformation projects, promoting a culture of productivity and quality nationally positioning the issues of quality and productivity as a priority, and improving infrastructure to support best practices in quality and productivity;

8. Avoid placing the prohibition laws prescribe medications, consultations and discounts by laboratories and drug stores to retailers;

[12] Agreement No. 1153. The executive body in the Field of Economic. www.cdc.org.sv

9. Laws include a ban on vertical price fixing and other supply conditions and discounts by laboratories and drug stores to retailers;

10. Reform the status of CSSP, disabling the participation of professionals with ties to drug companies in the drug sector, or to assign responsibility for verification of medicines at a different institution of CSSP.

The institutional position of the Board of Directors derives from on The Constitution and the Universal Declarations of Human Right. Its starting point is the consideration that health is a fundamental human right, and medications are necessary to satisfy property directly.

The human right to health is collected with its terms by our Salvadoran Constitution when Article 65 says:

> *"The health of the inhabitants of the Republic constitutes a public good. The State and people are obligated to see to its conservation and restoration.*
>
> *The State shall determine the national health policy and shall control and supervise its application…"*

Furthermore, our Salvadoran Constitution, Article 1 sets:

> *"(…) it is the obligation of the State to secure for the inhabitants of the Republic, the enjoyment of liberty, health, culture, economic well-being and social justice.."*

The purpose of issuing a position on the issue of drugs was the increase competition in the sector, through the opening of that market. Although, the position contains a recommendation regulating drug prices in the sense that if the price band fixation of reference prices or maximum prices for medicines are needed to ensure access to them population, such measures can and should be applied. In addition, the position provides that measures of price regulation limit competition and thus must be exceptional, as in the case in question, based on the nature and purpose of the good or service in question, in checking their need and always restricted to the essentials. Thus, in the case of medicines, all measures of price regulation should consider the cost structure differentiated between brand name drugs and generic drugs, the conditions of competition in products, and applied to a special list of drugs national interest.

5. Competition effect on poor, small entrepreneurs and job seekers, in principle.

From an economic perspective, and in a context of competition, all the economics agents are rivals in the market (smalls entrepreneurs, medium and large rivals) seeking to gain more market share, trough the implementation of more efficient methods of production, innovation and improvement in the quality of products. In a competitive market will be displaced weaker rivals, i.e. those that produce inefficiencies and welfare losses in the market.

However, in a market without competition, from the point of view of supply, economics agents have no incentives for innovation, improved product quality, technology or investment in productive capacity. From the point of view of demand, consumers will pay higher prices and lower quality products procured by reducing their purchasing power to cover the essential goods and services. The lack of competition becomes an incentive for inefficient markets, affecting all consumers.

5.1 Competition effect on job seekers, in principle

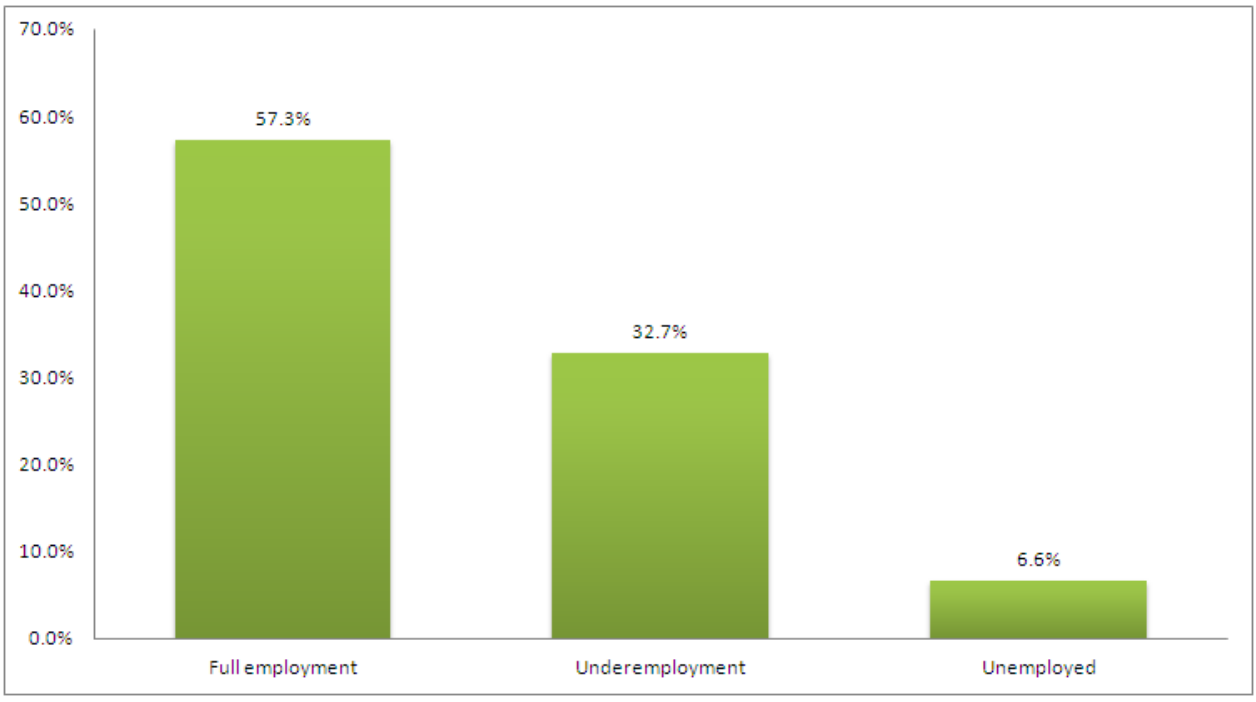
Employment is defined, economically, for the curves of supply and demand for labor. People offer their work and it is companies that claim. Unemployment has a negative relationship with GDP (gross domestic product) (PIB for its acronym in Spanish), called *Okum Act*[13], which says that every 2% drop in GDP, relative to potential GDP, unemployment increased by 1%

The Gross Domestic Product (GDP) of a country is the result of the sum of consumption, investment, the trade balance (exports minus imports) and government consumption. The GDP and employment generation are in a positive relationship because GDP growth means increased consumption, investment, exports, government spending, which will lead to an increase in labor supply.

A perfectly competitive market ensure no consumer surplus and producer, working as an incentive for the demand side to consume an optimal price and quantity and the supply side, to invest in innovation, technology and disposal barriers to entry for future competitors, for example ensuring an efficient market. This is how the free market competition is an efficiency factor that favors the increase of GDP of a country, affecting, in turn, positively on employment.

According to Household Survey Publication Multipurpose 2011, data (EHPM) the annual growth rate of GDP was 1.5%, the national unemployment rate was 6.6%. The underemployment rate is 32.7% in the urban area.

El Salvador: Urban PEA as employment



Source: Results of Survey Multipurpose Household 2011. (EHPM). EAP: economically active population.

13 Resico, Marcelo F. Introduction to the Social Market Economy. 1st. Edit - Buenos Aires: Konrad Adenauer Stiftung, 2010. http://kas.org.ar/DialogoPolitico/pdfs/economia_social_resico.pdf

6. Competition´s effect on poor, small entrepreneurs and job seekers, in principle

Competition results in several benefits:

a) Reduced price: Companies set prices attractive strategies to achieve more customers consuming their goods or services.

b) Improved quality: To oust their rivals, operators improve the quality of their products.

c) Promoting innovation: The innovation reduces costs and maximizes the benefits of the companies, which often are transfers to consumers.

Under conditions of competition, anticompetitive practices impede access of new operators, e g in the market for white sugar in bulk, Sugar and Derivatives Distributor, SA de CV (Dizucar) conducted a discriminatory restriction on the sale of those goods; preventing market entry of new competitors. Another example in El Salvador is in the market for wheat flour, in which the anti-competitive market division by traders HARISA S A and MOLSA has caused massive bankruptcy bakeries in the country, which results in the failure of small businesses.

"At present the interest aroused SMEs (PYME its acronym in Spanish) at government and business and the ongoing efforts to develop them efficiently, with increased competitiveness and impact comes from the realization that SMEs are a key factor in economic development and social development. SMEs are major generators of employment and wealth in each country participating significantly in the creation of gross domestic product. Another reality is that creating a job in SMEs requires a much smaller capital investment than in large companies, thus being a sector of great social impact.[14] "

SMEs are expected to benefit from clear rules to compete in their respective markets, identifying niches that allow you to be more competitive against its competitors. Salvadoran MSEs representing 99.4% of all firms and generates more than 699,000 jobs[15]. The more flexibility a company has to change its environment will be more competitive against its competitors so job seekers or poor workers would benefit from the competition that strengthens the competitiveness of SMEs.

In 2011 came into force the amendments to the Law on Procurement and Contracting Public Administration (LACAP its acronym in Spanish) aimed at promoting the development of micro and small enterprises (MSEs)[16]. In El Salvador, there are micro enterprises 463.803 subsistence microenterprises 158.574, 13.208 small businesses; 2.624 medium, and 772 large companies only.

The reform is to enable MSEs to obtain at least 12% of the annual budget for state public procurement as an incentive to increase the number of bidders in public procurement market, thereby avoiding the tender commission collusive. Similarly, the increased participation of the SMEs will allow the production of more employment opportunities for the Salvadoran population.

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14 Challenge and Opportunity of Salvadoran SMEs: building an agenda for development. FUNDE http://www.fundes.org/uploaded/content/publicacione/936703854.pdf

15 http://www.conamype.gob.sv/index.php/novedades/noticias/1007-2012-un-ano-de-logros-para-conamype-y-la-micro-y-pequena-empresa

16 Procurement Act Public Administration. Articles 39-A and following. http://www.proesa.gob.sv/%5Cimages%5Cnormativa/lacap.pdf

7. Competition policy toward poverty

The Competition Law of El Salvador aims to promote, protect and guarantee competition, by preventing and eliminating of anti-competitive practices in order to increase economic efficiency and consumer´s welfare. In that sense, the Competition Act promotes a more competitive and efficient market transparent and accessible, encouraging the dynamism and growth in benefit of the consumer. The purpose is to establish clear rules economics agents, regardless of their size; they can carry out their business in a free market.

In that sense, the Competition Law in El Salvador, safeguard undistorted market where all participants can have clear rules and order is the gain consumer preference. For this reason, competition policy should not make a distinction between the poor and the rest of society. As has been stated, in some cases it is necessary to intervene with subsidies and price regulations to try to reassure the poor access to essential goods and services; however, such intervention is always exceptional.

Competition policy aims to protect the economic efficiency, to be successful with that objective is necessary to prioritize and focus research efforts, study and detection of anticompetitive practices in the markets for basic food basket, for example, the wheat flour market, rice, sugar, oil, services such as electricity, transport and others. It should be noted that experience has shown that markets products and services of CBA have distortions in competition, thus as part of the public policy priority on reducing poverty should highlight the importance of eradicating practices anticompetitive markets goods and services of CBA as one of the key elements in combating poverty.

EUROPEAN UNION

1. Introduction

The European Commission has as its main mission, to make markets deliver more benefits to consumers, businesses and the society as a whole, by protecting competition on the market and fostering a competition culture. This is achieved through the enforcement of competition rules and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests.

Therefore, competition is not an end in itself. It contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole.

Fostering a competition culture in which consumers make informed choices between products and services offered, businesses refrain from anti-competitive agreements or behaviour and public administrations realise how competition can contribute to addressing wider economic problems, directly contributes to making markets work better for the benefit of consumers and business.

According to a 2009 Eurobarometer survey, more than 80% of EU citizens consider that competition between companies can lead to better prices and to more choice. Also, 70% of EU citizens are of the opinion that companies should not be allowed to make agreements on prices. Finally, two-thirds of EU citizens agree that companies that receive financial aid from governments might have an unfair advantage over their competitors, to the detriment of consumers.

As for many competition agencies, the reduction of poverty is not, as such, one of the explicitly stated objectives of European competition policy; still there are many ways in which the interests of the least well-off in society are actively taken into account by the European Commission's actions. The European Commission's competition policy is closely connected to and intertwined with the overall objectives and policy of the European Commission and in particular those that seek to curb the crisis, alleviate its impact on citizens, and promote a return to economic growth. Furthermore, the European Commission has also targeted in its competition enforcement activities those sectors of industry which are of critical importance to consumers, such as the energy, pharmaceutical, financial services, air transport, telecommunications and food sector. These sectors lay a claim on a significant part of the income of the least well-off consumers. Finally, the European Commission maintains its fight against price enhancing cartels as cornerstone of its competition policy enforcement.

2. The contribution by competition policy to the improvement of citizen's livelihoods

There is a strong link between competition policy and all the other policy projects designed by the European Commission and the Member States to strengthen the European Single Market and to improve the livelihoods of citizens.

The general objectives pursued by the European Commission to protect competition on the market as a means to enhance consumer welfare, to support growth, jobs and competitiveness of the EU economy

and foster a competition culture fully support its overall Europe 2020 Strategy, and in particular its three mutually reinforcing priorities: smart growth, sustainable growth and inclusive growth[1].

Historical evidence suggests that the causal link between effective competition and economic growth is particularly important in times of economic crisis. A weakening of the competition framework may prolong a severe economic downturn by several years and significantly affect the situation of those in society who are least well-off.

Making markets work better requires, in the first place, a focus on those sectors which are the most important for the competitiveness of the EU economy and whose functioning has the greatest effect on consumers. Hence, tackling anti-competitive practices in key sectors such as ICT, energy, transport, pharmaceuticals and financial services aims at maximising the contribution of competition policy to achieving the EU's overall objectives. Moreover, making markets work better for consumers means that priority must be given to the most serious competition infringements such as collusion between competitors, which requires competition enforcement also in mature sectors, where firms may collude against their customers to protect their rents.

By keeping markets open, EU competition policy ensures that the benefits of globalisation are passed through to European consumers. At the same time, by targeting international cartels, mergers and abusive practices of firms of any nationality which harm European consumers, EU competition policy helps to protect European consumers against the potentially harmful aspects of globalisation.

Another key objective of EU competition policy is to ensure that competition on the market is protected against distortive State aid. Such aid not only harms consumers, but also the overall public interest. For example, State aid granted for the rescue of a firm in difficulty could delay the necessary restructuring of certain firms or give undue advantages to some firms over others. However, the European Commission not only acts against distortive aids, it also applies a framework helping Member States to spend better targeted aid by allowing "good aid", i.e. aid that addresses market failures and equity objectives in the interest of growth and jobs, such as regional investment aid, aid for research and development and innovation, training, environmental protection, risk capital or aid to small and medium-sized enterprises (SMEs). Such aid may contribute to enhanced consumer welfare and improve the situation of the least well-off in society.

Knowledge of the benefits of competition is essential for citizens to exploit their opportunities as consumers, for businesses to compete on the merits and for policy makers to bring initiatives that support smart, sustainable and inclusive growth. Fostering a competition culture in which consumers make informed choices between products and services offered, businesses refrain from anti-competitive agreements or behaviour and public administrations realise how competition can contribute to addressing wider economic problems, directly contributes to making markets work better for the benefit of consumers and business.

The European Commission has devised a general benchmarking methodology to quantify the results achieved in protecting and increasing competition. Based on this benchmarking exercise, the observable customer benefits from cartel decisions adopted in 2011 are in the range of €2.8 billion to €4.2 billion. As for the benchmarking of the observable customer benefits derived from the European Commission's intervention in the form of a decision prohibiting a horizontal merger or clearing such a merger subject to remedies, the range is of €4.0 billion to €5.8 billion for 2011.

[1] See DG Competition's Annual management Plan 2012 for more details: http://ec.europa.eu/atwork/synthesis/amp/doc/comp_mp.pdf

It is important to stress that these estimates cover only a part of the European Commission's actions and therefore underestimate the actual impact of its enforcement activities. Significant customer benefits also arise from the European Commission's enforcement action against abuses of a dominant position, anti-competitive vertical agreements and distortive State aids.

Furthermore, it is stressed that the above benchmark cannot account for: (i) customer benefits in terms of better quality or wider choice, as only customer benefits that can be quantified in monetary terms are captured; (ii) other effects of competition policy, such as productivity gains or impact on jobs; or (iii) the pass-on to final consumers, or the poor as such, as this would require a very comprehensive assessment of market dynamics throughout the value chain downstream of the markets concerned by the Commission‘s decision. There is however little doubt that a significant part of these benefits also directly or indirectly benefit the poor.

In the following sections, a number of examples will be given of how the European Commission has used the competition tool to directly or indirectly address and improve the situation of consumers and the least well-off in society.

3. Liberalisation

Services such as transport, energy, postal services and telecommunications have not always been as open to competition as they are today in the EU. The European Commission has been instrumental in opening up these markets to competition (also known as liberalisation).

In the EU Member States, services like these were previously the domain of national organisations with exclusive rights to provide a given service. Opening up these markets to international competition has allowed consumers to choose from a number of alternative service providers and products. They also benefit from lower prices and new services which are usually more efficient and consumer-friendly than before.

In the railway, electricity and gas industries, the network operators are now required to give competitors fair access to their networks. In these industries, monitoring fair network access by all suppliers is essential to allow the consumer to choose the supplier offering the best conditions. In the two markets which were first opened up to competition (air transport and telecommunications), average prices have dropped substantially.

When markets are liberalised, the European Commission's State aid control should prevent Member States from granting aid which would effectively reverse the market opening. This is a challenge for example in the postal sector where markets have been gradually liberalised up to complete opening through the 3rd Postal Directive.

4. Telecom

European citizens and businesses rely more and more on convenient, reliable and high quality telecom networks and services. Today there are more than 250 million daily internet users in Europe, and virtually every European owns a mobile phone. The competition rules work side by side with regulation specific to the telecoms sector to bring innovative, affordable services to European consumers.

The European Commission completely opened the telecommunications sector to competition on 1 January 1998, with marked results. Price developments give a good indication of the extensive impact which liberalisation of the telecommunications market has had on the sector. In 2006, consumers in the

EU15 spent around 27 % less for the same telecoms services than 10 years ago - in real terms this represents a 40% decrease[2].

Mobile has become the lowest cost method of providing consumers with access to basic telephone services throughout the European Union. This is mainly due to the cost advantage of mobile telephony networks which results from the low marginal cost of adding a new subscriber (the access radio network is shared between subscribers, whereas a fixed line connecting a subscriber offers less possibility for shared access costs, especially if the subscriber is located in a rural area).

Although affordability must be seen in the light of specific national conditions, it can be observed that since 2006, the EU average price of a low usage basket of mobile services decreased by 30% to €9.09 in 2010[3]. The Commission's Flagship Initiative on a Digital Agenda for Europe, launched in August 2010, aims amongst others to bring **the difference between roaming and national tariffs near to zero by 2015.**

The European Commission has worked successfully to increase competition in the telecoms area, bringing new entrants into the sector throughout Europe, forcing incumbent providers to raise their standards of service and reduce their prices, and applying the competition rules to maintain competition between telecom operators.

5. Energy

Another sector which is close to the consumer and the least well-off in particular, is the energy sector. Energy bills are a significant item of household expenditure, particularly for low-income households.

The European Commission's first electricity and gas directives were adopted in the late 1990s, with the objective of opening up the electricity and gas markets by gradually introducing competition. The European Commission has consistently argued that liberalisation increases the efficiency of the energy sector and the competitiveness of the European economy as a whole.

A second round of liberalisation directives was adopted in 2003. These provided that markets for all non-household gas and electricity customers were to be liberalised by July 2004. For private households, the deadline was July 2007. After these dates, businesses and private customers were to be able to choose their power and gas suppliers freely in a competitive marketplace.

However, a sector enquiry in the gas and electricity markets undertaken by the European Commission in 2005, published in January 2007, revealed that there remained serious obstacles to competition in the market. The energy inquiry responded to concerns voiced by consumers and new entrants in the sector about the development of wholesale gas and electricity markets and limited choice for consumers. Contributions to the sector inquiry came from energy companies, both incumbents and new entrants, from national regulators, competition authorities, consultancies, law firms, energy traders, grid operators, customers, industry associations and government agencies.

The inquiry brought to light that more than a decade after having launched the drive for liberalisation and despite two waves of European liberalisation directives, market concentration still reflected the 'old'

2 See the European Commission Staff Working Paper on the Evaluation of the performance of network industries providing services of general economic interest, SEC(2007) 1024: http://ec.europa.eu/internal_market/economic-reports/index_en.htm).

3 See the European Commission Staff Working Document SEC(2010) 630: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm

market structure, characterised by national or regional monopolies - usually dominated by vertically integrated companies - which controlled electricity prices in the wholesale market and blocked new entrants to the market. In the gas sector, incumbents tended to control imports and/or domestic production. To enter a market, and provide real competition, new players need access to energy supplies, to the network and to customers.

To tackle the problems identified in the course of the inquiry, the European Commission has notably taken action under the competition rules (anti-trust, merger control and state aids). Ten major antitrust decisions concerning the energy sector have been adopted since the conclusion of the energy sector competition inquiry in 2007.

The competition sector inquiry also had a spill over effect outside the immediate field of competition policy; its findings fed into the preparation of the third package of directives to liberalise gas and electricity markets adopted in 2009, with a view to ensuring that consumers benefit fully from liberalisation in terms of secure, competitively priced and sustainable energy. For instance, the need to strengthen the existing rules on separation of supply and network companies was a clear message that had come out form the inquiry, along with the need to remove obstacles to cross-border competition in energy markets.

Although energy prices have continued to rise in the EU, increased competition in energy markets has kept those prices in check. Indeed, in recent years consumer energy prices have increased much less than the price of energy inputs such as oil, gas and coal[4].

6. Pharmaceuticals

Without doubt the pharmaceutical sector is of great importance to consumers and the least well-off in society. There are tens of thousands of prescription and non-prescription medicines on the market, and more people are taking more medicines as our population ages. On average about € 390 were spent on medicines in 2010 for each European. This figure is expected to rise in the future, particularly in view of the Europe's aging populations.

As there were strong indications that competition in this sector remained insufficient, the European Commission decided in 2008 to launch an in-depth sector inquiry, with a view to determining whether Europe is maximising innovation and affordability in this sector. This matters greatly because more innovation and more affordable medicines would mean better quality of life and savings for patients and governments. The final report of 2009 provides an in-depth description of the sector. It analyses how companies behave in the patent and other regulatory systems and the mechanisms by which medicines reach consumers. A number of conclusions could be drawn from the inquiry.

The most important conclusion was that it takes too long for generic medicines to reach the market. On average, consumers wait 7 months for cheaper generic medicines to become available once patents for brand-name (also called originator) medicines expire. One reason is that drug companies use a variety of techniques to extend the commercial life of their medicines. When brand-name medicines are forced to compete with generics, prices go down. Furthermore more patients may be treated as in some instances they will only get access to generic versions of a medicine, e.g. in poorer Member States. The price decreases can be quite substantial. For a sample of medicines it was calculated that additional savings of 20% would have been possible if the generic version had become available immediately after the original patent expired. In a small number of cases prices could drop as much as 80-90%. Using a sample of medicines across 17 Member States that faced loss of exclusivity in the period 2000 to 2007, the European

[4] See the European Commission 2012 Communication on Making the internal energy market work, COM (2012) 663 final, footnote 7: http://ec.europa.eu/energy/gas_electricity/doc/20121115_iem_0663_en.pdf

Commission found that the entrance of generics produced €14 billion in savings, while delays to entry cost consumers around € 3 billion.

The inquiry also found that originator companies engage in so called defensive patenting strategies to block or delay competition from other originator companies.

Following the inquiry, the European Commission decided to scrutinise the sector more closely a.o. by carrying out patent settlement monitoring exercises and where appropriate prosecute specific companies for alleged violation of competition law. In July 2012 the Commission's third monitoring exercise on agreements regarding patent settlements in the pharmaceutical sector showed a stabilisation of settlements that were potentially problematic under EU antitrust rules at low numbers. This suggests that the closer antitrust scrutiny since the sector inquiry report of 2009 has created an increased awareness of originator and generic companies of which types of settlements can give rise to antitrust scrutiny – generally the so-called pay-for-delay settlements. This is good news for consumers who will benefit from cheaper pharmaceuticals.

Complementary measures beyond the remit of competition law have also been developed. EU countries have been urged to take action against misleading campaigns questioning the quality of generic medicines, to introduce mechanisms to significantly accelerate approval procedures for generic medicines such as immediate/automatic pricing, to streamline trials that test the added value of medicines and to introduce measures supporting speedy uptake of generic medicines and improved price competition.

All these actions should benefit consumers and provide them with quicker access to safe, innovative and affordable medicines.

7. Financial services

In 2005, the European Commission conducted a sector inquiry in the financial sector. The inquiry focused on the markets for payment cards and for core retail banking services in the EU, including current accounts and related services. The outcome of the inquiry provided clear evidence of fragmented markets and of areas where markets are not working as well as they should, unnecessarily raising the cost of retail banking services for European firms and consumers alike.

The European payment cards industry is large and provides the means for consumer payments with an overall value of €1 350 billion per year. Such payments generate an estimated €25 billion in fees annually for banks. For consumers this is a sector of considerable importance, although as the fees are hidden, and only passed on indirectly by merchants as higher prices, most consumers are not aware of the impact on them.

The sector inquiry confirmed the existence of significant entry barriers. At international level there appeared to be an effective duopoly for cross-border card payments. At national level it was found that the payment cards networks set a range of discriminatory rules. There also appeared to be huge variations in payment card fees across the Member States. Retailers in some countries paid fees that were up to four times more than in other countries for accepting the same major credit card. The inquiry also strengthened the European Commission's concerns about the levels of multilateral interchange fees in some card schemes. As customers already pay the cost of interchange fees - since retailers pass them on in higher retail prices, paid not only by card users but also by customers paying cash - reducing these fees would, on balance, benefit consumers.

The EU retail banking industry generates €250-275 billion per year in gross income, equivalent to 2% of EU GDP. Markets are generally fragmented along national lines, divided by factors including competition barriers and regulatory, legal and cultural differences.

The sector inquiry found indications of competition problems in several areas which directly affect consumers. For instance, a majority of banks in most Member States force their customers to purchase extra products – such as current accounts or insurance – when taking out a mortgage or a loan. In many countries, there is effectively no choice: all the big banks tie the same sets of products together. Where such banks are in a position to be able to set prices on these product markets, this raises competition concerns.

Further, the inquiry identified a range of unnecessary obstacles for consumers to switching bank accounts which weaken competition. Low price transparency and high fees for maintaining and closing accounts discourage switching behaviour. The inquiry showed that consumers generally hold their personal current account with the same bank for around 10 years on average, compared to nearly 8 years on average for SMEs. The enquiry also showed that on average banks are more profitable in markets where customer mobility is low.

Following the publication of the sector inquiry report, several market players have taken voluntary action to address the most serious problems identified. Where barriers remain, the European Commission's follow-up actions focus on competition law enforcement. For instance, the European Commission has opened several cases in the field of Payment cards, with the aim of reducing the costs for the retailers and the consumers. In the Visa/Morgan Stanley case, Visa prevented a bank from becoming an acquirer, thus limiting competition on this market. In the Carte Bancaire case, big banks prevented smaller banks from issuing less expensive cards, to the detriment of all cardholders. Finally, in the MasterCard case, the Commission considered that the fees paid between banks for each card payment were too high. Similar proceedings are currently pending with regard to Visa. In the meantime, both card schemes have accepted to lower their prices for cross-border transactions.

Outside the direct realm of competition policy, the European Commission has recently addressed the important issue of access to banking services. Access to a bank account has become a pre-condition for participating fully in modern economic and social life, in which the use of cash is rapidly decreasing. According to recent studies, around 30 million consumers over the age of 18 in the European Union do not have a bank account. Out of these 30 million 'unbanked' citizens, it is estimated that between 6 and 7 million do not have a bank account because they have been denied access to one. In view hereof the European Commission has issued in 2011 a Recommendation aiming to improve this situation[5].

8. Food

In response to mounting concerns regarding the functioning of the food-supply chain the European Commission launched its own internal Food Task Force within the Directorate-General of Competition at the beginning of 2012. The Food Task Force operates for an initial two-year period and its creation coincides with a growing political focus upon the sustainability of farming and transformation industries as well as concerns about the impact of rising food prices on the reduced budgets of households in the current economic environment.

In 2011 and 2012, the European Parliament asked the European Commission and national competition authorities (NCAs) to cooperate more closely so as to ensure effective competition within the food sector, and also urged the European Commission to conduct a sector-specific inquiry into the food supply chain within the EU. As a follow-up, the European Commission launched a fact-finding exercise involving stakeholders and National Competition Authorities (NCA's) with a view to better understanding the competitive structure, interplay of actors and degree of competition in food markets. It held meetings with relevant European associations of producers, processors, traders, wholesalers and retailers representing

5 See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:190:0087:0091:EN:PDF

several food sub-sectors, so as to obtain insights into recent economic developments and specific factors influencing competition at all levels within different food supply chains.

Secondly, given the national or regional scope of food retail markets, the European Commission strengthened its dialogue with NCAs on food related issues in the framework of the European Competition Network (ECN). In particular, ECN members exchanged information on recent enforcement, monitoring and advocacy initiatives undertaken at national and EU level, as well as on policy issues raised by recurrent commercial practices which may affect the functioning of food supply chains.

The European Commission has also been active in the investigation of suspected infringements involving the food sector (see the next section). For their part, NCAs across the EU have been increasingly active in recent years in investigating food markets at a domestic level, with a particular investigative emphasis placed upon suspected infringements arising from activities within supply chains.

In May 2012 the European Competition Network (ECN) published a report providing an extensive overview of all competition law enforcement (antitrust cases and mergers) and market monitoring actions undertaken by the NCAs and the Commission over the period 2004-20116. This report includes more than 180 antitrust cases, close to 1,300 merger decisions and more than 100 monitoring actions undertaken by NCAs in enforcing competition law and monitor markets in the food sector since 2004. These cases dealt with a wide range of sectors, with a particular emphasis on cereals and cereal-based products, milk and dairy, fruits and vegetables, and retail sales of daily consumer goods, covering all levels of the food supply chain. With respect to sector inquires and market studies, NCAs have either focused on specific stages of the food supply chain, in particular on retail (including relations between retailers and their suppliers), or on specific product sectors (in particular, milk and dairy products, fruits and vegetables, and cereals) and often assessed price formation.

In view of these continued investigative efforts by NCAs at a national level, the launch of the European Commission's Food Task Force represents an intensified and complementary effort to root out and sanction competition law breaches within the food sector across the EU. This could see the Food Task Force combining the dual roles of heading the enforcement vanguard, and acting as an effective mission control, disseminating information to NCAs to enable effective national enforcement in domestic or local markets.

In addition the Food Task Force has been following and contributing to the on-going discussions on the CAP reform: one of the key elements being discussed in the reform is the application and possible modification of competition rules in the sector.

Finally the Food Task Force launched in December 2012 a call for tender for an economic study on the food retail sector. The purpose of this study is to gather quantitative evidence on the evolution of choice and innovation at this level of the food supply chain, as well as to analyse the factors (ranging from concentration of retailers and suppliers to shop and socio-demographic characteristics) which influence most the evolution of choice and innovation in the food retail sector. This study was launched in response to various claims from stakeholders in the industry as well as policymakers that retailers' business practices may hamper investment in innovation and reduce choice for the end consumer. The study is also expected to shed further light on the competitive situation of local retail markets in different EU member States.

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6 The low usage basket refers to typical low usage consumption patterns of national services: voice calls and SMSs. See the EU Staff Working Document SEC(2010) 630: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm)

7 ECN Subgroup Food (May 2012), "ECN Activities in the Food Sector – Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector", Available at http://ec.europa.eu/competition/ecn/documents.html#reports.

9. Recent efforts in sanctioning cartels in consumer sensitive sectors

The European Commission's enforcement practice in the food and other consumer sensitive sectors has primarily focused on tackling hard core cartels. In the context of the economic crisis, rising food prices and serious constraints on the incomes of the least well-off in society, detecting and sanctioning collusive behaviour in these sectors has become more important than ever. Some illustrations hereof are set out below:

9.1 Banana cartels

Bananas are bought all year around by a large proportion of EU consumers, and the EU is the largest consumer and importer of bananas in the world. According to EUROSTAT in 2010 the EU consumption of bananas was approximately 5 million tonnes, of which 12 % were domestically produced.

As imports dominate the EU banana market, it is not surprising that marketing and trade are at the forefront of competition enforcement in the sector. The banana market is highly concentrated with five major multinationals (Dole, Del Monte, Chiquita, Fyffes and Noboa/Pacific Fruit/Bonita) controlling more than 80% of all internationally traded bananas, and at least 50 % in the EU fresh banana markets. Furthermore, the trade in bananas during the period of the infringements was characterised by significant trade flows between Member States. For instance, bananas imported into a few ports located along either the Northern or Southern European shipping routes could be distributed throughout the region or transported elsewhere.

In its decision of 12 October 2011 the European Commission concluded an investigation on the banana market which had started in 2005, following an immunity application by Chiquita, and sanctioned a cartel operated by this company and Pacific Fruit (case COMP/39482 - Exotic fruit). Both companies are major importers and sellers of bananas in the EU. From at least July 2004 to April 2005, the companies fixed weekly sales prices for bananas and exchanged price information in relation to their respective brands in Italy, Greece and Portugal. The European Commission imposed a fine of € 8, 9 million on Pacific Fruit while Chiquita, as the immunity applicant, was granted immunity from fines.

In October 2008, the European Commission also fined Dole and Weichert/Del Monte € 60 million for price fixing in Northern Europe (case COMP/39188 – Bananas). It found that in the period 2000-2002 the companies had engaged in bilateral pre-pricing communications during which they discussed banana price-setting concerning Austria, Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden.

9.2 Dutch beer cartel

Beer is one of the most important beverage items in EU household expenditure and it is particularly important for HoReCa services. In 2010 approximately 343 million hectolitres of beer worth were sold in the EU. Most beer (ca 63 %) was sold in retail outlets, but about 70 % of expenditure on beer occurred in the HoReCa.

In its decision of 18 April 2007 (Case COMP/B/37.766 - Dutch beer market), the European Commission fined Dutch brewers Heineken, Grolsch and Bavaria with a total of € 273 million for operating a price-fixing cartel in the beer market in the Netherlands. The InBev group was granted immunity under the European Commission’s leniency programme. The four brewers coordinated prices and price increases of beer in the Netherlands, both in the on-trade segment of the market (where consumption is on the premises) and the off-trade market segment (consumption off the premises, mainly sold through supermarkets), including private label beer. The European Commission also found that in both segments the brewers had coordinated commercial conditions offered to individual customers and

allocated customers, while in the on-trade market segment the companies had coordinated the rebates granted to pubs and bars.

The companies concerned subsequently appealed the decision before the General Court, seeking annulment of the European Commission's decision or a reduction in their fines. The General Court largely upheld the fines for Bavaria and Heineken.

9.3 Refrigeration compressors

The European Commission has settled a cartel with producers of household and commercial refrigeration compressors, used in fridges, freezers, vending machines and ice-cream coolers. ACC, Danfoss, Embraco and Panasonic were fined a total of € 161 million for operating together with Tecumseh a cartel that covered the whole European Economic Area (EEA) for a period of three years. Tecumseh was not fined as it benefited from immunity under the 2006 Leniency Notice for revealing the existence of the cartel to the Commission.

ACC, Danfoss, Embraco, Panasonic and Tecumseh aimed at coordinating European pricing policies and keeping market shares stable in an attempt to recover cost increases. To this end, the cartel members held bilateral, trilateral and multilateral meetings at which they discussed prices, among other things, and engaged in an exchange of sensitive market information.

9.4 Consumer detergents

The European Commission fined Procter & Gamble and Unilever a total of € 315.2 million for operating a cartel together with Henkel in the market for household laundry powder detergents in eight European Union countries. Henkel got immunity for revealing the cartel to the European Commission. The three companies are the leading producers of washing powder in Europe. The cartel lasted some three years and aimed at stabilising market positions and at coordinating prices.

The cartel started when the companies implemented an initiative through their trade association to improve the environmental performance of detergent products. The environmental objective, however, did not require them to coordinate prices or other anti-competitive practices to the detriment of consumers.

10. Conclusion

The European Commission is of the opinion that there is a clear link between competition and poverty reduction. Although it may be difficult to quantify and indicate precisely how strong, or how direct the link is, the European Commission considers that competition policy can make a strong contribution to the position of the weakest in society.

The contribution by competition policy consists of lower consumer prices for goods or services of particular importance to the poor, as the result of the opening up of markets to competition, the breaking up of cartels, or the prohibition of anti-competitive mergers. It is also be brought about by the prohibition of "bad" State aids which distorts competition and the stimulation of "good" aid which contributes to economic growth and the creation of jobs and innovation.

In the whole debate on the relationship between competition policy and poverty reduction it should be reminded that European competition policy is not an isolated policy, but is part of and contributes to the overall policy objectives of the European Commission, which seek to get Europe out of the economic crisis by stimulating economic growth and improving employment opportunities to the benefit of the weakest.

GABON [*]

-- Version française --

1. L'efficience économique comme instrument de lutte contre la pauvreté

La promotion de l'économie, objectif traditionnel de la politique de la concurrence, doit entrainer un meilleur partage des richesses et permettre de lutter contre la pauvreté.

Dans le cadre de la mise en place de la nouvelle politique économique du pays appelée le PSGE (Plan Stratégique Gabon Émergent) dont l'objectif est d'aboutir à une « prospérité partagée », les pouvoirs publics s'attellent à mettre en œuvre des mesures afin d'attirer l'IDE (l'investissement direct étranger) notamment par la mise en place des instruments chargés d'améliorer le climat des affaires et faciliter l'établissement des entreprises. Au nombre des initiatives figure le CDE (Centre de Développement des Entreprises) ; celui-ci contribue activement au développement des entreprises au Gabon par la simplification des procédures administratives et par une plus grande efficacité dans le processus de traitement des dossiers.

Dans le même ordre d'idées, on peut compter dans le cadre de la politique de la concurrence, la mise en place d'une charte des investissements comportant des dispositions attractives.

La mise en place de tous ces instruments a pour but d'atteindre une efficience économique qui doit profiter à tous notamment par la création d'emplois devant entrainer une réduction du chômage.

On assiste à un développement d'un tissu des PME (petite et moyenne entreprise) et des PMI (petite et moyenne industrie)

2. L'ouverture des marchés entraine une meilleure disponibilité des produits à moindre cout

La concurrence profite aux entreprises mais aussi aux consommateurs dans la mesure où elle permet d'avoir une meilleure disponibilité des produits à des prix abordables, contribuant ainsi à améliorer les conditions de vie d'une certaine tranche des populations.

On peut remarquer dans les quartiers populaires des villes gabonaises que la plupart des foyers disposent de produits qu'ils n'auraient pas pu acquérir.

C'est le cas des véhicules : du fait de l'implantation de plusieurs vendeurs d'occasion ou des vendeurs proposant des véhicules neufs à moindre cout, plusieurs ménages disposent désormais d'un moyen de déplacement.

C'est le cas du marché de la téléphonie mobile, où il y a moins de 10 ans avec un seul et unique opérateur, l'accès au téléphone portable était réservé à une certaine élite alors qu'aujourd'hui n'importe

[*] Contribution soumise par Mme. Anne-Marie ENGOUMA, Directeur Adjoint de la Concurrence par Intérim, Direction Générale de la Concurrence et de la Consommation.

quel gabonais peut avoir accès à un téléphone portable, d'une part, d'autre part la couverture s'étend désormais à l'ensemble du territoire national.

De nombreux secteurs tels que la santé ou l'éducation suivent ce même schéma.

D'autre part, le respect des règles de transparence (affichage des prix notamment) contenues dans les dispositions relatives à la concurrence, les consommateurs avertis font des économies lors de leurs achats qu'ils peuvent affecter à d'autres dépenses.

L'excès de concurrence est paradoxalement peut causer la paupérisation des populations du fait :

- Des conditions de travail inhumaines qui sont imposées aux employés au nom de la poursuite de la compétitivité où le profit demeure le maitre mot au détriment du bien être des travailleurs ;

- De la présence sur les marchés des produits ne répondant pas aux normes sanitaires et qui mettent parfois en danger la vie des consommateurs qui les achètent.

Afin de profiter de la concurrence les pouvoirs publics doivent s'atteler à diffuser la culture de la concurrence qui doit permettre aux consommateurs de mieux profiter des bienfaits de la concurrence.

Pour que la concurrence puisse avoir des effets durables sur la pauvreté, il est nécessaire que les pouvoirs publics soient forts afin d'exercer des contrôles effectifs sur le terrain.

GABON [*]

-- English version --

1. The role of economic efficiency in alleviating poverty

Promoting the economy, the traditional objective of competition policy, must give rise to a greater distribution of wealth and help alleviate poverty.

As part of the implementation of the country's new economic development policy, known under its French acronym *PSGE* (*Plan Stratégique Gabon Émergent*), and which aims to achieve shared prosperity, the public authorities are working to introduce measures to attract foreign direct investment (FDI), notably by creating government agencies mandated to improve the business climate and put in place a more streamlined system for setting up new businesses. One such initiative is the Business Development Centre (*Centre de Développement des Entreprises CDE*) which helps businesses grow in Gabon by simplifying administrative procedures and ensuring that paperwork is handled more efficiently.

In a similar vein, one aspect of the government's competition policy involves the implementation of an Investment Charter with provisions for attractive investment conditions.

All these measures are being introduced with a view to making the economy more efficient which should benefit all stakeholders by creating jobs and cutting unemployment.

There is a growing fabric of small and medium-sized enterprises (SMEs) and industries (SMIs).

2. Opening up markets leads to greater consumer choice and lower prices

Competition benefits enterprises and consumers alike since it makes more products available at affordable prices and thus helps improve the standard of living for a certain segment of the population.

In the poorer districts of Gabonese towns, most households can now buy products that they previously could not afford.

Motor vehicles are a good example. Following the setting up of several second-hand car dealerships and vendors selling discounted new vehicles, many households now have their own means of transport.

The mobile telecommunications market is another example. Less than ten years ago, there was only one operator in Gabon and mobile phones were a luxury reserved for a certain elite. But today, in addition to every Gabonese being able to afford a mobile phone, there is also nationwide cell phone coverage.

Many other sectors such as health and education are following the same pattern.

[*] Contribution submitted by Ms. Anne-Marie ENGOUMA, Acting Deputy Director for Competition, Direction Générale de la Concurrence et de la Consommation.

Furthermore, compliance with transparency rules (*e.g.* price display) provided for in competition law enables discerning consumers to save money when shopping that they can set aside for other uses.

Paradoxically, excessive competition may aggravate poverty as a result of:

- Inhuman working conditions enforced on employees in the blind pursuit of competitiveness where the sole aim is to rack up profits at the expense of workers' well-being;

- The presence in markets of products that fail to comply with health standards and which may endanger the lives of consumers who buy them.

To gain maximum leverage from competition, the public authorities need to disseminate the competition culture to enable consumers to enjoy the full benefits of a competitive market.

To ensure that competition has a lasting impact in alleviating poverty, the public authorities must be resolute in order to carry out effective monitoring on the ground.

INDIA*

Executive Summary

The paper primarily focuses on competition as an anti-poverty approach in poverty reduction. The paper discusses broadly the causes and historical review of poverty trends in India. The paper further elaborates the impact of liberalization policies and economic reforms in poverty reduction since 1990's and emphasizes how competition affects markets of essential items through innovation and productivity. The paper also discusses the role of competition advocacy and competition effect on poor, entrepreneurs and job seekers. Finally the paper highlights the significance of competition as an engine of growth and approach of competition policy towards poverty reduction in India.

1. Introduction

Poverty is one of the biggest challenges today for the developing countries including India. The causes of poverty are diverse and issues are continuously debated and discussed nationally and internationally.

In India, the problem is more acute as the situation has been aggravated by high density of population, poor land-man ratio and high unemployment rate. Poor performance by the agriculture and the allied sector coupled with poor absorption of labour force by industrial sector has further deteriorated the situation.

Over last few decades, in India, several programs were initiated to curb poverty and positive results in poverty reduction have been achieved. Further, significant improvement has been observed across human development indicators such as literacy, life expectancy, education and healthcare. India's economy has grown steadily over the decades as a result of implementation of several economic policies, including competition policy with an aim to enhance consumer welfare and reducing poverty levels.

Like other economic policies, competition policy has also complex inter-relationships with poverty. Greater competition leads to well-functioning competitive markets, and promotes innovation, productivity and growth. All these factors positively affect reduction of poverty and generate employment and prosperity. Role of competition agencies also becomes extremely important in the context when rising prices have an adverse impact on the poor. Higher prices arising from the anticompetitive practices such as cartels have a greater impact on poor in comparison to other sections of the society as their access to essential goods and services is severely reduced.

This paper explores how competition policies along with other economic policies make impact on poor people in India. Effective regulation and competition make the functioning of markets efficient and aim to provide cheaper prices of essential items to poor. The paper will discuss the significance of competition policy as a government instrument in eradication of the poverty and enhancement of consumer welfare.

* The views expressed in the document have been researched and analyzed by the officers of the Competition Commission of India and do not necessarily represent the views of Government of India.

2. Poverty in India

According to the World Bank, India has the one- third of the world's total poor. A total number of 32.7% of the total Indian people fall below the international poverty line of US$ 1.25 per day (PPP).[1] Poverty line is an economic benchmark used by the Government of India to indicate economic disadvantage and to identify individuals and households in need of government assistance and aid. In India, the Planning Commission calculates the poverty estimates and poverty line. Recently, on the basis of Tendulkar Committee Report, the Planning Commission has reduced the poverty line to Rs. 28.65 per capita daily consumption in cities and Rs. 22.42 in rural areas, scaling down India's poverty ratio to 29.8 per cent in 2009-10. In India, an individual above a monthly consumption of Rs. 859.6 in urban areas and Rs. 672.8 in rural areas is not considered as poor.[2]

2.1 Recent poverty trends: Key findings of the Tendulkar Committee report, 2012:[3]

The Tendulkar Committee has prepared a final report on poverty estimates. Head count ratio (HCR) has been calculated using urban and poverty lines and the aggregated BPL population of the states has been used to obtain the final all-India HCR (Head Count Ratio) and poverty lines in rural and urban areas. Some of the major findings of the report were:

- There was a decline of 7.3 percentage points in the all-India HCR from 37.2% in 2004-05 to 29.8% in 2009-10. Rural poverty declined by 8.0% points from 41.8% to 33.8% and urban poverty declined by 4.8% points from 25.7% to 20.9%.
- In rural areas, approximately 50% of agricultural labourers and 40% of other labourers were below the poverty line, whereas in urban areas, the poverty ratio was 47.1% for casual labourers. Regular wage/ salaried employment have the lowest proportion of poor. In the agriculturally prosperous state of Haryana, 55.9% agricultural labourers are poor, whereas in Punjab it is 35.6%.

The above data clearly indicates the significant reduction in poverty levels in India. Even though the total overall poverty in India has declined, it is also pertinent that the extent of poverty reduction is often debated in India.

2.2 Causes and historical review of poverty

Poverty is caused by many factors such as illiteracy, population growth (against low economic growth), high growth rate of unemployment etc. Gender, literacy, land-ownership, employment status, religion and caste are also closely linked with poverty. After Independence, many initiatives have been taken by the Government of India to curb poverty. Subsidies in the essential items (food, water, energy etc.), access to loans to farmers and poor, better techniques in agriculture and irrigation, education programmes, protection and growth of labour intensive industries, price support, and family planning were the important measures taken by the Government since 1950. Government of India also introduced a number of planning schemes to provide food and essential items at subsidized and controlled prices.

However, despite many efforts during 1950's to 1980's, poverty reduction did not show much progress. In 1951-52, the first year of the National Sample Survey (NSS), the head-count ratio of poverty in India was close to 45 percent of the population. Even after 30 years in 1983, the poverty ratio stayed

1 Poverty Data, World Bank, www.data.worldbank.org/country/india .

2 2012, Tendulkar Committee Report.

3 2012,March Poverty Estimates for 2009-10, Press Information Bureau, Government of India

"constant" at 43 percent.[4] However, since then, there has been a sharp fall in poverty with the level for 1999-2000 being "close" to 26 percent. The number of poor declined to 260 million in 1999 due to reduction of poverty ratio by 10 % in 1993 -1999 significantly.[5] It clearly signifies that economic reforms have made a positive impact on high economic growth, poverty reduction and unemployment. Undeniably, economic reforms have contributed significantly in culminating absolute poverty levels.

2.3 Poverty and liberalization

Liberalization was one of the major economic reforms made by India in 1991. In his Budget Speech, the then Finance Minister India, Dr Manmohan Singh said, "*"It is essential to increase the degree of competition between firms in the domestic market so that there are adequate incentives for raising productivity, improving efficiency and reducing costs*".[6]

India undertook a number of reforms in different sectors of the economy including reduction in tariff barriers, opening foreign investment , technology advancement, removal of control in financial sector, tax structure etc. Many controls on trade and industry were removed to foster competition, efficiency and productivity in all major sectors of the economy. Indian economy was opened to competition from within and abroad. The two central components of these economic reforms were the liberalization of India's private sector and the reforms of the public sector. As a result, India made a significant economic growth in various segments of economy e.g. telecommunications, civil aviation, transport, manufacturing etc. Apart from achieving higher economic growth, India also witnessed reduction in poverty and malnutrition during the period. Other economic indicators, where major improvements were noticed were literacy rate, employment growth, inflation, balance of payments, factor mobility etc.[7] The poverty ratio (percentage of total people living below poverty line) went down to 26.8% and the World Bank cited the economic growth as the most important factor for poverty reduction in 1990's. [8]

The economic growth and the rapid industrialization during the economic reforms led to much higher investments, which paved the way for the entry of private players and simultaneously accelerated the employment generation. Per capita income went up and India emerged as a vibrant and dynamic economy as 60 million people escaped from the poverty trap.[9]

3. Poverty and competition

Since independence, India continues to pursue the strategy of planned economic development with the objective to promote social and economic advancement. The planned development was the means for growth in agriculture as well as technological advancement in industrial sector. Industrial Policy Resolution 1956 which suggested the emphasis on heavy industries, led to significant growth in the development of public sector.[10] Nevertheless, a high concentration of economic power was found by MIC in 85% of the industries in India. Monopolies and Restrictive Trade practices Act, 1969 (MRTP Act) was

4 2006, Arvind Virmani, Working Paper, Poverty and Hunger in India, Planning Commission

5 Poverty and Poverty Dynamics in India: Estimates, Determinants and Policy Responses Aasha Kapur Mehta and Shashanka Bhide (2012).

6 Prime Minister, Mr Manmohan Singh (1991, the then Finance Minister's speech).

7 2006, Arvind Virmani, Working Paper, Poverty and Hunger in India, Planning Commission.

8 The World Bank, "India: Sustaining Reform, Reducing Poverty", The World Bank, "World Development Report 2002: Building Institutions for Markets.

9 A. Shah and Aisha Kaptur Mehta, "Chronic Poverty in India: Incidence, Causes and Policies,"

10 Government of India Handbook of Industrial Policy and Statistics (Various Issues), Office of Economic Adviser, Ministry of Commerce and Industry. New Delhi.

enacted to check the level of concentration of Industries. Industrial Policy statement in 1980s stressed the competition in domestic market, technological up-gradation and modernization. Nevertheless, evolution of the industry along with rapid industrialization also witnessed the growth of anticompetitive practices in different sectors of economy. A competitive regime became the need of hour to curb such practices along with ensuring the protection of interest of consumers as well as enterprises. In 1999, Government announced the appointment of Raghavan Committee and the MRTP Act was replaced by the Competition Act, 2002.[11]

It is internationally understood that competition fosters productivity. The objective to enhance productivity forces the market players to innovate and optimize efficiency, leading to supply of better quality and competitively priced products, which ultimately benefit the poor.

Competition is also closely linked with public procurement programmes. In India, public procurement accounts for 20-30% of the total GDP. Bid-rigging in public procurement can cause serious economic harm. It increases prices artificially and lowers quality, leading to loss of taxpayers' money. Inefficient procurements have a detrimental impact on the quality of key public infrastructure and services and hurt the interests of the poor largely relying on public provision If procurement process would be implemented in a competitive manner, in view of the huge public expenditure on procurement, achievement of a meagre 5 per cent decline in procurement prices by infusing competition in public procurement has potential of saving huge amount of public resources. This would help in avoiding wastage of public money and curbing fiscal deficit. In addition, this will contribute to better allocation of resources towards development needs and poverty reduction programmes apart from improving's access to good quality public goods and services.

4. Competition's effect on markets for essential items

This section emphasizes how competition affects markets for essential goods and services. It further elaborates what role competition policy could play in making the provision of essential goods and services more efficient.

Competition drives markets towards achieving optimum efficiency and results in cheaper prices of the essential items. In the present context, the "essential items" means those goods or services which are acquired primarily for personal, family or household purposes, such as a food, water or petroleum products such as gasoline, fuel or services such as electricity, telecommunications, banking etc.[12] Effective competition facilitates innovation and increased productivity. This not only bring downs the prices of these essential items but also increases the quality, output and makes the goods and services more affordable. The lower prices that result from increased competitive pressures expand markets and make goods and services more affordable. On the contrary, when there are unnecessary regulatory impediments and insufficient competition in markets, the poor often pay higher prices and receive lower-quality goods and services which affect their total income drastically[13].

Hence competition in domestic markets is extremely important in making essential goods available at competitive prices, which has an impact on wider social development goals including poverty reduction. The World Bank in the Global Economic Prospects Report 2005 has emphasized the linkage between competitive markets and rate of poverty. Report says that, "*Economies with competitive domestic markets generally tend to have higher levels and rates of growth in per capita income. These economies also have lower rates of poverty and attract more domestic and foreign investment."*[14]

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11 2011, Draft National Competition Policy.

12 2007, R S Khemani :Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least developed countries.

13 2004, Joachim Ewert and Jeffrey Henderson, How Globalisation and Competition Policy inhibit Poverty Reduction.

14 2005 World development Report: Investment Climate, Growth and Poverty.

Unethical conducts like favouritism, nepotism in business practices, poorly designed public procurement and other government policies, cartels among oligopolistic firms and other anti- competitive traits also adversely impact competition, which affects the prices of the essential items. Ultimately, the impact is relatively more stringent on the poor than any other section of the society. A strong and robust competitive regime will definitely contribute effectively to check any inflationary rise in price of the essential items arising from anticompetitive practices and avoid adverse effect on poverty reduction.

5. Competition Commission of India's experience with markets

Distortions in the competition affect the price adversely and poor are disproportionately affected by the higher prices of the products. Well-functioning markets symbolize a healthy economy as it implies that markets are working in an efficient manner without distortions.[15] Concerns increase, when higher prices caused by anticompetitive conducts affects the market of staple products. For example, the market for agricultural products is adversely affected by the anti-competitive behaviour of the intermediaries. Neither the farmer nor the end consumer is benefited from the lack of competition in agriculture as most of the profit is gobbled up by the intermediaries through antic-competitive practices. More importantly, the situation has grave implications, when nearly 50% of rural agricultural labourers are below the poverty line in India.

Competition Commission of India recognizes the impact of competitive markets on the inclusive growth and the economic development of the country. Competition Commission of India (CCI) has taken several pro- active measures to encounter anticompetitive practices existing in various sectors of the economy. Actions were initiated for investigation including the markets of staple products (cartelization of supply of sugar, onion etc.) and industrial products (LPG cylinders, cement cartelization, banking etc.) In one of the major path breaking decision through its order dated 20 June 2012, CCI imposed a penalty amounting to more than six thousand cores (approx. USD 1.1 billion) on eleven cement manufacturers in India. CCI found that these cement companies had indulged in fixing the prices through cartelization. The penalty was imposed at the rate of 0.5 times the net profit of such manufactures for the past two years. CCI also stated in its order that "limiting and controlling supplies in the market and determining prices through an anti-competitive agreement is not only detrimental to the cause of the consumers but also to the whole economy since cement is a crucial input in construction and infrastructure industry vital for economic development of the country".[16] The Commission is also investigating suspected cartels in many vital sectors of the economy.

6. Competitive markets versus "pro-poor" government controls/interventions

The Government role in fostering competition is continued to be discussed among policy makers, researchers etc. with reference to the degree of protection and direct support that government provides to business entities. Exemption and exception have been observed in many countries, where assistance is provided by the government in terms of price support and procurement policies.[17] These exceptions and exemptions to certain products or certain sectors (e.g. small-scale industries or the public sector) from competition policy have always been debated in the context of pro-poor government controls/interventions.

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15 2004, Pradeep S Mehta and Nitya Nanda, Competition Policy, Growth and Poverty Reduction in Developing Countries.

16 *Builders Association of India* vs *Cement Manufacturers' Association & Others*. Case No 29/2010, CCI.

17 2007, R S Khamenei: Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least developed countries.

7. Competition effect on poor, small entrepreneurs and job seekers, in principle

This section examines what role could competition play in improving the prospects for poor entrepreneurs and job seekers. The chapter also discusses the competition effect on poor and how a robust competition authority can contribute towards their betterment.

Competition effect on Poor: Busting of cartels is significant especially in industries catering to the market of essential items, which are consumed by the poor mostly.[18] Cartels are the consortium of associations or enterprises which aims to maximize personal / mutual gains through unprincipled activities. Cartels jeopardize the competition and are detrimental for consumer welfare. The consequences could be more serious, when anticompetitive practices affect the market of staple products which affects the poor disproportionately. A strong competitive regime can eventually help poor from escaping the trap of such cartels, which are capable of affecting directly the daily life of the poorest of the society.

- **Role of Competition Advocacy***:* A properly designed advocacy program will eventually help in curbing anticompetitive practices existing in the economy. To have a greater impact and a wider reach to the different sections of the society, the program should be comprehensively implemented. Publishing of advocacy booklets and leniency program in national and regional languages is an extremely important measure for effective implementation.
- **Competition effect on small entrepreneurs and job seekers**: Undoubtedly, the level of competition is connected to entrepreneurship and growth. In other words, we could inference the positive correlation between entrepreneurship and competition policy. The level of competition enhances efficiency and subsequently productivity. This productivity escalates growth at different levels such as personal/individual, sectoral and at country level. Enhanced productivity also paves the way for innovation through investments in markets, which results in more employment generation[19]. The level of entrepreneurship is however, sometimes adversely affected by the level of competition in the market, where the entrepreneur enters. The situation becomes pertinent when the entrepreneur is a relatively poor entrepreneur. High competition in such markets could result in decrease in prices which may have an adverse effect on their total income.[20]

8. Competition effect on poor, small entrepreneurs and job seekers, in reality

Anti-competitive practices existing in the market of essential items may affect the poor disproportionately. The chapter discusses the efforts made by Competition Commission of India to investigate the markets including the market of essential items. The section further emphasizes the role of competition advocacy towards creating a culture of competition in the economy for the benefits of poor and small entrepreneurs.

1. **Enforcement:** As mentioned earlier, Competition Commission of India has intervened in many sectors in India including the markets of essential items to combat anti-competitive practices. Further, the Commission has initiated suo-moto actions based on the information received through public domain and other sources. Some of the suo-moto cases initiated by the Commission in different sections are mentioned below:[21]

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18 International Network of Civil Society Organizations on Competition, World Competition Day: Impact of Cartels on Poor.

19 Competition and Entrepreneurship as Engines of Growth, Gain Fazio.

20 2012, OECD, Latin American Competition Forum, Session: Competition and poverty reduction.

21 See orders of the Commission, ww.cci.gov.in

- Suo-moto Case no. 01/2011 (In Re: Rise in Onion Prices)
- Suo-moto Case no. 03/2011 (In Re: suo-moto case against LPG cylinder manufacturers)
- Suo-moto Case no. 01/2010 (In Re: Sugar Mills)

CCI initiated a series of investigations and imposed a penalty of Rs165.59 crores to the contravening entities in the case against LPG cylinder manufacturers. However, CCI has closed the matters relating to sugar mills and banks as violations were not established. The suo-moto probes undertaken clearly signify the commitment of CCI to keep a check on anticompetitive practices especially in sectors which have a bearing on poor.

2. **Role of Competition Advocacy**: Competition advocacy is one of the main pillars of modern competition law in India, which aims to create, expand and strengthen awareness of benefits of competitive markets in the economy. Section 49 of the Act empowers CCI to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training on competition issues. This mandate is a unique provision as no other law has such a provision in India. Accordingly, CCI has undertaken widespread advocacy amongst the stakeholders to inculcate a culture of competition in the economy. In pursuance of this mandate, the Commission lays adequate emphasis on the non-enforcement measures and has entrusted a dedicated division to undertake advocacy activities with the stakeholders to inculcate competition culture in the economy.[22]

9. Conclusion: Competition policy towards poverty

- Poverty reduction would be feasible through rapid industrialization and to achieve speedy success, all industries must work with optimum efficiency to enhance productivity and growth. Here, the role of competition become significant as competition is an engine of growth which drives efficiency and more productivity.[23]
- Those economic activities should be prioritized and effectively implemented which makes a positive impact on the poor. Competition in the markets of essential items such as food, water, energy, transportation will be helpful in providing affordable and better quality products to poor. Hence, the competition authority must ensure to sustain competition and eliminate anti-competitive practices from such markets.
- The Competition Authority must assess the impact of procurement policies and government regulation on competition. The Competition Assessment Toolkit as prepared by OECD will definitely prove to be useful for government to eliminate barriers to competition.[24]
- Effective enforcement of competition policy through enforcement and advocacy will make the economy open but well- regulated. This kind of economy will not only attract domestic investments but will also encourage foreign direct investments. A well designed and implemented competition policy will certainly make a positive impact on consumer welfare and poor by making goods and services available at competitive price. At the same time, it would open up market and enhance production opportunities creating employment. Such a scenario would indeed help in reducing poverty.

22 2012, OECD, Annual Report on Competition Policy Developments in India.

23 2004, DFID, Competition, Innovation and Poverty

24 www.oecd.org/daf/competition/compeitionassessmenttoolkit.htm

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JAPAN

Introduction: Reduction of the poor of small enterprises through the enforcement of the Subcontract Act by the Japan Fair Trade Commission

Micro, *small* and m*edium* e*nterprises (hereinafter, SMEs) that engage in transactions with large enterprises are often exploited by large enterprises, and may encounter economic hardship. In Japan, a typical example is where small and medium subcontractors are hit by delay in the payments of subcontract proceeds by large "parent" enterprises" (main subcontracting enterprises), and this has long been a problem in Japanese society.*

Over the years, the Japan Fair Trade Commission (hereinafter, the JFTC), Japan's competition authority, has dealt effectively with this problem through enforcement of the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors (hereinafter, the Subcontract Act), which serves as a supplementary law to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter, the Antimonopoly Act). This paper explains reduction in the impoverishment of SMEs through the JFTC's application of the Subcontract Act.

1. Dual structure of the economy and the impoverishment of SMEs

A phenomenon called the "Dual structure of the economy", whereby a high productivity sector comprised mainly of large enterprises and a low productivity sector comprised of SMEs exist side by side, is likely to happen during "periods of economic growth". Under such a structure, large enterprises and SMEs exist side by side, and a large gap exists between the two of them in aspects such as capital intensity, productivity, technology and wage levels.

Whereas large enterprises introduce advanced capital equipment and achieve high labor productivity, SMEs mainly used traditional production methods and their labor productivity is low. The wage gap between large enterprises and SMEs widens, reflecting this gap in productivity, and the wage gap persist for a long time due to disunited labor market liquidity and the segmentation of the labor market into the large enterprise segment and the SME segment.

Consequently, large enterprises use SMEs as subcontractors and gain a cost advantage by exploiting these low wages, sometimes using them to cushion the impact of economic downturn.

This dual structure of the economy is a problem that has faced in common with developing countries, and resolving this problem of the impoverishment of exploited SMEs and their workers is an important government issue.

In Japan, the dual structure of the economy is thought to have existed since the 1920s, but during the period of high economic growth after World War II, this gap widened significantly, and what is peculiar to Japan is that it performed the function of supporting Japan's economic development.

2. Challenge faced by the JFTC in an era of industrial policy supremacy

Confronted by economic devastation following its defeat in World War II, The Antimonopoly Act was introduced in Japan as a part of the economic democratization *policies of the Allied Powers in 1947. The Antimonopoly Act was* introduced, which was considered stricter *than the U.S. antitrust* laws that were its parent laws, and the JFTC was established as Japan's competition authority. At that time, Japan was faced with the urgent issue of developing and strengthening the domestic industry to achieve economic independence.

The Government therefore introduced a various protective measures and financial aid for industrial activities to strengthen the industrial infrastructure and rationalize or modernize enterprises. Under the administrative guidance of the *government office* dealing with industrial matters, the Government also often introduced measures for restricting competition in response to a trend towards overproduction occurring as a result of deterioration in economic conditions, and there was also pressure for substantial relaxation of the regulation of cartels from business circles. As a result, in the 1950s, the JFTC was forced to significantly roll back its regulation of cartels and the JFTC's inspection activities also slowed significantly. This period was referred to as the "winter years" for the JFTC.

3. Introduction of regulation of abuse of superior bargaining position

While relaxing regulation of cartels, the 1953 amendment of the Antimonopoly Act tightened regulation of unfair trade practices in the area of SMEs.

In other words, because the provision on the elimination of unfair economic power gap[1] was deleted, there was also the risk that large-scale enterprises might abuse their position and exert unfair pressure on SMEs, and to address such a situation, a new type of practice was added to unfair trade practices.

The newly added unfair trade practice was "abuse of bargaining position", and this is linked to the current regulation on abuse of superior bargaining position.

With the introduction of this regulation, trade practices whereby large enterprises use their position to impose an unfair disadvantage on SMEs became the subject of regulation. Such practices include delays in the payment of subcontract proceeds, which had become a social problem at the time, and abuse of the superior bargaining position of department stores over suppliers.

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[1] The Antimonopoly Act enacted in 1947 included a provision to prevent excessive concentration of economic power to the effect that a transfer of commercial facilities, etc. can be ordered in cases where there is "unfair economic power gap". More specifically, the act defined "unfair economic power gap" as where" there is an significant gap between enterpriser's economic power and its competitors", "the superior economic power of the enterprise cannot be justified on technological grounds" and "the gap enabled the enterprise to create a private monopoly", and prescribed that the transfer of commercial facilities, etc. can be ordered when such a situation exists.

However, this provision did not regulate anti-competitive practices. It was a "structural control" measure aimed at improving the market structure itself in terms of market competitiveness.

This provision was abolished as a result of the 1953 amendment of the Antimonopoly Act on the grounds that it was not suited to the present state of the Japanese economy.

4. The JFTC's proactive response to subcontract transaction issues

Under the dual structure of the economy, it became common for large "parent" enterprises to use SMEs as subcontractors. As explained before, this was because there was substantial difference in wages between large enterprises and SMEs and because this arrangement acted as a control valve against economic fluctuation. Subcontractors usually tended to be forced into accepting severe trading conditions by their parent enterprises.

Especially in the process of economic adjustment, a subcontractor affiliated with a large enterprise was made to function as its parent enterprise's economic control valve, and was put in a situation where it was fully exposed to the stresses of recession, including reduction in order volume, decline in order value, delays in the payment of subcontract proceeds, and draft in long-term notes.

At the time, the hardship of micro, small and medium subcontractors became a major social problem centering on the issue of delays in the payment of subcontract proceeds, and the Government also examined countermeasures.

Based on the 1953 amended the Antimonopoly Act, the JFTC designated a new type of unfair trade practice as follows, "establishing or changing trade terms or executing transactions in a way disadvantageous to the other party, unjustly in light of the normal business practices by making use of one's superior bargaining position over the said party".

As part of the implementation of the newly introduced regulation of abuse of superior bargaining position, the JFTC actively worked on regulation in areas related to SMEs which are in a weak competitive and bargaining position, including regulation of delays in the payment of subcontract proceeds and the unreasonable return of goods to suppliers by department stores.

The JFTC conducted a survey of the payment of subcontract proceeds, targeting ten sectors where there were considered to be a high level of subcontract transactions and significant delays in the payment of subcontract proceeds at the time, including the machinery sector, the manufacture and repair sector for automobiles, etc. Based on the results of this survey, in December 1953, the JFTC announced in the name of Chairman that delay in the payment of subcontract proceeds was a violation of the Antimonopoly Act and that the JFTC would make parental entrepreneurs seen to delay payment improve the situation. The JFTC then gave guidance for improvement in payment of subcontract proceeds to the 10 industries surveyed.

However, due to the subsequent increase in calls for further tightening of control over delays in the payment of subcontract proceeds from within government departments and small and medium enterprise a*ssociations, in March 1954, the JFTC announced "criteria for defining delays in the payment of subcontract proceeds" and decided to use these as a basis for tackling the problem of delays in the payment of subcontract proceeds.*

These criteria applied new criteria for the aforementioned abuse of superior bargaining position to the subcontract transactions of the ten types of industries targeted in the survey, and gave specific examples of violations to speed up the processing of cases, and this became the prototype for the Subcontract Act enacted later.

From fiscal 1954, the JFTC began expanding the number of cases surveyed based on the aforementioned criteria, and actively applied the Antimonopoly Act to improve and prevent delays in the payment of subcontract proceeds.

It is fair to say that while cartel regulation was relaxed, people's understanding and support for the JFTC's antimonopoly measures gradually increased as a result of the tightening of unfair trade practices regulation in the area of SME transactions.

5. Enactment of Subcontract Act

From 1955, Japan's economy began to boom, and with the JFTC's promotion and guidance for the payment of subcontract proceeds, the terms for payment of subcontract proceeds to subcontractors were also expected to improve.

However, the strains imposed on subcontractors by parental enterprises tended to worsen year by year. In other words, the rate of use of drafts as a means of payment of subcontract proceeds increased, and the proportion of long-term drafts also increased. What is more, there was an increasing tendency for parental enterprises to demand subcontractors to lower the amount of subcontract proceeds payable.

Given this further deterioration in the business situation of subcontractors, many of which were SMEs, it became necessary to adopt more rigorous and effective measures than before to tackle the problem of delays in the payment of subcontract proceeds, etc.

Upon examination, the Government reached the conclusion that it was necessary to regulate subcontract transactions by means of a special act, and not by means of the Antimonopoly Act. This conclusion was based on the following three reasons:

1. In subcontract transactions at the time, parental enterprises placed orders with subcontractors verbally or without clearly stipulating the terms of transactions, and when parental enterprises had to pay the subcontract proceeds, there were cases where the parental enterprises enforced one-sided disadvantageous terms on the subcontractor. Based on the assumption of regulation under the Antimonopoly Act, it was necessary to somehow objectively make clear the terms of the transaction between the parental enterprise and the subcontractor, but clarification of transaction terms pursuant to the provisions of the Antimonopoly Act was impossible to achieve, and special legislation was considered necessary.
2. Since, in a subcontract transaction, the subcontractor is heavily dependent on the parental enterprise, the subcontractor cannot be expected to make a complaint to the JFTC, demanding measures against violation by the parental enterprise without preparation to end its business relationship with the parental enterprise. It was, therefore, considered, necessary for the speedy resolution of problems associated with subcontract transactions to make a survey with the cooperation of relevant government agencies, on a permanent basis, not on the basis of complaints of violations, and to actively seek correction, and new legislation to this end was considered necessary.
3. With respect to delays in the payment of subcontract proceeds, which was the main problem associated with subcontracting, promoting the voluntary cooperation of parental enterprises was considered a more effective way of improving the situation than administrative measure in accordance with the Antimonopoly Act proceedings to order payment, and the enactment of separate proceedings from the proceedings under the Antimonopoly Act was considered necessary.

Given the economic background and legal reasons surrounding subcontract transactions described above, the Subcontract *Act* was enacted and promulgated in June 1956.

The Subcontract Act has been amended repeatedly since its enactment to the present day, to reflect changes in the economic conditions surrounding subcontract transactions, but the original Subcontract Act enacted in 1956 is outlined below.

5.1 Clarification of trading relationship

On the assumption of controlling violations related to subcontract transactions, the act obligated the parental enterprise to deliver to the subcontractor a written statement (written order) specifying the amount of subcontract proceeds, etc. for the transaction to clarify the terms of transactions, and also obligated the parental enterprise to prepare and retain documents related to the transaction with the subcontractor.

5.2 Clarification of prohibited conduct of parental enterprises

The act clarified that the parental enterprise must not unreasonably refuse to receive the work, delay payment of subcontract proceeds, unreasonably reduce the amount of subcontract proceeds, or unreasonably return the work, thereby expecting self-restraint from parental enterprises and actively taking enforcement actions against enterprises in violation of the act.

5.3 Strengthening of supervisory structure

The act stipulated that the JFTC, the Director-General of the *Small* and Medium Enterprise Agency and the competent ministers had the right of on the spot investigation, since subcontractors cannot be expected to actively file complaints about violations related to subcontract transactions, and also stipulated that the Director-General of the *Small* and Medium Sized Enterprise Agency had the right to request the JFTC for measures under the Subcontract Act.

5.4 Adoption of recommendation system

The act stated that the provisions of the Antimonopoly Act shall not be applied in cases where the administrative measure of recommendation was adopted against a parental enterprise that failed to comply with prohibited conduct provisions and measures such as the payment of subcontract proceeds was adopted by the parental enterprise in accordance with the recommendation, thereby giving the parental enterprise the opportunity to make voluntary efforts to improve the violation so that cases can be processed speedily and smoothly.

6. Outline of current Subcontract Act

Already, more than fifty years have passed since the Subcontract Act was introduced in 1956 as an effective countermeasure against delays in the payment of subcontract proceeds. With the content of its provisions being amended in line with changes in economic conditions since its introduction, the Subcontract Act exists as important legislation governing subcontract transaction relationships under the dual structure of the economy which exists even today, and it is also actively applied by the JFTC. The current Subcontract Act is outlined below.

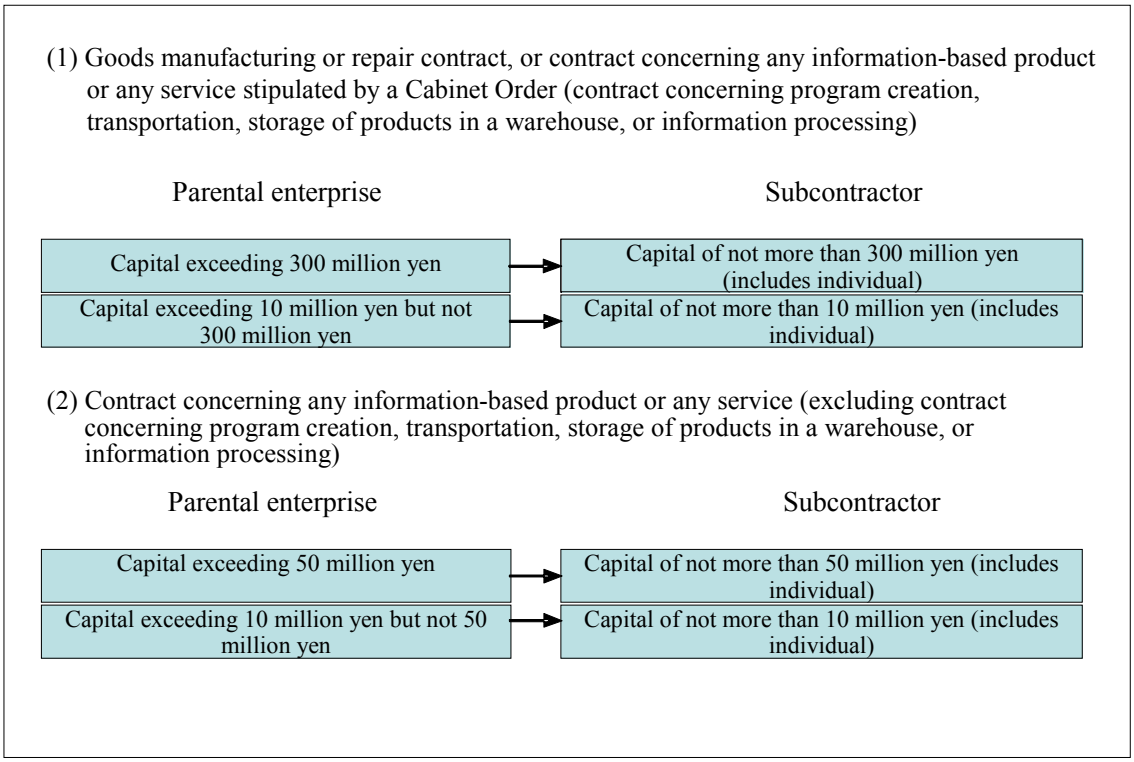
6.1 Regulated transactions

Transactions regulated by the Subcontract Act are transactions whereby a juridical person enterprise with capital exceeding a certain amount makes a “manufacturing contract,” “repair contract,” “information-based product creation contract,” or “service contract” with an individual enterprise or a juridical person enterprise with capital of not more than a certain amount.

The Subcontract Act states that out of the aforementioned four contract transactions, transactions where the capital of the parties to the transactions meets certain criteria, as shown below, are regulated by the act.

It goes without saying that, for regulation purposes, there is no need to determine the relevant market or define the dominant position in the relevant market or superior bargaining position.

Figure 1. Definition of parental enterprise and subcontractor

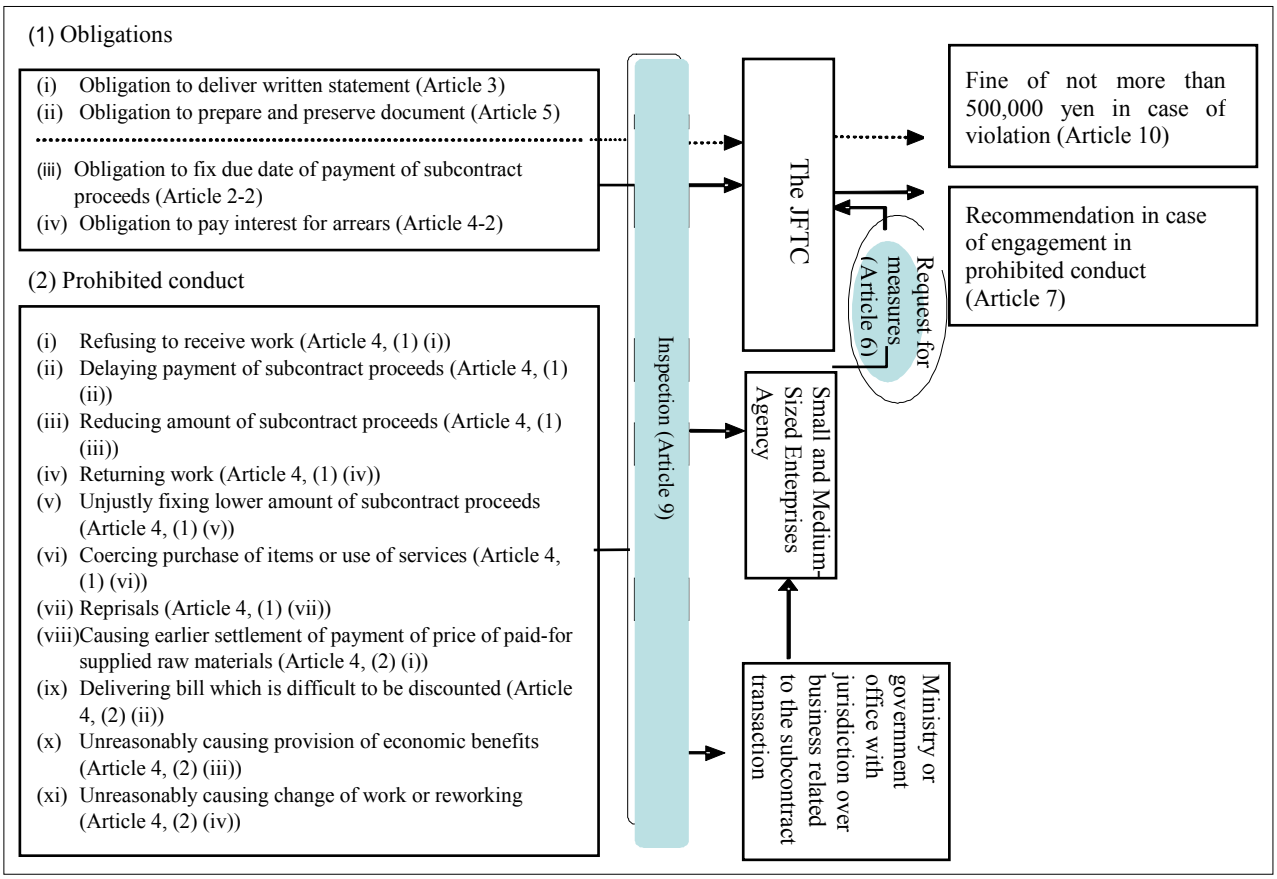


6.2 Obligations and prohibited conduct of parental enterprise, and measures taken by the JFTC

The obligations and prohibited conduct of the parental enterprise and measures taken by the JFTC are shown below.

Depending on the gravity of the case, the JFTC may issue corrective guidance in the form of administrative guidance, in addition to the following legal measures.

Obligations and prohibited conduct of the parental enterprise and measures taken by the JFTC



7. Enforcement Situation of the Subcontract Act

With respect to the enforcement of the Subcontract Act, due to the nature of subcontract transactions, even if a subcontractor suffers disadvantage as a result of violation of the Subcontract Act by the parental enterprise, the subcontractor cannot be expected t ovide information voluntarily. Consequently, to uncover suspected violations of the Subcontract Act, the JFTC regularly sends questionnaires to parental enterprises and subcontractors, demanding reports.

The number of such document-based inspections has increased consistently every fiscal year, and in FY2012, the JFTC conducted document-based inspections of 38,781 parental enterprises and 214,000 subcontractors.

In relation to parental enterprises who were in violation of the Subcontract Act, the JFTC ask them for correction by means of issuing recommendations under the Subcontract Act, or administrative guidance.

In FY2011, the JFTC issued recommendations in 18 cases, and issued administrative guidance in a record number of 4,326 cases, indicating that the act is being actively applied.

Furthermore, the JFTC actively engaged in promotional and educational activities, as it is essential that parental enterprises and subcontractors understand the content of the Subcontract Act, in order to try to prevent violations of the Subcontract Act. Every year, the JFTC holds seminars and explanatory meetings about the Subcontract Act in regions throughout Japan.

Also, towards the end of each year, the JFTC issues a letter under the joint signatures of the the JFTC Chairman and the *Minister* of Economy, Trade and Industry to more than 30,000 parental enterprises and more than 600 relevant trade associations, demanding thoroughgoing compliance with the Subcontract Act.

8. Relationship between the Antimonopoly Act and the Subcontract Act

The Subcontract Act is an act to supplement the Antimonopoly Act. By establishing capital classifications and contractor classifications like manufacturing and repair contract with respect to practices included in unfair trade practices prohibited by the Antimonopoly Act that fall under "abuse of superior bargaining position," the Subcontract Act indicates the scope of transactions in which abuse of superior bargaining position is likely to occur, and it specifies as prohibited conduct the types of practices that may constitute abuse of superior bargaining position. The Subcontract Act also prescribes matters to be observed by parental enterprises (obligation to deliver document, obligation to fix due date for payment of subcontract proceeds, etc.).

Unfair trade practices are practices that fall within the scope of regulation of unilateral conducts under the Antimonopoly Act and that are practices provided by the Antimonopoly Act or designated by the JFTC from among the types of practices that "pose a risk of impeding fair competition", and currently 17 types of practices[2] have been provided or designated.

The meaning of "fair competition", which forms the basis of unfair trade practices regulation, rests on the notion of a fair competition order through the satisfaction of the following three conditions: (1) ensuring free competition, (2) ensuring the fairness of competitive means, and (3) ensuring the basis for free competition.

Of these, (3) ensuring the basis for free competition is taken to mean that the basis for free competition is ensured, wherein transactions are undertaken with trading entities judging freely and independently whether to trade and trading terms, and the regulation of "abuse of superior bargaining position" is classified as falling under this.

The Subcontract Act is a law enacted to supplement the aforementioned regulation of abuse of superior bargaining position under the Antimonopoly Act.

However, unlike the Antimonopoly Act, the Subcontract Act does not state that it aims to ensure fair and free competition or to ensure the interests of general consumers. Instead, the Subcontract Act states that it aims to make transactions of parental enterprises with subcontractors fair and to protect the interests of the subcontractors. The Subcontract Act also has the nature of a law protecting enterprises beyond the framework of competition law.

9. The JFTC's enforcement of the Subcontract Act

A typical example of where the competition authority is in charge of the execution of policy/law besides the enforcement of competition policy and competition law is consumer policy. Competition policy

[2] Unfair trade practices that are provided by the Antimonopoly Act or designated by the JFTC are as follows: concerted refusal to trade, other refusal to trade, discriminatory consideration, discriminatory treatment on trade terms, etc., d*iscriminatory treatment*, etc. in a *trade* association, unjust low price sales, unjust high price purchasing, dealing on exclusive terms, resale price restriction, dealing on restrictive terms, deceptive customer inducement, customer inducement by unjust benefits, tie-in sales, etc., interference with competitors' transactions, interference with internal operation of a competing company, abuse of superior bargaining position, unjust i*nterference* with the appointment of a counterparty's officers.

and consumer policy are similar in the sense that they are both policies for ensuring the interests of consumers, and strong synergies are expected when the competition authority is in charge of both.

However, consumer policy is also an area that the competition authority cannot take charge of completely as some aspects, such as consumer safety policy, are highly technical. Therefore, depending on the content of the consumer policy, a different organization from the competition authority may take charge, and a policy decision is made to determine which consumer policies to put the competition authority in charge of.

Similarly, a policy decision is made to determine which authority is put in charge of responding to the impoverishment of SMEs that are the vulnerable players in a competitive market and their workers, and to determine which policy means are to be used.

For example, a problem with a specific transaction arising in connection with the contract such as delay in the payment of subcontract proceeds, which has been mentioned as a problem in this paper, is ultimately a civil problem between the specific enterprises, and some believe that the parties involved should themselves seek to resolve the problem through judicial proceedings, and that there is no need for administrative agencies to intervene.

However, apart from exceptional cases where it has become the norm to resolve specific trading disputes in a court of law and there are well-established judicial services for this, usually, SMEs are likely to be put in a situation where they have to accept, without resistance, unjust practices by large enterprises. Accordingly, it is fair to say that some degree of intervention by administrative agencies is necessary to improve the situation.

It is true, the drawbacks that arise when an administrative agency intervenes in specific trading problems must also be borne in mind.

For example, arrangements established as social safety nets, such as assistance for failed SMEs, livelihood assistance for low-paid workers and unemployment insurance benefits, are not interventions in specific autonomous business activities themselves and can be seen as *competitive* neutrality *policy* arrangements. However, regulation under the Subcontract Act is different from such *competitive* neutrality *policy* arrangements, as it is intervention in the actual trading process between the parent enterprise and the subcontractor.

Excessive administrative intervention in transactions between parental enterprises and subcontractors deters parental enterprises from using subcontractor transactions and impedes the free entry and withdrawal by subcontractors, indeed it risks having consequences that go against the aim of the Antimonopoly Act of promoting fair and free competition. Consequently, the balance between protection of SMEs and freedom of the business activities of enterprises needs to be taken into account in policy application.

It is, therefore, necessary to appropriately establish the subjects of regulation and to ensure the transparency of regulation content to avoid having a deterrent effect, i.e. causing parental enterprises to refrain from using subcontractors. From the viewpoint of smooth continuity of business activities, it is also necessary to strengthen compliance among parental enterprises and reduce the actual occurrence of violations, to prevent damage suffered by subcontractors as a result of violations, as far as possible.

The JFTC came to be in charge of enforcing the Subcontract Act due to the act's historical background. As already explained, the JFTC's involvement began when, in the 1950s, the JFTC started providing assistance to SMEs that were in economic hardship under the dual structure of the economy, by using the administrative measures under the Antimonopoly Act of unfair trade practices to take

enforcement actions against delays in the payment of subcontract proceeds. This received strong support from the Government and the Japanese people and led to the enactment of the Subcontract Act.

In addition, the JFTC, the competition authority whose main duty is to promote fair and free competition, is in charge of enforcing the Subcontract Act, which has the nature of a law protecting entrepreneurs. From a theoretical point of view, the demonstration of strong synergy can be expected in terms of achieving a balance between competition policy and policies for the protection of SMEs, and ensuring the economic basis for fair and free competition.

10. Conclusion and implications

As explained above, in Japan, the competition authority the JFTC performs the function of rescuing SMEs from economic hardship and creating a base for them to be able to conduct autonomous business activities by regulating unfair practices of parental enterprises against subcontractors through application of the Antimonopoly Act and the Subcontract Act, which was enacted as a supplemental law to the Antimonopoly Act.

The following three points should be identified as points to bear in mind so that activities to support SMEs such as the above are sufficiently effective and do not go against the aim of the competition law of maintaining and promoting competition.

1. Even if SMEs suffer disadvantage through the abuse of superior bargaining position by large enterprises, due to the nature of such transactions, SMEs cannot be expected to file for legal proceedings to improve the problem, and even if the administrative agency regulates such unfair practices by law, the SMEs that are the victims cannot be expected to actively provide information because they fear the possibility of reprisals from the parental enterprises. Therefore, some ingenuity in the detection of suspected violations is necessary. The JFTC detects suspected violations of the Subcontract Act by issuing questionnaires on a regular basis each year and demanding reports so that parental enterprises cannot know who provides the information.

2. If parental enterprises continuously engage in unfair practices against subcontractors, this will have serious adverse economic effects, not only impeding the investment of subcontractors and causing them to withdraw from the market, but also impeding the efforts of parental enterprises to improve productivity (see Annex). Consequently, ensuring compliance by parental enterprises to prevent the occurrence of violations is more important than the detection of violations. It is, therefore, necessary to make the content of regulation clearer and more transparent and to put effort into dissemination and awareness rising activities in relation to relevant enterprises. The JFTC has also accumulated broad expertise in this field.

3. Needless to say, it is important for competition policy to maintain active market entry/withdrawal by SMEs in the competition process and to ensure that transactions between large enterprises and SMEs are conducted based on the autonomous judgment of the specific enterprises.Accordingly, excessive intervention on the pretext of relief for impoverished SMEs should be avoided. The Subcontract Act regulates only specified transactions between enterprises with capital exceeding the amount prescribed by law and entrepreneurs with capital of not more than the said amount, and is not the kind of legislation that regulates transactions between large enterprises and SMEs across the board. Also, although the government office with jurisdiction over the business is granted a certain degree of authority under the Subcontract Act, the act states with regard to measures in response to violations that only the competition authority JFTC shall issue recommendations.

ANNEX: THE "COMING OUT" OF ABUSE OF SUPERIOR-BARGAINING POWER IN THE ANTITRUST WORLD*

By Frederic Jenny**

(PP.8-9)

Even though it is unlikely to occur frequently, we have to consider the possibility that the coercee has market power. For example, a small supplier with no close competitor is faced with the following alternative by a large retailer: either the supplier meets some unjustified demand (such as, for example, an additional discount) or the retailer will refuse to carry the supplier's products. In such a case, the threat forces the supplier to lower his price. Thus, when the coercee has market power, coercive threats may have a consumer welfare increasing effect.

However, coercive threats may also have negative effects on efficiency.

First, as mentioned earlier, through coercion retailers can shift over to suppliers the burden of some functions that would otherwise be thesis as retailers. They have an interest in doing so, irrespective of whether or not the suppliers are more or less efficient at providing those functions than they are. Thus burden shifting may take place, even if it means a loss of productive efficiency.

Second, and more importantly, when faced with the prospect that retailers will capture their efficiency gains through additional coercive threats and demands, upstream firms will be discouraged from seeking productivity gains, from investing or even from staying in the industry. The only firms that will consider staying in the industry at the upstream level are firms which for some reason (the strength of their brand, for example) have a countervailing bargaining power. New entrants or small firms will usually not have such a countervailing bargaining power in the initial stages of their entry on a market and will therefore be at a disadvantage. As a result, bargaining power on the retailer side is likely to create or increase barriers to entry in the upstream industry, and to lead to an increase in concentration and a decrease in consumer choice and competition. There are allegations in Europe that the increase in concentration in the European food industry is partly a response to concentration (and buyer power) at the retail level.

It has been argued that powerful retailers are unlikely to engage in coercion since by doing so they would promote concentration among their suppliers and thereby undermined their own interests. But they will do so because of the externality involved. In an oligopolistic situation in the retail sector; a large scale retail chain cannot be sure that its competitors will not engage in coercive practices which might ultimately lead to more concentration of suppliers, irrespective of whether or not it engages in such practices itself. Yet if the others do not engage in such practices, each oligopolist retailer has an incentive to engage in such practices since it will gain competitive advantage by shifting some costs to suppliers.

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* Submitted to UNCTAD Ad-Hoc Expert Group on the Role of Competition Law and Policy in Promoting Growth and Development, Geneva, 15 July 2008

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In this scenario, even if we assume that consumers may benefit in the short run (if, for example, the additional advantages secured through coercion are passed on to them), they will ultimately bear the cost of the increase in concentration (and therefore the decrease in the intensity of competition) between the suppliers in the medium to long run.

KENYA*

1. Introduction

In his Foreword Statement to the Kenya Vision 2030, our President states that '… since year 2003 to date, income per capita has been rising speedily thereby giving Kenya a chance of escaping from poverty, after a long period of decline in real personal earnings.… poverty levels have declined from 56% in 2002 to 46% in 2006[1].' Kenya's population stands at 41 million people and therefore, from these estimates, about 19 million people live below poverty line.

The President goes further to indicate that this momentum has to be sustained while also consolidating the gains Kenya has achieved so far towards the realization of the Millennium Development Goals (MDGs) and elimination of Poverty.

The Vision 2030 is Kenya's Economic Development Blueprint aimed at making *'... Kenya a globally competitive and prosperous, where every person will enjoy high quality of life'*. The Vision is anchored on Economic, Social and Political pillars which are founded on macro-economic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor; infrastructure; energy; Science, technology and innovation (STI); among others.

It is imperative to note that the said foundations are all geared towards eliminating poverty and focusing on pro-poor reforms or initiatives. For example, stable micro-economic stability works in favor of the poor, who stand to lose the most in periods of high inflation. Also, to facilitate enhanced equity and wealth creation opportunities for the poor, the Government focuses special attention to investments in the '… *communities with high incidence of poverty'*.

All Annual National Budget Policy Statements (BPS), which in turn outline the focus of Government Agencies, are cascaded from the Vision 2030. Therefore, the Competition Authority of Kenya, when developing/prioritizing its short-term objectives has to be awake to the theme of the current BPS. Consequently, the Authority's enforcement activities are geared towards achieving the objectives of the *Vision 2030*. As outlined earlier, these are realization of the Millennium Development Goals (MDGs) and elimination of poverty.

It is important also to share with the Forum that this was the fundamental basis of reviewing our earlier competition law and subsequently enact the current Competition Act[2]. The Act is within international best practice threshold, in terms of the institutional dispensation and its legal coverage.

2. Poverty Definition

The Kenya government has been measuring and monitoring poverty through Qualitative Poverty Surveys [Welfare Monitoring Survey – WMS] and Qualitative Poverty Assessments [Participatory Poverty

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* Contribution submitted by the Competition Authority of Kenya, February 2013.

1 His Excellency Mwai Kibaki, President of Kenya, in his Foreword Statement for the *Kenya Vision 2030.*

2 www.cak.go.ke

Assessment Surveys- PPAs] since 1990. However, according to Mariara and Ndeng'e[3], poverty is multidimensional and complex in nature and manifests itself in various forms. Therefore, no single definition can exhaustively capture all aspects of poverty.

PPAs view poverty '…as hunger, lack of shelter, sickness and unable to access medicare. Poverty can also be defined as being illiterate and living one day at a time. Poverty is losing a child to illness brought about by malnutrition and unclean water'.

Subsequent Government policy papers; Poverty Reduction Strategy/Economic Recovery Strategy have similarly recognized poverty as multi-dimensional and they go further to define poverty to include inadequacy of income and deprivation of basic needs and rights, and lack of access to produce assets as well as to social infrastructure and markets.

Quantitative approach defines the poor as those who cannot afford basic food and non-food items. ERS adopted the quantitative measures of poverty based on the 1997 WMS data; poverty line at Kshs.1, 239 per person per month and Kshs.2, 648 respectively for rural and urban areas.

The qualitative approach, based on various PPAs undertaken, the people define, view and experience poverty in different ways. In the PPA of 2001, people define poverty as their inability to meet their basic needs. Poverty was associated with features such as lack of land, unemployment, lack of food, housing, medicare, among others. Nonetheless, in a nutshell, poverty was summarized as the inability to meet/afford certain basic needs.

This means that poverty is multifaceted in nature and characteristics of poverty go beyond income measures alone. Therefore, our view is that both quantitative and qualitative approach should be used to capture aspects of poverty.

The two approaches have been used in Kenya to generate information on the gravity and characteristics of poverty. Generally, from both approaches the poor in Kenya tend to be clustered in social categories, namely; the landless; people with disabilities; pastoralists in Arid and Semi-arid lands (ASAL); unskilled and semi-skilled laborers; AIDs orphans; Street children; subsistence farmers; urban slum dwellers, and; the unemployed youth.

However, there remains a question as to the acceptable and comparable poverty measures. For example:

11. Is the quantitative approach of Kshs.1, 239 per month per person meager income in nomadic/pastoral communities, who consume non-marketable products that are not typically captured by the food basket (raw milk, wild fruits, berries, animal blood etc.)? It implies that this overstates poverty among the nomads/pastoralists.

12. In Qualitative approach, our view is that wealth ranking exposes a relative type of poverty and does not allow objective comparison. This can be illustrated by the fact that the poor in some certain areas might be viewed to be rich in some other areas. Based on land and animals the poor in Maasai Community are rich in Kisii and conversely the rich in Kisii are poor in Maasai[4].

3 Presentation at the PADI Workshop Serena-Beach Hotel, 2004

4 Maasai are a pastoralist indigenous community who thrive on cattle keeping while Kisii are agriculture based ethnic group who thrive on small scale intensive farming.

Therefore, the one million dollar question is what should policy makers take into account when initiating pro-poor initiatives or how does the Competition Agency profile the poor and how do we appreciate poverty?

We are of the view that since the PPA's are concerned with people's perception of poverty, two main issues are of concern for policy; the causes of poverty and coping strategies adopted by the poor. From this, the Authority focuses, within its mandate on how to minimize or eliminate causes and effects of poverty.

Perceived causes of poverty are low agricultural productivity and poor marketing; insecurity; unemployment and low wages; bad governance; landlessness; poor physical infrastructure, High cost of basic social services; bad weather.

Based on the aforementioned, the Authority has been focusing on ensuring the poor access the basics at affordable prices. This is through enforcement activities targeting sectors which have high impact to their food basket. In addition, initiating competition advocacy aimed at laws which affect competition negatively, especially in sectors which have greatest impact to the poor.

3. Authority's pro-poor enforcement initiatives

The Authority and also the Kenyan Government have articulated in their various policy guidelines the importance of promoting and enhancing competition as a means of eliminating poverty[5]. Pursuant to these statements, various activities, aimed at preventing anticompetitive business practices and government regulations that end up increasing the prices for goods with great importance in the consumption basket of poor families have been undertaken.

Two examples in key sectors; agribusiness and transportation will help us illustrate this affirmation:

3.1 Food: Maize sector

In the maize sector, removal of self-regulations within millers association allowed for greater competition, resulting in lower prices of maize flour, an essential good for poor families.

Maize [corn] is the most important and widely consumed cereal in Kenya, especially for poor families. In Nairobi, maize and derivative products represent 9% of the consumption basket of low income households compared to 2% in the case of high income of high income households. Furthermore, maize is a staple food crop that provides one third of the revenues from crop sales to poor households. [Source: KNBS, KIHBS 2005/2006].

The Kenyan government opened up the maize milling sector, from state-owned enterprises, subsequently having many large scale millers [43]. However, the cost of maize flour was still high [Kshs. 70 per kg] and there existed high price margins [approx. 42%.]

This is mainly due to concentration of milling business to one 'family' and the maize millers association 'recommending' minimum prices to be charged by their members. The Authority intervened and demanded review of the association's internal regulations.

5 The Authority's Budget Outlook Paper, 2012/2013 and the Economic Recovery Strategy and Vision 2030.

This intervention facilitated the elimination of all mechanisms for price coordination. After the elimination of recommended prices, prices were reduced. This has facilitated price competition leading to reduction in prices [by about 15%]. This is quite a benefit to the poor consumers.

3.2 Transport: The Matatu sector

In the case of local transportation, an important service for poor individuals, elimination of restrictions to competition provided benefits for poor consumers. Government policies that allowed for greater entry have been complemented by the action of the Competition Authority to order cease of price fixing within Matatus' Associations.

Matatus are a small-scale means of transport which is Kenya's main transport sector. They play a significant role in the movement of poor people and also their goods and services in Kenya. They also facilitate, among others, their access to health care facilities; transport their children to school and access to markets of their farms produce.

They serve the low and the low middle-income population which account about 53% of the population. As of June 2012, transport accounted 8.66% of Consumer Price Index [CPI] weight, 3rd after food and non-alcoholic beverages and energy.

Since 1973, the sector has experienced rapid expansion after a Presidential decree, to operate and compete with the public bus transport companies in medium and long-distance passenger transport. The sector has been expanding (standing at 40,000 matatus currently) due to the Government's reduction in licensing and also the availability of financing. However, it has been indicated that currently elimination of 'cartels on routes' has been the key factor in facilitating new entrants to the sector (http://ssm.com/=2129063).

These cartels, disguised as trade and welfare associations, were fixing fares and also charging 'route entry charges'. This ensures there are a few numbers in each route so as to facilitate collusion. Another unfortunate angle is that they were deterring entry of small scale [poor] entrepreneurs hence exacerbating poverty levels further. Lack of competition caused by collusion and few players, was leading to high fares being occasioned the poor.

The Associations were also recommending commuter fares to be charged by 'their members' especially when the price of fuel went up. For example when a litre of petrol went up by only Kshs.3 the Associations would recommend an increment of Kshs.20 per commuter (within Nairobi City) and about Kshs.100 per passenger for long-distances. These prices would greatly affect the low income families whose expenditure in matatu fares is 7% compared to only 0.2% for high income households [Source: KNBS, KIHBS 2005/06].

The Authority investigated the matter and issued a 'cease and desist order' to the Associations. The Association withdrew the practices and commuter fares have stabilized generally. Without the Authority's intervention, the cartelization would have continued affecting the poor.

In summary it is true competition regulation has an impact on poverty alleviation. In both cases we observe that allowing for private sector participation and reducing regulatory barriers to entry is not enough to increase rivalry among market players and guide benefits to the poor. Specific enforcement initiatives are needed to guide business behavior and discourage anticompetitive practices that harm consumers, particularly the poor.

3.3 Competitive markets versus "pro-poor" government controls/interventions

The Authority's view is that one of the most relevant tools to promote market competition is the use of advocacy; so that government bodies take competition into account when issuing regulations and making decisions aimed at supporting competition and also geared towards deriving "pro-poor' gains.

Our view is buttressed by the fact that various government interventions in the market place suppress competition, though they may be aimed at supporting it. Thus we posit that the mandate of the Competition Agency should extend beyond merely enforcing the competition law. It must also participate more broadly in the formulation of its country's economic policies, to ensure they do not adversely affect competitive market structure, business conduct, and economic performance and therefore harming the poor.

The competition Authority must assume the role of a competition advocate. This means to be proactive and bring about government policies that lower barriers to entry, promote open market with the private sector participation, and minimize unnecessary government intervention in the marketplace.

For instance, in Kenya, the application of price controls for certain food and fuel products were timely preempted through advocacy by the Authority. In 2010, during the commodity price volatility, the Kenyan Legislature wanted to introduce price controls in 'some essential commodities'. The initial Bill included wheat flour, rice, cooking fat and oil, sugar, diesel and petrol.The Agency was of the view that this would set the wrong precedent and reverse the gains of reduced government intervention in open markets.

As a number of country case experiences have shown, adverse effects of price controls are considerable. These include inefficient allocation of government resources, fiscal losses, shortages and smuggling, reduction of product quality, low productivity of firms with controlled prices, encouragement for cartels formation, facilitation of market control by certain favored individuals, governance issues related to corruption, among others. This will at the end hurt the poor since they exacerbate the causes of poverty, encapsulated in Para 17 above.

Furthermore, the measure was regressive in the sense that high and middle income households would benefit in a greater extent, instead of poor households**.** Considering the goods included initially in the Bill, goods with controlled prices represented around 15% of the consumption basket of the poor households, and 44% and 35% for middle and upper income households.

Establishing price controls for some goods could also have precipitated a snowball effect in other sectors of the economy. Through an identified national champion, in a powerful Ministry, the Agency advised against the assenting of this Bill.

Sector regulations can also prevent competition to flourish. For instance, in the case of Pyrethrum, the law created a statutory monopoly for a state-owned body and prohibited private sector participation in certain activities along the value chain.

Pyrethrum is an industrial crop used for the preparation of pesticides and it currently grown by small scale poor farmers. Its demand in the international market is increasing. However, Kenya lost its predominant position in the market (80% during the 80s) to possess now less than 5% of market share despite Kenya's natural advantage for producing this crop.

The lethargy and governance problems of the state monopoly and the inability of allowing private investment have caused the erosion of the industry. The Authority are supported the opening of the sector to competition. It is expected now that private investment in the industry will allow sustainable management of planting material, contract farming, and greater efficiency in husbandry and processing.

Furthermore, positive effects are expected in production, exports and investment to the benefit of the poor farmer [entrepreneur].

In summary, Competition Advocacy is a strong support for ensuring government bodies do not interfere with developing market competition. It requires identification of partners and closely collaborating with key partners within the government as well with the key beneficiaries of reform (creating demand for reform in the private sector, with consumers). But it also needs exercising contextual intelligence and application of 'smart power'.

KOREA

1. The effects of competition policy on poverty reduction: Introduction

In general, competition policy does not directly aim at helping the poor. At the same time, we cannot claim that competition policy has no effect on the poor. In this article, we will sort the different effects into three categories according to policies that have the most impact on the poor.

The first example comes from the demand side of the product market. The poor, as consumers, can, more than most, enjoy the benefit of the low prices induced by competition. In some cases, the poor can become new participants in the market after the implementation of a competition policy, where they had previously been unable to do so because of high prices.

The second is from the supply side. The poor, as employees, can receive either a higher income or a lower income as a result of competition. A firm facing fierce competition may dismiss some of their extant employees. In many cases, it is unskilled labour—more often the poor—who are the main target of these layoffs. The increase in production accrued from a competition policy can also open the doors to new chances of employment for the unemployed poor.

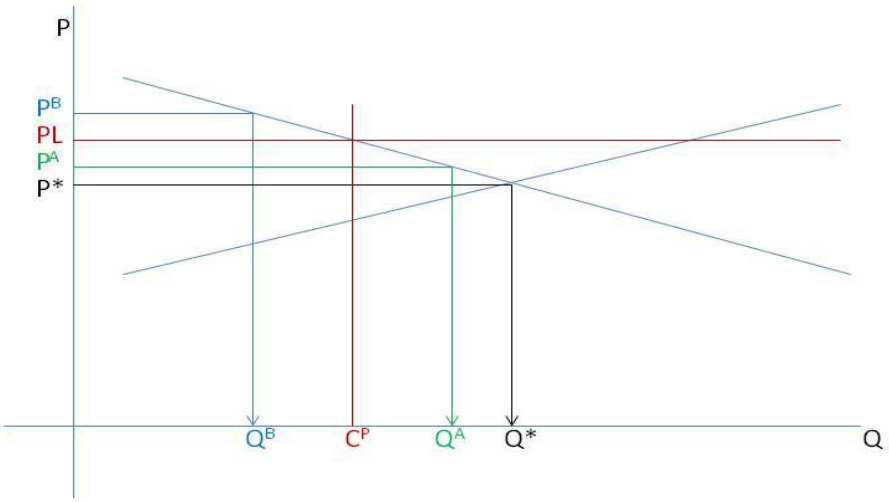
The third example comes from the international reallocation of resources. Competition policy may drive firms to other countries in order to avoid fierce competition or to lower production costs. The employees in the home country may then be dismissed, while those who are unemployed in the firm's target country may be newly employed. When we consider international interactions, the pattern of effects of a policy on the poor can be quite different across countries.

2. Category I: Lowered prices can increase consumer surplus

Competition policy mainly aims to reduce market prices, and so increase consumer surplus. A well-designed competition policy can directly reduce market prices. When firms in the market collude taciturnly, they are possibly somewhere near the Cournot equilibrium. Sometimes, the policy breaks down a collusion and fierce price competition ensues (i.e. Bertrand equilibrium).

The figure below demonstrates how PB and QB are the market equilibrium price and quantity before the competition policy is implemented. If we suppose that there are no additional entry firms after the competition policy, and firms should decrease their prices because of the competition authority's effective monitoring for the taciturn (or explicit) collusion, then, the new equilibrium becomes (P*, QB).

In the aggregate, the consumer surplus then increases by QB(PB-P*). Looking at the figure below, we should assume that the consumers' willingness to pay for a product is related to their income levels in monotone, and that the PL is the maximum willingness that consumers below the poverty line can pay. In this case, no consumers below the poverty line can consume the product before the implementation of the competition policy. After the implementation of this policy, the poor have a chance to consume the product according to the allocation rule for over-demanded goods.



With this in mind, let's consider the case where a competition policy invites new entrant firms into the market. Even though the policy cannot monitor their taciturn (or explicit) collusion, the production will increase because of the increase in the number of operating firms. One possible result could be (PA, QA). At this new equilibrium, the aggregate consumer surplus increases by QB(PB-PA) + 0.5(PB-PA)(QA-QB). Moreover, the amount of (QA-CP) goes to consumers below the poverty line. That is, the newly obtained consumer surplus of 0.5(QA-CP) is attributed to the poor, who could not consume the product before the policy implementation.

With a necessity good, in contrast to a luxury good, the willingness to pay at the poverty line may be quite significant. In this case, even more poor can be included in consumption after the implementation of a policy.

When considering the poor as consumers for designated products, the effects of competition policy cannot necessarily lift the poor above the poverty line in nominal terms. This is largely due to a lack of consideration of the income of the poor. However, competition policy does have an effect on the poor in real terms. In other words, a decrease in prices can increase the poor's purchasing power in real terms, and so ultimately help the poor.

3. Category II: The pressure of competition to re-organize the production process

One possible instant effect of the introduction of competition is to remove the extant inefficiency of production. Before developing a new technology and a new structure for a more efficient production scheme, each competing firm should reduce its own inefficiency. The layoff of surplus labour could be an answer. Some employees can be promoted to newly-created managing positions. Indeed, it is very difficult to determine what effect on the poor the removal of inefficiency might have. The employed poor can be dismissed while others might be promoted, in the same way that the unemployed poor can be employed.

With time firms faced with competition will develop new technology and new production schemes to increase production efficiency. New technology then induces a re-organisation of the production process. The re-organisation of employment is also an inevitable process. The effects on the poor would be similar to those mentioned above.

Firms can develop new products and new marketing strategies to avoid competition, with the effects similar to those already mentioned. The introduction of new products would lead to a need for more employment, which can open up new possibilities to the unemployed poor.

However, the most important effect of competition policy via the production process is the actual increase in what is produced and traded, both in terms of quantity and quality. In a homogenously "good" market, we can assume that competition policy increases the number of operating firms, and so increases what is produced and traded. Increased production would lead to a rise in the need for employment, including the unskilled labour often supplied by the poor. Employment can then increase a person's income level and allow him or her to rise above the poverty line.

Now, if we consider a monopolistic competitive market, a competition policy could lead firms to develop newly differentiated goods. Some firms may develop differentiated goods aimed at low-income consumers, while other firms may focus on high-income consumers to take advantage of their higher willingness to pay. Even though the lower-income consumers have less willingness to pay, it can nonetheless be profitable for firms when there is enough volume.

4. Category III: International interaction can contribute to a reduction in worldwide poverty

When the competition authority in one country initiates (or strengthens) competition policy, this policy can affect other countries. Firms operating in a competitive environment can consider moving into another country where there is a less competitive environment. Or, these firms can build new factories in countries with lower costs to reduce their production costs through lower labour costs.

It is most likely that the country with the more competitive environment and higher labour cost is the developed country and that the country with the less competitive environment and lower labour cost is the underdeveloped or developing country.

In many cases, dismissed workers in developed countries can avoid the fall into poverty since developed countries more often have a social safety net, with flexible labour markets that will allow unemployed workers to find a new job more easily. The new investment in the underdeveloped or developing countries can also create tremendous new employment opportunities for the unemployed poor. From the viewpoint of international interactions, therefore, the enhancement of competition policy in developed countries can help to reduce poverty worldwide.

5. Some relevant questions on the effects of competition policy

When is price-reduction, caused by competition policy, more helpful for the poor than for the rich?

It seems quite obvious that the price-reduction from competition policy would be beneficial to all consumers, both the rich and the poor. Yet the extent or the effect of such benefits could vary depending on the elasticity of corresponding goods. More specifically, even a small drop in the price of goods that have a high price-elasticity of demand would dramatically expand market output so that a large number of people—including, the relatively poor—could participate in the market to consume such goods. On the other hand, a price that is lowered in a market with low price-elasticity may not be accompanied by an increase in market output, so only existing consumers—more likely the relatively rich—would benefit

from such prices, and not the poorer consumers. This might be a lesson for us on which product markets we should keep our eyes on and how to decide the priorities for the enforcement of competition policy.

Is it necessarily true that fierce competition between firms would give rise to the elimination of jobs for the poor in particular?

When firms face fierce competition, they have a stronger incentive to become more "efficient" through, for example, laying off "inefficient" workers. From the point of view firms (or the owners of firms), inefficient workers are defined as those who are paid more than their marginal productivity or their contribution to the firms' merits. Given that higher-paid workers are more likely to be in such a situation, they would be the first to be laid off rather than lower-paid workers who are normally "underpaid." Hence, incentives to lay off workers within firms may not be as detrimental to the poor as they are to the more well off.

Is competition law enforcement helpful for a small entrepreneur AND the poor?

Even if competition law enforcement is helpful for a small entrepreneur, it isn't necessarily helpful for the poor, since there is no clear evidence indicating how small entrepreneurs are connected to the poor. Granted, workers hired by small entrepreneurs are paid less on average than those working for larger firms. However, a more thorough investigation of the numbers of low-paid employees working for small as opposed to large entrepreneurs should be carried out to measure the true effects.

MAURITIUS

Introduction

The link between poverty and market operation is complex. At times, the poor may feel and seem left behind by markets. The government of Mauritius historically viewed price controls as a way to protect consumers, notably poor consumers, from exercise of market power. Price controls applied to 100s of products in the 1990s. The competition law was seen as an alternative to price control, under the rationale that competition law enforcement would prevent abuses of market power. The existence of a competition law was favoured by the Mauritius Chamber of Commerce and Industry, largely in order to free markets from the shackles of unwieldy regulations that were, in any case, prone to manipulation.

This paper will review the economic background of Mauritius that feeds into its approach to competition and poverty, presents available statistics on poverty in Mauritius, examines how the areas of focus of the Competition Commission of Mauritius (CCM) compare with spending by those in poverty, and explain how competition authority action may have influenced the poor, notably via cases in priority sectors for the poor.

1. Economic background

Over a period of nearly a quarter of a century from the time of independence until the mid-1990s Mauritius successfully transited from a classic plantation economy- sugar proceeds representing 95% of export revenues- into a middle income economy with a diversified economic base including the three pillars of Sugar, Tourism and Industry. Mauritius featured a classic plantation economy with a difference. The sugar plantations were owned not by absentee foreign nationals or multinationals but by the local descendants of the firs French colonizers of the island forming an integral part of the nation.

The movement from a monocrop economy to a multi-polar diversified one to which have now been added Financial Services and ICT sectors, was driven by a dynamic, arguably unique model of public-private partnership in Africa. In the context of a critical phase of economic downturn marked by social unrests and high levels of unemployment in the 1970's the World Bank and IMF imposed Structural Adjustments Programmes based on austerity at home and incentives for an export-driven model of economic development and liberalization of controls on foreign direct investments. The policy induced diversification into Tourism and industrialization based on Garments manufacturing for exports can be traced back to these SAPs. Economic treaties with the US and Europe such as the Lome and Cotonou Conventions provided the larger context of preferential trade agreements which sustained the adopted economic model.

2. The Context – Liberalization and deregulation

The winds of liberalization and globalization did not spare the small island economy at the end of the last century. In line with the dominant economic paradigm the country chose the path of further integration into the global economy. Protective tariffs (as distinct from tariff designed for revenue purposes) were virtually eliminated. Tariff peaks were reduced from peaks of 120 % to maximum of 30 % on a very limited number of products.

Price control was a pervasive feature of the economy, but has now all but disappeared. There was a Ministry for Consumer Protection and Price Control which exercised via maximum permissible mark-ups. Maximum price regulations have practically been eliminated.

Partial deregulation of the financial services markets was undertaken with a view to introduce more competition among operators. Banks are supervised by the Bank of Mauritius with whom the CCM has a MOU regarding competition matters in the Banking industry.

A number of natural monopolies are controlled by government- including the Central Electricity Board, the Central Water Authority, and the State Trading Corporation for exclusive distribution of flour, domestic LPG and fuel. Although the only products which lie outside of the ambit of the CCM are LPG and fuel the government does intervene in these markets by providing subsidies sometimes directed to specific sections of the population. For example in its drive to protect weaker sections of the population, low income earners' electricity and water tariffs are subsidized. These are sectors where the notion of national interest would weigh on eventual decisions by the CCM

3. Liberalization, competition and poverty reduction

Liberalization of markets through deregulation and opening up of the markets is theoretically meant to benefit final consumers through the mechanisms of fair competition among operators by providing a larger choice and improved quality at better prices.

It was therefore felt that for the benefits of economic growth to be passed on to consumers it would be essential to reduce the impediments to competition that were evident in the domestic market. A Competition Bill was in gestation since as early as 2001 but the Competition Act only came into force in 2007.

In small island economies seller concentration is higher on average than in larger economies. In Mauritius the economic history has reinforced the concentration of economic power in the hands of a few families and a few conglomerates dominate the import and distribution trade.

Although there is no simple relationship between the level of concentration and the extent and vigour of competition in the market, there is a widespread perception that market domination in many sectors by monopolies or duopolies lead to restriction of competition.

The setting up of the CCM in the larger policy context of "democratization of the economy" is largely thought of a means to give a fairer deal to consumers while providing the small emerging economic operator a level playing field in which he can leverage his competitive advantage.

Poverty alleviation is a major plank of the "democratization of the economy" policy adopted by the present government in Mauritius.

Many policy makers including Ministers and high public officials construe the Competition Commission as an instrument for implementing government's policy although they all respect the independence of the institution in its day to day operations.

4. The statistics: Poverty in Mauritius[1]

Mauritius does not have an official poverty line. When evaluating poverty, a variety of standards are used, including by government statistics. One is to measure poverty as less than half the median household income. By this measure, about 7.9% of households were below the poverty line in 2006/07 and about 7.7% in 2001/02.[2] By this measure, poverty has likely been relatively unchanged over the last ten years.

This measure should be distinguished from extreme poverty. The World Bank has measures of $1.25 per day in purchasing power parity (PPP) as extreme poverty and $2.00 per day in PPP as a higher poverty line. Using the $1.25 measure, less than 1% of the population is below the indicator level in 2001/02 and in 2006/07. However for a developing country like Mauritius, it may be more appropriate to use the $2.00 per day cut-off point. Under this measure, less than 1.5% of the population is below the indicator level.[3]

According to a World Bank report that uses a presumptive measure of poverty as 1/3 of the average income, "In 1975, 40 per cent of the households were below the presumed poverty line, by 1991/92, the proportion had fallen to 11 per cent.[4] Thus Mauritius experienced a substantial reduction in poverty during the period from 1975 to 1992.

5. Distribution of complaints to CCM

A key question for the CCM is whether it has an appropriate distribution of matters with respect to the issues of importance to the poor. In order to better focus on this, it is worth emphasizing that according to a categorisation of spending by use, 45.9% of spending of the poor goes on food and non-alcoholic beverages and 15.4% of their spending goes on housing, water, electricity and gas. In short, more than 60% of spending of the poor goes on food, housing and non-telecom utilities.[5] The full spending breakdown, both for poor and average income earners is provided in Table 1. The share of spending on food and housing for the poor is proportionately higher than the average person's spending in these categories, a natural reflection of priorities for people with limited resources.

Complaints follow a completely different pattern from spending, with the bulk of complaints to the CCM (44.7%) arising in the miscellaneous category, which accounts for only 2.8% of the spending of the poor.

Up to this point, investigations have been relatively evenly distributed across expenditure categories, with the miscellaneous category not receiving the bulk of investigations, but also the combined food and housing sector not receiving the bulk of investigations, but nonetheless accounting for a substantial share (39%) of investigations. At the same time, the miscellaneous category, which accounts for about 45% of

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1 Mauritius is a country of about 1.3 million persons and can thus be classified as a small state.

2 See p. 82, Central Statistical Office (2009) Poverty Analysis 2006/07, http://www.gov.mu/portal/goc/cso/report/natacc/poverty/poverty07.pdf accessed on 3 January 2013.

3 See pp 80-81, Central Statistical Office (2009) Poverty Analysis 2006/07, http://www.gov.mu/portal/goc/cso/report/natacc/poverty/poverty07.pdf accessed on 3 January 2013.

4 p. 71, World Bank 1995 Mauritius: Country Economic Memorandum: Sharpening the Competitive Edge, Report No. 13215-MAS. http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20204568~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:430367,00.html, accessed on 3 January 2013.

5 The categorisation used is the UN's Classification of Individual Consumption According to Purpose (COICOP).

complaints takes up 11.1% of investigations, a much smaller volume of CCM activity than would be justified by the frequency of complaints, but still substantially in excess of the 2.8% of spending by the poor devoted to this sector.

Food products and products related to housing have constituted a high priority for the CCM and will continue to do so in the future, given the large importance of this sector to the economy as a whole.

6. Direct alleviation measures

The Mauritian government has a number of policies in place to alleviate poverty and difficulties associated with being on a low income, even if not below the poverty line. These include provision of certain essential goods at subsidised prices (notably "ration" rice, potatoes and LPG), income supplements for lower income jobs and subsidised housing and housing loans. These will not be further described in this paper, as they are not the primary matter under discussion.

7. Competition law enforcement for categories with high spending by the poor

Food products have constituted a basic element of the CCM's law enforcement agenda since its earliest days, as have housing products. The first competition law case of the CCM concerned contracts between the supplier of the main brand of block processed cheese and supermarkets. Among other effects, the contracts were found to create barriers to entry for other brands of block processed cheese. The case arose from a complaint.

On 09 September 2010, the Competition Commission of Mauritius (CCM) concluded its abuse of monopoly situation case (INV 001) related to the market of block processed cheddar cheese in Mauritius. IBL Consumer Goods (now IBL BrandActiv), the exclusive domestic distributor, was found to have infringed Section 46 of the Competition Act. As a remedy, IBL Consumer Goods was directed to, inter alia, cease the practice of offering retroactive rebates on Kraft branded block processed cheddar cheese in exchange of premium shelf space for its Kraft branded processed cheddar cheese as well as other Kraft-branded products, including chocolates, biscuits and powdered juice.

On 18 November 2011 the CCM published an ex post evaluation on this case. The scope of this evaluation was restricted to the primary market of block processed cheddar cheese (250g). Block processed cheddar cheese represents more than 90% of the total cheese market in Mauritius.

The evaluation found that after the CCM issued a direction to stop these agreements, new entry occurred within a year, and prices for block processed cheese began to fall. The HHI fell from 8,200 to 4,000 to 5,000. The annual average price increase for block processed cheese during the pre-CCM intervention period, i.e. from September 2007 to August 2010 was 16.5%. During this time, the report found that the wholesale costs of cheddar cheese in Australia were relatively stable, in terms of Mauritian currency value. In addition, following the entry of two new brands in February and April 2011 respectively, the average price of the two incumbents fell by 4.5%. Moreover, the average lowest price among all processed block cheeses declined by 12.7% compared to the 2010 average price. Consumer benefits from this intervention have been estimated as lying between Rs 130m and Rs 600m, or about USD 4 to 19 m.[6]

[6] See ex post evaluation study *Evaluation of CCM Case: IBL Consumer Goods Sales Contracts with Retail Stores* (18 November 2011) available at http://www.gov.mu/portal/sites/ccm/pdf/INV001-EvaluationReport-Non-Confidential.pdf.

Housing products have also been a focus of CCM activity. In a recent set of 13 Competition Commission decisions, 8 banks were found to have abused their dominant positions in their sales practices for mortgage insurance, via point of sale advantage that effectively led consumers to purchase products that were not in the initial bundle they shopped for. A review of rates from alternative insurance companies suggested that rates could have fallen by 10% or more for consumers who shopped around.

8. Conclusion

The poor devote a substantial share of their spending to food, housing and utilities. To date, about 39% of CCM investigations lie in these categories. Thus substantial CCM resources, focus and action are being devoted to these areas that are of most economic concern to the poor. This is a comforting sign for the CCM, and may be particularly important in a country that still has a developing economy.

Table 1. Distribution of Household Spending and CCM Activity by Expenditure Type

COICOP division	Average monthly household consumption expenditure (Rs)		Distribution (%) of monthly household consumption expenditure		Distribution of complaints to CCM*		Distribution of CCM investigations**	
	Poor	All	Poor (%)	All (%)	Number	Per cent (%)	Number	Per cent (%)
01. Food and non-alcoholic beverages	2,986	4,534	45.9	31.7	41	14.1	4	22.2
02. Alcoholic beverages and tobacco	353	614	5.4	4.3	11	3.8	0	0.0
03. Clothing and footwear	232	807	3.6	5.6	2	0.7	0	0.0
04. Housing, water, electricity, gas and other fuels	1,000	1,498	15.4	10.5	8	2.7	3	16.7
05. Furnishings, household equipment and routine household maintenance	347	1,022	5.3	7.1	9	3.1	0	0.0
06. Health	105	467	1.6	3.3	33	11.3	1	5.6
07. Transport	438	2,295	6.7	16.0	38	13.1	2	11.1
08. Communication	184	569	2.8	4.0	2	0.7	2	11.1
09. Recreation and culture	319	760	4.9	5.3	9	3.1	2	11.1
10. Education	136	510	2.1	3.6	3	1.0	2	11.1
11. Restaurants and hotels	219	592	3.4	4.1	5	1.7	0	0.0
12. Miscellaneous goods and services	182	632	2.8	4.4	130	44.7	2	11.1
TOTAL	**6,500**	**14,300**	**100.0**	**100.0**	**291**	**100.0**	**18**	**100**

* Excluding confidential/sensitive complaints. **Publicly released investigations

Source: CSO Poverty Analysis 2006/07 and CCM

MEXICO*

Distributive and regional effects of monopoly power: Abstract

This report summarizes the research of Carlos Urzúa[1] for the Federal Competition Commission of Mexico on the distributive and regional effects of pricing by firms with market power in Mexico. It presents evidence that welfare losses due to monopoly are significant and regressive in the income dimension, and that they differ across urban and rural areas, and across each of the 32 states. The results suggest that in the urban sector the negative impact of monopoly power grows (in relative terms) as households become poorer. In the limit, the poorest households have a relative welfare loss about 19.8% higher than the one suffered by the richest. For the rural sector the redistributive impact is even more pronounced, since the first decile has a relative welfare loss of about 26.4% compared to the ninth decile, and of 22.7% compared to the tenth decile. On the geographic dimension, the state with the smallest relative welfare loss turns out to be Baja California, which lies at the farthest north, while the state with the largest loss is Chiapas, at the farthest south. In fact, Chiapas' relative welfare loss is 2.77 times larger than Baja California's. More generally, the southern states which are Mexico's poorest are those with the greatest welfare losses.

1. Introduction

At first glance, it seems natural to surmise that the welfare effects of firms with significant market power would vary according to consumers' income, or across regions; especially in the case of developing countries, where transportation costs tend to be high and consumers are poorly informed. Nevertheless, there have been few studies that explore these issues in detail in a developed or underdeveloped economy.

Among these: Comanor and Smiley (1975), McKenzie (1983), and Creedy and Dixon (1998 and 1999). Moreover, Hausman and Sidak (2004) explore the same issue for the particular case of long distance phone calls. Urzua's work not only follows those authors in analyzing the distributive impact of firms with a significant market power in the case of Mexico, but also deals with regional effects.

Since the only expenditure survey available in Mexico, the one used here, is not longitudinal, it is not permissible to take the unit values (expenditure divided by quantity) as prices. Strictly speaking, those values reflect both commodity prices and their qualities. Thus, to circumvent that problem, Urzúa uses the model of spatial variations proposed by Deaton (1987 and 1990).

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* Contribution submitted by Mexico's Federal Competition Commission. This paper summarizes the larger, more technical report prepared for the Federal Competition Commission of Mexico in 2008 by Carlos Urzúa. The report in Spanish is available at: http://www.oecd.org/daf/competition/45047597.pdf A summary in English by the author is available at: http://alejandria.ccm.itesm.mx/egap/documentos/EGAP-2009-04.pdf

1 Carlos Urzúa is professor of economics at Instituto Tecnológico y de Estudios Superiores de Monterrey.

2. Data on household expenditures

Data for household income and expenditure survey are from the 2006 Encuesta Nacional de Ingresos y Gastos de los Hogares, ENIGH for short.2 The sample consists of 20,875 housing units. It was designed to be representative and provide reliable estimates at the national level, as well as at the urban and rural levels (the urban sector includes all localities with 2,500 or more inhabitants, while the rural sector includes the rest). Furthermore, the 2006 survey was representative of some, but not all, of the 32 Mexican states. The sampling method was stratified and multi-staged. Each primary sampling unit consisted of one or several "basic geo-statistical areas" (similar to the census tracts employed in other countries). The resulting 2,785 primary sampling units were subject to stratification based on socio-demographic variables to produce 392 strata from which the sample was drawn.

3. Markets

The selection of the markets under study is facilitated by the fact that in 2008 the Federal Competition Commission listed a number of sectors that it wanted to examine closely (CFC, 2008). The goods and services mentioned by the Commission that are also contemplated in the ENIGH are the following: corn tortilla; processed meats; carbonated soft drinks; cow milk; chicken and eggs; beer; medicines; electricity; liquefied gas; natural gas; and gasoline; intercity bus transportation; air traveling; elementary, secondary and higher education; long-distance, local and cell phone calls; internet; medical and hospital fees; and credit card payments.

Even though all the goods and services mentioned above are reported in the ENIGH, for most of them there is only information on household spending, not on unit values. This is the case for both the services and the energy consumption goods. This fact prevented Urzúa from estimating their corresponding price elasticities. Therefore, in this paper he focused solely on the following seven consumption goods for which unit values are indeed reported: corn tortilla; processed meats (ham, bacon, sausage, etc.); carbonated soft drinks (together with juices and bottled water); cow milk; chicken and eggs; beer; and medicines (whether purchased with or without a prescription).

4. Measuring welfare losses from market power

We summarize here the theoretical model and assumptions to estimate the distributional consequences of market power. More technical details are available at the original reports Urzúa (2008b, 2010).

It is assumed from the beginning that the social welfare cost of market power can be represented by the loss of consumers' surplus. Although it is well known that welfare losses are much better estimated using utility based measures, such as equivalent variations, these measures cannot be calculated here.

Given a particular good, let p^m be the price charged to households by the firms with market power. We assume that the marginal cost of the supplier, cm, is constant and equal to the competitive price that would prevail under perfect competition, p^c. As in Creedy and Dixon (1998), we further assume that the demand curve can be approximated by a linear demand function, in such a way that the loss of consumers' surplus, B, can be calculated as:

$$B = \frac{(p^m - p^c)(q^c - q^m)}{2} \qquad (1)$$

2 The 2006 ENIGH survey was the latest available at the time of the study. Since then, a 2010 ENIGH survey has been released.

Denoting by η the elasticity of the demand for the good relative to its own price, then

$$\eta = \frac{(q^m - q^c)/q^m}{(p^m - p^c)/p^m} \qquad (2)$$

and so, the welfare loss can be rewritten as:

$$B = \left(\frac{p^m - p^c}{p^m}\right)^2 \frac{p^m q^m (-\eta)}{2}. \qquad (3)$$

In order to calculate (3), we require not only an estimate of the elasticity, but also of the amount spent on the good, which can be obtained from the survey. We need also the estimated increase in relative prices due to market power, which depends on the particular industrial structure prevailing in the market. Each market is assumed to be an oligopoly with K identical firms, which produce the same good and make decisions according to the conjectural variations hypothesis. As a result, the price margin due to market power can be expressed as:

$$\frac{p^m - p^c}{p^m} = -\frac{1}{\theta\eta} \qquad (3)$$

where θ is a function of the conjectural elasticities and of market shares. Thus, the total consumers' loss due to market power can be approximated as:

$$B = -\frac{p^m q^m}{2\theta\eta} \qquad (4)$$

Once the value of θ is established, this formula requires an estimate of price elasticity and spending on each good. The value of θ depends in general on both the market shares and the conjectural elasticities. However, when the conjectural responses are those of the Cournot model, it implies θ=K.

Finally, in order to be able to establish comparisons across groups of individuals, it is convenient to rescale the welfare loss. Let M be the number of goods purchased by consumers from firms with market power. A measure of the total welfare loss in relative terms can be found after dividing the welfare loss on each item by the total expenditure on the M goods:

$$L = -\frac{1}{2}\sum_{i=1}^{M} \frac{w_i}{\theta_i \eta_i}, \qquad (5)$$

Where w_i is the share of good *i* in total expenditure

5. Estimation of own price elasticities

As we said before, the reported unit values are not prices of the goods, because they reflect both commodity prices and their quality. Variations in unit values across households may be due to changes in the quality of goods purchased; for instance, the price difference between two cuts of beef can be quite significant. Under these conditions, it might seem impossible to estimate own-price elasticity. However, we can use an indirect procedure for that end: the model of spatial variations due to Deaton (1987 and 1990). Here, we describe the results and refer to the original report, Urzúa (2008b, 2010), for technical details.

The estimation results, for both urban and rural households, are presented in Table 1. As can be appreciated, the point estimates of the own-price elasticities seem to be reasonable in both sectors. Only the demand for milk is inelastic, at a level of significance of 5%.

Table 1. Own-price elasticities

	Elasticity	Standard error
Urban households		
Corn tortilla	-1.389	0.623
Processed meats	-0.507	0.103
Chicken and eggs	-1.087	0.324
Milk	-0.327	0.143
Carbonated soft drinks	-1.023	0.215
Beer	-1.082	0.12
Medicines	-1.842	0.472
Rural households		
Corn tortilla	-0.311	0.105
Processed meat	-0.456	0.295
Chicken and eggs	-1.559	0.5
Milk	-0.394	0.128
Carbonated soft drinks	-1.142	0.529
Beer	-1.462	0.204
Medicines	-1.117	0.438

6. Distributional and regional impacts

As noted earlier, if for each market we assume that firms produce a homogeneous product, have identical cost functions, and behave as in a Cournot game, then the measure of the total welfare loss in relative terms given in (11) can be rewritten as

$$L = -\frac{1}{2}\sum_{i=1}^{M}\frac{w_i}{K_i\eta_i}, \qquad (6)$$

In order to compute (6) Urzúa specified the number of firms participating in each of the seven Cournot oligopolies.3 In the case of the corn tortillas, 70 percent of the supply of corn flour comes from a single company and the rest from a myriad of small producers and households across the country. He assumed K=2. The processed meat market, he assumed K = 3 because in that market there are three companies of relatively equal size. Another three firms used to control the chicken and eggs markets until very recently, when imports have brought some price discipline. Yet, in 2006, year of the survey, K =3 would still seem to be the most adequate value. In the case of milk, two companies control about 80% of the market, while the other 20% is geographically fragmented. Thus, for the simulation he took K = 2.

Regarding soft drinks, a single player has about two thirds of the sales. That agent has been fined previously by the Mexican Federal Competition Commission for monopolistic practices. Thus he set K = 1. In the beer market, Mexico is a classic case of a duopoly since there are only two producers. However, the market is segmented geographically, thus, he chose K =1. The final case, the market for medicines is the most complex with several producers. Yet, prices in Mexico are considerably high according to international standards. Since the most favored hypothesis to explain that phenomenon is conscious parallelism, he set K = 1.

Using the values determined above, the own-price elasticities given in Table 1, and data on households' income and spending, Table 2 presents estimates of the distributive effects of market power. The results are calculated by urban or rural area, and by decile of total monetary income (the lower the decile, the poorer the group). The relative welfare loss due to market power in the seven markets is presented for each household and the average of the losses among all households in each decile. Finally, those averages are expressed relative to the average of the decile that is affected the least by the market power of the firms.

Table 2. Welfare loss due to market power

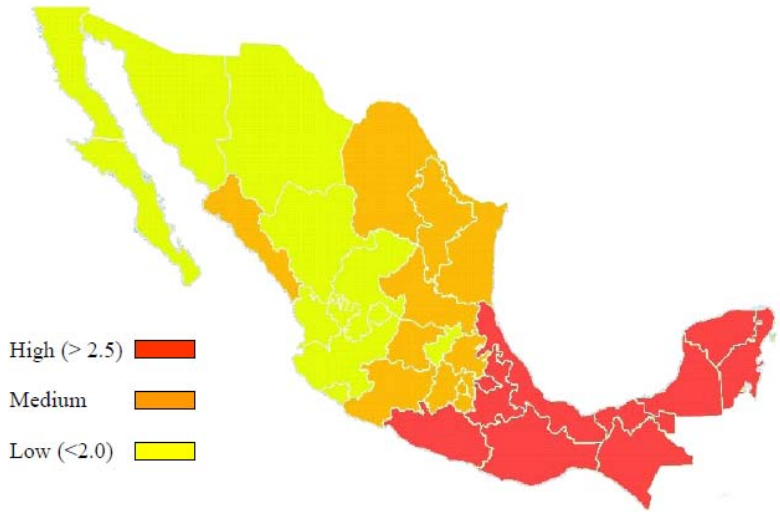
Urban households		Rural households	
Decile	**Relative loss**	**Decile**	**Relative loss**
I	1.198	I	1.264
II	1.176	II	1.219
III	1.158	III	1.236
IV	1.134	IV	1.214
V	1.128	V	1.211
VI	1.109	VI	1.15
VII	1.073	VII	1.148
VIII	1.052	VIII	1.043
IX	1.036	IX	1
X	1	X	1.03

The estimates thus obtained are presented in the second and fourth columns of Table 2. The results suggest that in the urban sector, the negative impact of monopoly power grows (in relative terms) as households become poorer. In the limit, the poorest households have a relative welfare loss about 19.8% higher than the one suffered by the richest. For the rural sector the redistributive impact is even more serious, since the first decile has a relative welfare loss of about 26.4% compared to the ninth decile, and of 22.7% compared to the tenth decile.

3 We refer to the original articles for more detailed justification of these choices.

Given the substantial redistributive effects arising from monopoly power, Urzúa then analyzes the impact across the 32 Mexican states by using a similar procedure as the one mentioned earlier, except that now urban and rural households are classified by their home states, not by their incomes. Figure 1 illustrates the results. The state with the smallest relative welfare loss turns out to be Baja California, while the state with the largest loss is Chiapas; they are the northernmost and southernmost states of Mexico, respectively. In fact, Chiapas' relative welfare loss is 2.77 times larger than Baja California's. More generally, the southern states, many of which are Mexico's poorest, are those with the greatest welfare losses. What factors might explain these results? Urzúa gives two answers: the percentage of households that live in the rural sector in the case of each state, as well as the very diverse consumption patterns that exist in Mexico. For instance, a majority of rural households live in the south, and for them the most important component of their diet is corn tortilla.

Figure 1. Relative welfare losses in the states of Mexico



7. Summary of results

The results suggest that in the urban sector the negative impact of monopoly power grows (in relative terms) as households become poorer. In the limit, the poorest households have a relative welfare loss about 19.8% higher than the one suffered by the richest. For the rural sector the redistributive impact is even more pronounced, since the first decile has a relative welfare loss of about 26.4% compared to the ninth decile, and of 22.7% compared to the tenth decile. On the geographic dimension, the state with the smallest relative welfare loss turns out to be Baja California, which lies at the farthest north, while the state with the largest loss is Chiapas, at the farthest south. In fact, Chiapas' relative welfare loss is 2.77 times larger than Baja California's. More generally, the southern states which are Mexico's poorest are those with the greatest welfare losses.

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MAROC (CONSEIL DE LA CONCURRENCE) *

--Version française --

De prime abord, Les interactions entre Concurrence et pauvreté ne sont pas évidentes ; mais lorsqu'on réfléchit d'une façon générale en termes de rapports entre « l'économique » et « le social » dans la vie des sociétés, la relation en question apparaît clairement aussi bien de manière directe qu'indirecte et diffuse à travers les effets de l'économie de marché dont la concurrence constitue le principal fondement. Cette situation est encore plus manifeste à l'ère de la mondialisation puisque les débats en cours s'opposent sur la portée de la relation entre l'économie de marché globalisée et la pauvreté.

Pour les uns, le marché et son corollaire la Concurrence constituent le cadre idoine pour l'épanouissement de l'activité économique et pour la croissance, condition sine qua non pour la promotion de l'emploi et donc pour la lutte contre la pauvreté. Pour d'autres penseurs et acteurs de la vie économique, non seulement la croissance ne constitue ni un déterminant toujours direct pour l'emploi, ni une condition suffisante pour l'amélioration du sort de toute la population en raison des déficiences dans la redistribution des ressources, mais la recherche effrénée de l'efficience économique dans le cadre de la globalisation, génère logiquement des laisser pour compte et la pauvreté.

Un tél débat, et en tout état de cause une telle relation, mérite donc réflexion. C'est ce que nous entreprendrons en premier lieu dans le cadre de cette communication. Nous essayerons par la suite de cerner le concept de pauvreté avant de passer dans une troisième étape, à l'analyse de ses relations avec la Concurrence.

1. Le débat sur les relations « Concurrence-pauvreté »

Le moins qu'on puisse dire c'est que l'économie de marché et son corollaire la Concurrence font l'objet de débat, voire même de controverse, quant à leurs effets sur la pauvreté.

1.1 La thèse défavorable au lien positif entre l'économie de marché globalisée et la pauvreté

Les contradicteurs du libéralisme et de l'économie de marché mondialisée considèrent que le marché de plus en plus non régulé constitue la principale cause de la pauvreté. En effet, dit on, si la Concurrence a généré un certain niveau de croissance durant les dernières décennies, elle suscite également la marginalisation de larges franges de la population et donc un niveau élevé de pauvreté. Pour les partisans de cette thèse, jamais la constitution de richesse n'a été aussi forte que durant les vingt dernières années, mais en même temps, le monde n'a jamais enregistré autant de pauvreté absolue et de frustrations relatives que durant les deux dernières décennies. De même, les défenseurs de cette thèse considèrent que quand bien même l'économie de marché serait de nature à engendrer des taux de croissance importants, il n'en demeure pas moins qu'elle créerait un environnement difficile d'accès pour les moins nantis dans la mesure où l'intégration dans ce système exige un niveau d'instruction, des qualifications et des moyens qui font souvent défaut aux couches sociales les plus défavorisées. L'effet d'ascenseur que l'économie de marché est censée engendrer en faveur des classes pauvres et moyennes ne serait en fait qu'une illusion

* Contribution soumise par M. Abdelali Benamour, Président, Conseil de la Concurrence (Maroc).

dans la mesure où ce système perpétuerait la transmission de la pauvreté d'une génération à l'autre à cause des difficultés persistantes d'accès à l'éducation, aux soins, à l'habitat..etc. Cette situation serait d'autant plus réelle que le système d'économie de marché non régulée débouche nécessairement sur le creusement des écarts sociaux et le renforcement de la position des plus nantis à travers la création de situations de rentes et de privilèges pour les lobbies les plus influents.

Par ailleurs, même la tendance favorable à la croissance semble s'inverser et le monde vit une crise profonde depuis 2008. Le système libéral aurait donc atteint une sorte de pallier et le marché n'a pas pu générer les conditions de son auto-régulation. La crise en question serait donc la preuve irréfutable de l'échec du système économique mondialisé et donc du marché concurrentiel.

1.2 Les partisans d'un effet positif du marché et de la Concurrence sur la lutte contre la pauvreté

Les partisans du marché et de la Concurrence partent du constat concernant l'énorme production de richesses durant les dernières années et considèrent que s'il y a retournement de conjoncture depuis 2008, c'est parce que l'économie de marché et sa régulation ne sont plus correctement mises en œuvre. En effet, selon ces partisans, les pratiques anti-concurrentielles font légion et les Etats sont souvent incapables d'y faire face en raison du comportement de certains partisans du libéralisme orthodoxe mettant en doute certaines régulations considérées comme suspectes. L'exemple du comportement à l'égard des grandes banques et du monde de la finance est assez éloquent en la matière. De plus, lorsqu'on on examine l'évolution historique de l'économie du marché, on constate qu'elle a pratiquement toujours été accompagnée d'une régulation publique destinée à atténuer les effets négatifs qui peuvent accompagner ses aspects positifs. C'est ainsi que lorsqu'on est passé des pouvoirs seigneuriaux du moyen âge à l'Etat Nation, le marché s'est élargi dans un cadre concurrentiel, a permis une émergence importante de richesses, mais également de disparités sociales et de pauvreté, ce qui a amené les pouvoirs publics à intervenir en instituant une panoplie de protections sociales qui ont atténué certains débordements négatifs du marché. La même constatation peut être faite à l'occasion du passage des Etats-nations à la constitution de groupements économiques plus larges comme celui de l'Union Européenne. Comme tout le monde le sait, le marché s'est considérablement élargi ; la Concurrence s'est développée et la richesse de la région s'est substantiellement accrue ; mais il fallait faire face aux différents niveaux de développement et aux inégalités grandissantes ; dès lors, l'institution européenne a mis sur pied des mécanismes d'accompagnement pour l'aide aux régions et aux personnes les plus fragilisées par le nouveau grand espace. Malheureusement, lorsqu'on est passé à la phase de mondialisation, le marché s'est encore énormément élargi, mais la nouvelle richesse n'a pu être accompagnée par la mise sur pied d'institutions et de procédures mondialisées destinées à atténuer la pauvreté et l'exclusion qui ont accompagné la nouvelle donne.

Partant de ces éléments, on peut donc dire que ce n'est pas le marché et son corollaire la Concurrence qu'il faut incriminer puisque l'ouverture mondiale a permis un enrichissement sans précédent et l'émergence de nouvelles puissances économiques anciennement pauvres comme la Chine, l'Inde, le Brésil et tant d'autres, mais le manque de régulation et d'accompagnement globalisé qui aurait pû atténuer les débordements existants et éviter la crise qui sévit.

2. Le concept de la pauvreté

Habituellement, on met en évidence deux types de pauvreté : la pauvreté absolue définie par des données statistiques ayant trait directement à la population concernée et la pauvreté relative mettant en évidence des données comparatives entre différentes franges de la population. On peut en fait mettre en exergue un troisième type de pauvreté qu'on pourrait qualifier de psychologique ; il découle non pas du niveau direct de revenu ou de l'analyse des disparités dans leur répartition, mais plutôt du positionnement psychologique de certaines catégories sociales par rapport au modèle de consommation en vigueur.

Pauvreté absolue, pauvreté relative de type social et pauvreté psychologique constituent donc les trois principales formes que peut prendre cette déviation sociale.

2.1 La pauvreté absolue

La pauvreté absolue est généralement définie comme étant un état d'incapacité à satisfaire ses besoins vitaux ; le plus souvent, elle est appréhendée par rapport aux revenus monétaires de certaines catégories de la population et donc par leur pouvoir d'achat. On dégage alors des seuils indicatifs de pauvreté. A titre d'exemple, au Maroc, la population vivant au dessous du seuil de la pauvreté est estimée par le Haut Commissariat au Plan à 8,9% de la population totale, soit environ 2,84 millions de personnes. Par ailleurs, La population ciblée par le régime d'assurance maladie et qui est considérée comme défavorisée, représente 28% de la population, soit 8,9 millions de personnes.

En fait, cette analyse de type monétaire est de plus en plus dépassée au profit d'une approche structurelle qui, en plus du revenu monétaire, tient compte des possibilités d'accès à certains services considérés désormais comme des données du niveau de vie minima des populations. Il s'agit de l'accès à l'éducation de base, à la santé et au logement comme il s'agit de la disponibilité en eau, en électricité, en chauffage et en certains moyens de communication.

Sin nous revenons au cas du Maroc et à la situation générale qui y prévaut, le Haut-Commissariat au Plan évalue les personnes dites vulnérables à 40% de la population totale, soit 12,7 millions d'habitants. Cette catégorie couvre non seulement les populations pauvres et vulnérables, mais également une partie de la classe moyenne. Précisons cependant que si, en termes de pouvoir d'achat, la pauvreté a augmenté entre le début des années quatre-vingt et deux mille et qu'elle reste relativement importante au Maroc, la tendance semble se renverser depuis cette époque aussi bien en termes globaux qu'en ce qui concerne les disparités sociales entre les femmes et les hommes ainsi qu'entre les zones urbaines et les zones rurales.

Ce renversement de tendance a été possible grâce aux efforts consentis durant cette dernière décennie pour la lutte contre la pauvreté et la précarité à travers des programmes ciblés visant l'intégration des couches sociales les plus fragilisées dans le circuit économique. Nous pouvons citer à titre d'illustration, outre le système de compensation destiné à soutenir les prix des produits de consommation de base, l'initiative nationale de développement humain (INDH), les programmes publics d'investissement dans l'infrastructure de base des zones rurales, les programmes d'attribution de microcrédit et de lutte contre l'analphabétisme et l'abandon scolaire et les programmes d'encouragement des petites et moyennes entreprises notamment tayssir et moukawalati

En conclusion, on peut donc dire que la pauvreté absolue se mesure désormais aussi bien par certains niveaux de revenus monétaires que par l'accès à certains services sociaux considérés comme indispensables.

2.2 La pauvreté relative de types social et psychologique

Au-delà de l'aspect quelque part quantitatif de la première approche, on peut mettre en évidence ce qu'on appelle communément la pauvreté relative qui découle des disparités sociales dans la répartition sociale des revenus. Un individu ou un ménage peut disposer d'un revenu relativement décent et accéder à certains services dépassant le niveau de pauvreté absolue, mais se sentir pauvre parce qu'en termes de comparaisons sociales, les disparités sont tellement grandes qu'elles suscitent un ressentiment négatif de la part de certaines catégories de la population.

En relation avec la pauvreté relative de type social, on peut mettre en évidence un troisième type de pauvreté découlant plutôt d'un positionnement psychologique comparatif. A titre d'exemple, dans une société donnée, on peut observer des disparités sociales importantes en termes de revenus, mais le

sentiment de frustration et de pauvreté psychologique changera en fonction du comportement des classes sociales les plus aisées. Si dans une société donnée, les plus nantis ont un comportement d'économie et d'investissement, le sentiment de frustration sera moins ressenti. Si par contre, les classes sociales aisées, comme cela arrive dans une bonne partie des pays en développement, s'adonnent à des dépenses ostentatoires importantes, les effets de comparaison seront plus importants ainsi que le ressentiment de pauvreté. A titre d'exemple, le comportement nettement ostentatoire des plus nantis au Maroc fait qu'une bonne partie de la population et des classes moyennes aspire à atteindre le même niveau de consommation et ressent alors une certaine frustration s'apparentant de la pauvreté. Ce qui est parfois dommageable, c'est que certaines catégories de la population relevant de ce qu'on pourrait qualifier de classe moyenne, ont souvent des niveaux de revenus supérieurs aux populations comparables dans des pays du Maghreb par exemple, mais par effet de comparaison et de mimétisme, vont être soit agressifs à l'égard de ceux qui réussissent plus qu'eux, ou s'adonneront à des pratiques inavouables pour relever le niveau de leurs revenus.

3. Les effets positifs du libre marché et de La Concurrence sur la pauvreté

Le libre marché et la Concurrence génèrent des effets positifs sur la pauvreté, et ce aussi bien à travers la promotion de la croissance que la protection du consommateur, l'assurance d'une certaine égalité des chances et l'acceptation de certaines exemptions sociales aux règles strictes de la Concurrence.

3.1 Concurrence, croissance et lutte contre la pauvreté

Il est évident que lorsque le marché concurrentiel fonctionne normalement sans être travesti, il contribue, de par les effets de compétition, d'innovation et de créativité, à stimuler la production et donc la croissance. Il permet également de renforcer ce mouvement par l'obtention d'un meilleur rapport qualité / prix qui stimule la compétitivité des tissus économiques nationaux et donc leurs potentiels d'exportation. Évidemment, un niveau élevé de croissance ne peut que développer l'emploi et donc les conditions de lutte contre la pauvreté. Certes la croissance ne constitue pas une condition suffisante pour lutter contre la pauvreté en raison des possibilités d'inégalités sociales qu'elle peut générer, mais il s'agit tout de même d'une condition nécessaire à l'amélioration de la situation sociale parce qu'elle aboutit à agrandir le gâteau en mesure d'être réparti et que, accompagnée d'une régulation sociale adéquate, elle permet de corriger les disparités sociales. Par ailleurs, La concurrence sur le marché permet nécessairement l'émergence d'acteurs économiques compétitifs en mesure de rivaliser sur les marchés mondiaux, ce qui engendre des taux de croissance plus importants et l'amélioration du niveau de vie de la population. Cette relation est mise en évidence par une étude réalisée par McKinsey Global Institute qui a cherché à déterminer pourquoi certains pays restent riches, tandis que d'autres demeurent pauvres, même s'ils sont soutenus par des transferts financiers importants émanant des mécanismes d'aide internationale. Dans son livre présentant les résultats de cette l'étude, William Lewis a expliqué que «le progrès économique dépend de l'augmentation de la productivité, qui dépend de la concurrence non faussée. Lorsque les politiques gouvernementales limitent la concurrence, les entreprises les plus efficaces ne peuvent pas remplacer les moins efficaces, et par conséquent la croissance baisse et la nation demeure pauvre ». Ainsi, la concurrence peut donc jouer un grand rôle pour améliorer les performances d'une économie dans sa globalité tout en engendrant un impact direct sur le pouvoir d'achat et le bien être des consommateurs.

3.2 Concurrence et protection du consommateur

Si la Concurrence, de par le meilleur rapport qualité/prix qu'elle génère constitue un facteur de croissance économique, elle a également une dimension sociale puisque ce meilleur rapport entre la qualité et le prix ne peut que profiter au consommateur. Il s'agit donc d'une dimension sociale de la Concurrence, dimension significative quelque part d'un certain recul de la pauvreté.

En luttant contre les pratiques anticoncurrentielles qui augmentent les coûts pour les personnes défavorisées, les autorités de la concurrence peuvent améliorer directement la vie des citoyens les plus pauvres. De plus, en exerçant leur compétence d'advocacy à l'égard des mesures gouvernementales pouvant affecter la concurrence, ces autorités permettent aux marchés concurrentiels de libérer leur potentiel en termes de qualité et de prix en faveur des plus pauvres. A titre d'exemple, le Conseil de la Concurrence du Maroc a entrepris en 2010 une étude sur la Concurrence dans le secteur de la téléphonie mobile. Le fait que cette étude révèle des pratiques débouchant sur des tarifs trop élevés et qu'elle a été publiée en grand public et en présence des médias, a eu pour effet de voir les tarifs pratiqués par les entreprises concernées, baisser graduellement et substantiellement.

Précisions par ailleurs que lorsqu'il y a pratiques anti-concurrentielles, alors que les plus aisés peuvent être en mesure d'absorber les surcharges qui en résultent en réduisant les dépenses discrétionnaires, une personne pauvre vivant avec quelques dollars par jour pourrait devoir réduire les dépenses de première nécessité comme la nourriture ou les soins de santé. De plus, payer plus pour les nécessités signifie que moins de ressources seront disponibles pour faire des investissements à long terme, telles que l'ouverture d'une petite entreprise, ou l'investissement dans des équipements agricoles. De même, la collusion dans les marchés publics impose des coûts supplémentaires injustifiés aux consommateurs, notamment les plus pauvres. Il a été observé que «même les petites améliorations dans la performance des programmes de marchés publics peuvent produire d'importants avantages sociaux, en particulier pour les citoyens les moins aisés. En effet, la plus part de ces dépenses sont pour les services d'infrastructure et sociaux qui sont conçus dans une large mesure à aider les populations économiquement défavorisées.

3.3 Concurrence, éthique et égalité des chances

La logique globale de l'économie concurrentielle c'est que chacun peut gagner le maximum s'il innove et organise correctement sa production, mais sans rentes indues résultant de pratiques anti-concurrentielles ou d'aides justifiées des pouvoirs publics. En cela, la Concurrence est favorable à l'éthique dans les affaires. Mais en même temps, en évitant les pratiques anti-conconcurrentielles et notamment les barrières à l'entrée, la Concurrence ouvre la voie à une certaine égalité des chances et à la possibilité d'entreprenariat pour les classes moyennes ; ceci est de nature bien sûr à accroitre la sphère des gagnants et à réduire la pauvreté. Le World Development Report 2000-01 stipule que «les marchés fonctionnent alors en faveur des pauvres parce qu'ils sont tributaires des marchés formels et informels pour vendre leur force de travail et leurs produits, pour financer leurs investissements, et pour s'assurer contre les risques. Le bon fonctionnement des marchés est important pour la croissance et l'élargissement des possibilités pour les pauvres».

3.4 Les exemptions dans le droit de la Concurrence et la lutte contre la pauvreté

Le droit et la politique de la Concurrence convergent pour mettre en œuvre un système économique où règne la vérité des prix sans rentes injustifiées au profit de certains agents économiques. Cependant, comme nous le savons, ils admettent certaines exemptions par rapport aux principes généraux, exemptions à caractère économique et social.

Concernant les exemptions économiques, le droit de la Concurrence admet la possibilité de mise en œuvre de certaines aides d'Etat conditionnées au profit des champions nationaux et des PME. On peut donc considérer que les exemptions en faveur des PME, en permettant l'émergence et le développement des classes moyennes, contribuent quelque part à la lutte contre la pauvreté.

Pour ce qu'il est des exemptions à caractère social, il s'agit d'abord de préciser que le meilleur prix sur lequel débouche la politique de la Concurrence peut s'avérer au-dessus du pouvoir d'achat de certaines catégories sociales ; de ce fait, le doit de la Concurrence admet la possibilité de soutenir de façon

conditionnée les prix de certains produits de consommation de base ou de procéder à une aide directe des intéressés. C'est ainsi qu'au Maroc, il existe un système de compensation qui consiste à soutenir les prix de certaines catégories de farine, du sucre et des carburants. Actuellement, suite à une étude faite par le Conseil de la Concurrence, le gouvernement marocain est en train de réfléchir sur la possibilité de suppression de ce système de compensation qui profite également aux catégories sociales aisées et aux intermédiaires et à son remplacement par un système d'aide directe aux catégories sociales les plus fragilisées.

Précisons enfin qu'au-delà de ces systèmes d'aide directe aux plus démunis, et dans le cadre d'une conciliation entre la politique de la Concurrence et la politique industrielle ou politique socio-économique générale, les pouvoirs publics admettent la mise en œuvre, parallèlement à la politique de la Concurrence, d'un certain nombre d'actions destinées à améliorer les conditions de vie des citoyens. C'est ainsi qu'au Maroc, au-delà du système de compensation, l'État a mis en place ce qu'on appelle l'Initiative Nationale de Développement Humain (INDH) destinée à lutter contre tous les aspects de la pauvreté et couvrant aussi bien des aides sociales que des actions en faveur de l'éducation, de la santé, de l'adduction d'eau et d'électricité en milieu rural et suburbain.

En conclusion, on peut donc dire que le marché et la Concurrence sont de nature à créer des conditions favorables aux classes moyennes et économiquement faibles sous réserve bien sûr que la régulation joue pleinement son rôle.

MOROCCO (COMPETITION COUNCIL) *

-- English version --

At first glance, the interactions between competition and poverty are not evident. Yet when one thinks generally in terms of the relationship between "economic" and "social" aspects in the life of society, a clear interaction becomes apparent, both directly and indirectly through the effects of the market economy of which competition constitutes the main foundation. This situation is even more obvious in this age of globalisation, when the ongoing debate focuses on the scope of the relationship between the globalised market economy and poverty.

For some, the market and its corollary, competition, constitute the ideal framework for the flourishing of economic activity and growth, a condition sine qua non for promoting employment and hence for combating poverty. In the view of other thinkers and players in economic life, growth is not always a direct determinant of employment nor is it a sufficient condition for improving the lot of the population as a whole, because of shortcomings in the distribution of resources; moreover, they hold that the frantic search for economic efficiency in the context of globalisation will inevitably generate marginalisation and poverty.

Such a debate, and in any case such a relationship, must be grounds for reflection. This is what we will attempt first in the course of this communication. We shall then try to define the concept of poverty before moving on to the third stage, where we analyse its relationship to competition.

1. The debate over the "competition-poverty" relationship

The least one can say is that the market economy and its corollary, competition, are the subject of much debate and even controversy as to their effects on poverty.

1.1 The argument that denies a positive link between the globalised market economy and poverty

The opponents of liberalism and of the globalised market economy maintain that the market, increasingly unfettered by regulation, constitutes the main cause of poverty. In fact, they argue, if competition has generated a certain level of growth in recent decades, it has also led to the marginalisation of large segments of the population, thereby raising the level of poverty. For supporters of this viewpoint, there has never been so much wealth constituted as during the last years, but at the same time the world has never seen so much absolute poverty and relative frustration as during those two decades. As well, the defenders of this thesis insist that while the market economy might be able to generate significant growth rates, it will nonetheless create a difficult environment of access for the less affluent, to the extent that integration into the system demands levels of education, qualifications and resources that are often beyond the reach of the most disadvantaged social layers. The "escalator effect" that the market economy is supposed to generate in favour of lower and middle classes is merely an illusion, as the system perpetuates the transmission of poverty from one generation to the next because of persistent difficulties of access to

* Contribution submitted by Mr. Abdelali Benamour, President, Competition Council (Morocco).

education, healthcare, and housing. This situation is all the more real because the unregulated market economy necessarily deepens social divides and bolsters the position of the most fortunate by creating situations of rent and privilege for the most influential lobbies.

Moreover, the favourable growth trend seems to have reversed itself and the world has been mired in a profound crisis since 2008. The liberal economic system has in a sense plateaued and the market has been unable to generate the conditions for regulating itself. The current crisis is irrefutable proof of the failure of the globalised economic system and hence the competitive market.

1.2 The proponents of a positive effect of the market and of competition for combating poverty

The champions of the market and of competition begin by pointing to the enormous production of wealth in recent years and argue that if there has been an economic downturn since 2008 this is because the market economy is no longer properly run and regulated. As they see it, anticompetitive practices are widespread and governments are often incapable of countering them because of the behaviour of certain proponents of orthodox liberalism, who treat regulation as suspect. The behaviour of the big banks and the world of finance offers an eloquent example here. Moreover, an examination of the historical evolution of the market economy shows that it has nearly always been accompanied by government regulation intended to lessen the negative effects that can accompany its positive aspects. Thus, with the shift from the feudal power arrangements of the Middle Ages to the nation state, the market expanded in a competitive setting, allowing the creation of significant wealth but also of social disparities and poverty, which led governments to intervene by instituting a panoply of social protection schemes that attenuated some of the market's negative spillovers. The same observation can be made in relation to the move from nation states to the establishment of broader economic groupings such as the European Union. There, as everyone knows, the market has expanded greatly; competition has flourished and the region has become substantially wealthier. But something had to be done about the differing levels of development and growing inequalities: consequently, the European institution has established support mechanisms to help the regions and social groups most seriously affected by the new, larger economic space. Unfortunately, in the passage to globalisation, the market has expanded enormously but the newly-created wealth has not been accompanied by the establishment of global institutions and procedures for reducing the poverty and exclusion inherent in the new world order.

Taking these elements as a starting point, then, we may say that it is not the market and its corollary, competition, that are to blame – since global openness has produced unprecedented wealth and the emergence of new economic powers that were formerly poor, such as China, India or Brazil and so many others – but rather the lack of regulation and of global support mechanisms that might have attenuated the excesses and avoided the crisis.

2. The concept of poverty

It is common to classify poverty in two types: absolute poverty, defined by statistical data that relate directly to the population concerned, and relative poverty, using comparative data among different segments of the population. We can in fact identify a third type of poverty, which we could qualify as psychological: it derives not from the direct level of income or the analysis of disparities of income distribution, but rather from the psychological positioning of certain social categories in relation to the prevailing model of consumption. Absolute poverty, relative poverty of the social kind, and psychological poverty thus constitute the three main forms that this social scourge can take.

2.1 Absolute poverty

Absolute poverty is generally defined as the inability to meet basic needs. It is most often measured in terms of the monetary incomes of certain population categories, and hence their purchasing power. Indicative poverty thresholds can then be set. For example, in Morocco the population living below the poverty threshold is estimated by the Planning High Commission at 8.9% of the total or 2.84 million individuals. On the other hand, the population targeted by the sickness insurance system, which is considered a disadvantaged group, represents 28% of the population or 8.9 million individuals.

In fact, this monetary analysis is being increasingly abandoned in favour of a structural approach which takes into account not only monetary income but also the possibilities of access to certain services that are now considered as indicative of people's living standards. These include basic education, health and housing as well as the availability of drinking water, electricity, heating and certain means of communication.

Looking again at the case of Morocco and the general situation prevailing there, the High Commission for Planning estimates the number of "vulnerable" people at 40% of the total population, or 12.7 million. This category covers not only the poor and vulnerable but also a portion of the middle class. We should note, however, that while poverty as measured by purchasing power increased between the beginning of the 1980s and the year 2000 and remains relatively high in Morocco, the trend seems to have reversed itself since that time, both in global terms and with respect to social disparities between women and men as well as between urban and rural zones.

The reversal of this trend can be attributed to the efforts made over the last decade to combat poverty and insecurity through targeted programmes for integrating the weakest social layers into the economy. By way of illustration, we may mention the compensation system intended to subsidise the prices of basic consumer products, the National Human Development Initiative (INDH), programmes of public investment in basic rural infrastructure, programmes for the allocation of microcredit and for combating illiteracy and encouraging school attendance, and programmes to promote small and medium-sized enterprises, in particular *tayssir* and *moukawalati.*

In conclusion, we may say that absolute poverty is now measured as much by access to what are considered indispensable social services as it is by the conventional yardstick of monetary income.

2.2 Relative poverty of the social and psychological types

Beyond the essentially quantitative aspect of the first approach, we may point to what is commonly called relative poverty, which reflects social disparities in the distribution of income. An individual or a household may have a fairly decent income and may have access to services not available at the absolute poverty level, but will nevertheless feel poor because, in terms of social comparisons, the disparities are so great as to evoke resentment among certain population groups.

Along with relative poverty of the social kind, a third type of poverty can be identified, one that has more to do with comparative psychological positioning. In any given society, for example, there may be significant social disparities in terms of income, but the feeling of frustration and psychological poverty will be different depending on the behaviour of the most affluent social classes. If in a given society the wealthiest groups are seen as saving and investing, there will be less feeling of frustration. If on the other hand the better-off social classes give themselves over to conspicuous consumption, as happens in many developing countries, the comparative effects will be more important as will be the feeling of poverty. For example, the clearly ostentatious lifestyle of the wealthiest people in Morocco is such that much of the population, including the middle class, aspires to achieve the same level of consumption and feels a degree

of frustration akin to poverty. What can be damaging is the fact that certain population categories that might qualify as middle-class often have levels of income that are higher than comparable populations in countries of the Maghreb, for example, but through the effect of comparison and imitation they will either take an aggressive stance against those more successful than themselves or will engage in shameful practices in order to boost their incomes.

3. The positive impacts of the free market and competition on poverty

Free markets and competition have positive effects on poverty, through the promotion of growth, the protection of consumers, the guarantee of a certain equality of opportunities, and the acceptance of certain social exemptions to the strict rules of competition.

3.1 Competition, growth and poverty reduction

It is obvious that when the competitive market functions properly without distortions it can contribute, through the effects of competition, innovation and creativity, to stimulating output and growth. It also reinforces this momentum by producing a better quality/price relationship that stimulates the competitiveness of the national economic fabric and hence its export potential. Obviously, a high level of growth is bound to spur employment and enhance the conditions for combating poverty. Growth is certainly not a sufficient condition for combating poverty, given the social inequality that it can generate, but it is surely a necessary condition for improving the social situation because it "expands the pie" available to be shared and, when accompanied by adequate social regulation, it can correct social disparities. Moreover, market competition necessarily entails the emergence of economic players able to compete on world markets, which generates higher growth rates and improves living standards. This relationship was demonstrated in a study conducted by McKinsey Global Institute, which sought to determine why some countries remain rich while others stay poor, even if they are supported by significant financial transfers through international aid mechanisms. In his book presenting the results of the study, William Lewis explained that "economic progress depends on increasing productivity, which depends on undistorted competition. When government policies limit competition… more efficient firms can't replace less efficient ones. Economic growth slows and nations remain poor". Thus, competition has great potential for improving the performance of an economy as a whole while having a direct impact on the purchasing power and well-being of individual consumers.

3.2 Competition and consumer protection

Although competition constitutes a factor for economic growth, because of the better quality/price ratio it generates, it also has a social dimension: this better relationship between quality and price is bound to benefit the consumer. This, then, is a social dimension of competition, one that is significant in terms of reducing poverty.

By focusing on anticompetitive conduct that increases costs to disadvantaged individuals, competition authorities may directly improve the lives of their countries' poorest citizens. Furthermore, by exercising their advocacy powers with respect to government measures that may affect competition, these authorities allow competitive markets to unleash their potential in terms of quality and price in favour of poorest. By way of example, the Competition Council of Morocco undertook a study in 2010 of competition in the mobile telephony sector. The fact that the study found practices resulting in rates that were too high, and that it was published and covered by the media, had the effect of gradually and substantially reducing the rates charged by the companies concerned.

We should also note that in the presence of anticompetitive practices, while the more affluent may be able to absorb the resulting overcharges by reducing their discretionary spending, a poor person living on a

few dollars a day may have to curtail spending on basic necessities such as food or health.. Paying more for the necessities of life means having fewer resources available for making long-term investments, such as opening a small business or purchasing agricultural equipment. Similarly, supplier collusion in public procurement imposes unjustified additional costs on consumers, especially poor ones. It has been observed that "even small improvements in the performance of public procurement programmes can yield large social benefits, especially for the least affluent citizens.[…] Many of these expenditures [on procurement] are for infrastructure and social services that are designed in large measure to assist economically disadvantaged populations"

3.3 Competition, ethics and equal opportunity

The logical rationale for the competitive economy is that everyone can gain the most by innovating and organising his production correctly without relying either on the unearned rents that result from anticompetitive practices or on legitimate subsidies from government. Competition, then, works in favour of ethics in business. But at the same time, by avoiding anticompetitive practices and barriers to entry, competition opens the way to a certain equality of opportunity and the possibility of entrepreneurship for the middle classes: this is bound to expand the "winners' circle" and to reduce poverty. The World Development Report 2000-01 states that "markets work for the poor because poor people rely on formal and informal markets to sell their labour and products, to finance investment, and to insure against risks. Well-functioning markets are important in generating growth and expanding opportunities for poor people."

3.4 Exceptions in competition law and the struggle against poverty

Competition laws and policies converge to establish an economic system where truth in pricing prevails, without unjustified rents to the benefit of certain economic agents. However, as we know, they allow certain exemptions from the general principles, of an economic and social nature.

When it comes to economic exemptions, competition law allows for state subsidies to promote "national champions" and SMEs. Exemptions in favour of SMEs can be said to help reduce poverty if they encourage the emergence and development of middle classes.

As to exemptions of a social nature, it must be noted, first, that the "best price" resulting from competition may be beyond the reach of certain social categories. For this reason, competition law makes it possible to subsidise the prices of basic consumer goods, subject to conditions, or to provide direct assistance to buyers. In Morocco, for example, there is a system of compensation to keep the prices of certain categories of flour, sugar and fuel artificially low. In the wake of a study by the Competition Council, the Moroccan government is now considering the possibility of eliminating this compensation system, which also benefits the wealthier classes as well as intermediaries, and to replace it by a system of direct grants to the poorest social groups.

Lastly, beyond these systems of direct support to the most disadvantaged, and in the context of reconciling competition policy with industrial policy or socioeconomic policy in general, the authorities may pursue various actions in parallel with competition policy, designed to improve living conditions. In addition to the price compensation system, the Moroccan government has introduced the "National Human Development Initiative" INDH), which is intended to combat all forms of poverty and includes not only social assistance measures but also actions relating to education, health, water and electricity supply in rural and peripheral urban areas.

In conclusion, we may say that the marketplace and competition can serve to create conditions favourable to the middle classes and to economically disadvantaged groups, provided of course that regulation plays its proper role.

NAMIBIA*

1. Introduction

This submission explores the link between Competition and Poverty Reduction from the Namibian perspective. The Namibian experience of Competition Policy enforcement is relatively very new, since 2009 only. In addition not much empirics are available investigating the link between poverty reduction and competition policy in Namibia. As a consequence this paper explores the current status quo in terms of the country. It aims to highlights areas that could be strengthened to solidify Competition impact on poverty reduction. The paper is thus structured as follows. Section 2 explores poverty and its causes in Namibia. Section 3 explores the theoretical link between poverty reduction and competition. Sections 4 and 5 explore the current Namibian setup in terms of competition and poverty reduction. Section 6 concludes and offers some recommendations.

2. Poverty in Namibia: A profile

Namibia's poverty's profile is adequately captured in the 'Namibia 2011 Population and Housing Census: Preliminary Results', 'Namibia Household Income and Expenditure Survey 2009/10' and 'Fourth National Development Plan:2012/13-2016/17' official publications. Poverty and extreme poverty remain endemic in the country, coupled with high levels of income inequality. Around 9.6% of all households are classified as Severely Poor in Namibia, whilst those classified as Poor Households are 19.5%. The Namibian poverty definition follows the Basic Needs approach. The causes of poverty in Namibia are numerous and include factors such as low skills base, low agricultural productivity, climate change variability and high income inequality with a Gini Coefficient of 0.59. In Namibia poverty is also masked by regional and urban-rural divides. Around 27% of households in rural areas are poor, and the highest incidence of poverty is in the Kavango region, where 43% of households are poor.

3. Theoretical linkages of competition and poverty reduction

Ellis Singh (2010) explores the theoretical linkage between Competition and Poverty Reduction. The benefits of competition are many and varied such as reduced prices –which positively affect the poor's capacity to consume, improved choice and quality for consumers, greater business and managerial efficiency (especially for smaller businesses in enhancing their capabilities), and incentives to innovate which contribute to growth. Competition also plays a fundamental role in determining the impact of business on the economy, the allocation of resources between consumers and business, and the balance of power between business and the state.

A lack of competition that results in higher prices and higher profits implies a transfer of resources from consumers to the owners of the companies that produce the goods. In other words, a transfer of resources from the poor to the rich. Competition and competition policy – and here it is defined quite broadly to include all policies affecting competition, including trade policy, regulation, privatisation, industrial policy, and competition law – play a crucial role in disciplining business, and preventing excess profits and unfair business practices designed to keep out new entrants. The existence of a good

* Contribution compiled by the Research and Development Division, Namibian Competition Commission.

competition policy framework allows new firms to enter the market, and helps to create a level playing field between firms, which is important for attracting investment and developing the private sector and especially the local SME sector.

The extent of competition is crucial in determining the impact of globalisation on development, where large multinationals with considerable market power are entering small underdeveloped economies which desperately need the products, investment capital, and know-how that they bring, but which wants to avoid the repatriation of excess profits, and the unfair suppression of domestic business. Thus sound competition policy is an important accompaniment to globalisation and liberalisation processes, to ensure that developing countries achieve the expected benefits. Competition also helps to challenge the dominance of the economic 'elite' that is so often observed in developing countries, where well-connected or closely allied politicians and business people cooperate to extract the economic rents from productive activity, at the expense of society as a whole. This is one of the main reasons why economic growth does not always result in poverty reduction. Competition allows new entrants to gain a foothold and gives them the opportunity to undercut or outcompete the incumbents, undermining the cosy relationship enjoyed by the few, and reducing the power of cronyism and the returns to corruption. So competition plays an important role in creating economic opportunity for new firms, contributing to private sector development and enabling more people to engage in markets and contribute to economic growth.

4. Poverty reduction and competition: Some Namibian issues

The Namibian Competition Commission (NCC) has been in existence since very late 2009. It has thus been pre-occupied with configuring its systems and formal set-up whilst meeting and working through issues of merger control, restrictive business practises and market studies. As a consequence it still has to immerse itself in the broader sphere that would entail a national competition policy. It is thus at this juncture not surprising that competition issues are absent in the National Poverty Reduction Action Programme of 2005 nor in the 2012 Draft National Rural Development Strategy. In addition, the country is still investigation the correct institutional configuration of Consumer Protection, thereby leaving the NCC slightly inept at handling issues and complaints arising from poorer consumers and the general consumer at large.

In the absence of a national competition policy, the NCC is currently not able to explicitly review government controls/interventions in terms of their impact on market competition. Except with industrial policy designs such as Infant Industry Protection where the NCC may offer some advice to the government. However as a NCP is formally absent, the process is not wholly formalised and given the recognition it deserves.

Similarly when it comes to small businesses and job seekers, the NCC attempts to ensure that these interest groups are best served through merger control, public interest reviews and remedies.

5. Framing the issues further

In framing the issues further, we attempt to adequately capture what the issue is affecting the three groups of interest-poor consumers, small business and job seekers. We then attempt to define the possible action/plan that the NCC could undertake to help defray the issue.

Table 1: Poor Consumers

Issue	NCC Action/Possible Response
Excessive Pricing of Goods adverse effect on poor/Consumer Complaints	Consumer Protection institutionalisation/Market Studies in certain sectors
Government Policy such as Infant Industry Protection	National Competition Policy and Regulatory Impact Assessment
Government Interventions for Pro-poor	Review of Zero VAT-rating of Goods, carry out Market Studies in certain sectors
Effects of Cartels	Corporate Leniency Policy, Restrictive Business Practices investigations.

Table 2: Small Businesses

Issue	NCC Action/Possible Response
Directed Competitive enhancement schemes for Small business	Regulatory Impact Assessment
SME Policy and Investment Act targeting certain economic sectors for small businesses	National Competition Policy and Regulatory Impact Assessment
Protection of Small business sector from large acquisitions effects elsewhere in the economy or in same sector	Merger Control and Public Interest Reviews

Table 3: Job Seekers

Issue	NCC Action/Possible Response
Directed Competitive enhancement schemes for Small business	Regulatory Impact Assessment
SME Policy and Investment Act targeting certain economic sectors for small businesses	National Competition Policy and Regulatory Impact Assessment
Protection of Small business sector from large acquisitions effects elsewhere in the economy or in same sector	Merger Control and Public Interest Reviews

6. Recommendations and conclusion

Although the explicit link between poverty reduction and competition policy is evolving in Namibia, in terms of the assessment in (4) and (5) above, the following recommendations may be made:

- A major weak point is the absence of an explicit national competition policy that can enhance the mainstreaming of the NCC's work in other major governmental regulations and policies such as Industrial Policy, Poverty Reduction Action Plans and Rural Development Strategy. The existence of a NCP will enable rigorous regulatory impact assessment of major governmental programmes and help in assessing the impact of those on poverty reduction.

- In its current work of curbing anticompetitive practises, the NCC should establish a comprehensive Monitoring and Evaluation Framework to help track the impact of its output on national interest groups such as poor consumers, small businesses and jobseekers.

- As the impact of cartels on the poor is very severe, the work of the NCC should go beyond the adoption of a Corporate Leniency Programme. In Southern Africa, there is a prevalence of regional cartels, especially in the Southern African Customs Union (SACU) and SADC by extensions. The NCC could assess along with its sisters organisations in the region the feasibility of a Regional Competition Fund along the lines of the suggested Global Competition Fund to help defray the impact of cartels behaviour on the poor.

- Finally, the NCC should ensure that poverty reduction as a strategy is adequately mainstreamed in its Public Interest Policy.

PAPUA NEW GUINEA*

Abstract: The role of the ICCC in achieving micro-economic reform; a competition and dynamic private sector; effective utility regulation; and consumer protection – Necessary ingredients for poverty alleviation

This paper focuses on specific actions by the competition authority of Papua New Guinea which alleviate poverty. While general administration of competition law has the effect of improving allocative efficiency throughout the economy, contributors were invited to present case experience of actions which specifically affected the poor, and examples of interventions that affected poverty specifically. However, significant economy-wide interventions which raise living standards, particularly those which disproportionately benefit the poor, are also mentioned, showing linkages.

Introduction

The Independent Consumer and Competition Commission of Papua New Guinea is not only the competition authority, but also regulates utilities, calibrates taxi-meters and trade weighing equipment; conducts sectoral inquiries for Government; and is responsible for product safety and price regulation of goods and services declared by the Treasurer . As part of its competition responsibilities, the ICCC adjudicates on clearance applications for mergers based on a competition test; and on authorisation applications for other potentially anti-competitive conduct based on the preponderance of public benefit over lessening of competition.

Macro-economic policy and ***micro-economic reform*** are the obverse and reverse sides of the same coin – maximisation of economic growth to achieve the nation's development objectives and, thereby, alleviate poverty.

Social priorities such as health, education, and infrastructure provision for poverty reduction can only be financed by a nation if the economy is competitive and efficient, as it is its economic development that generates financial resources that can be used for those social purposes - relying solely on the State and donors to provide such social services, without broad-based economic development, is futile as their available resources are very limited.

The ability of citizens to 'self-fund' services for themselves, such as health and education depend on their employment prospects and income-earning opportunities, all of which depend on the economy being freed from anti-competitive constraints which 'chain' the nation to sub-optimal productivity and economic performance – which, in turn, perpetuates poverty, rather than relieving it.

A 'rising tide' of economic progress will 'float all boats' and the role of micro-economic reform in securing enhanced economic development should not be underestimated. The Independent Consumer and Competition Commission (ICCC), which is the Government's 'front line' agency on micro-economic regulation and reform, has achieved, and can continue to spur, changes to private and public sector industry

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structure, conduct and performance to improve national economic performance that is most effective in alleviating poverty.

A competitive environment, without anti-competitive regulation or business conduct encourages private sector growth to meet needs which the State, with its limited resources, cannot possibly do. The private sector, however, needs to compete rather than collude or engage in acquisitions which damage competition.

State Owned Enterprises (SOEs) which operate 'enabler' infrastructure sectors of the economy need to be made to supply their services efficiently and reliably to greater segments of the population at affordable prices.

While the above may be argued to generate 'economy-wide' benefits, they make macro-economic management easier by freeing up Government financial resources which are available to be spent on health and education, two well-known drivers of poverty-alleviation.

With improving economic conditions and living standards, citizens will have greater disposable incomes to spend and they need to obtain 'value for money' for their expenditure. Consumer surplus generated by more effective expenditure expand the economy and enhance poverty-alleviation approaches, either by greater consumption or greater savings, which translate into investment and job creation.

Competition law, therefore, needs to be supplemented by comprehensive ***consumer protection*** laws to ensure that the gains made through the application of competition law are not lost by unfair trading. The ethical trader should not be disadvantaged by unethical traders engaging in conduct that is designed to mislead or deceive consumers. Also, the products that consumers buy should not pose a risk to life and limb, especially for little children, so ***product safety*** is significant, not least for the economic costs of accidental death or injury.

In a growth environment, suppliers need to compete on a level advertising playing field which does not allow claims that are misleading or deceptive; and products and services need to perform to general expectations of quality and functionality.

The ICCC has been, and continues to be, active in all the above areas, but to maximise its impact, assured continuity of expert advisory assistance for a significant period is essential.

1. Competition and poverty alleviation

One of the ICCC's key roles is to ***protect and promote competition*** and a substantial proportion of ICCC resources is devoted to competition across the economy. One may well ask 'what does this do for poverty alleviation'? Misallocation of resources is a key contributor to poverty. To the extent competition can be encouraged, resources are more efficiently allocated – put simply, surpluses are created in the hands of consumers, who spend more, thereby creating more jobs and the 'knock on' effect is to alleviate poverty.

In the case of PNG, the poor suffer most from a rising currency, brought on by the resources boom, by reduced income for rural agricultural products and reduced employment opportunities resulting from cheaper imports. Where anti-competitive conduct reduces their purchasing power, they are hit by a 'double whammy' of reduced income and higher prices.

The Commission actively monitors the market place for anti-competitive behaviour and takes action to prevent this.

The Commission initiated legal proceedings against *Steamships Trading Company Limited* and some subsidiaries for acquiring a tranche of shares in Consort Express Lines Limited, which gave the former control over the latter, alleging breach of Section 69 of the ICCC Act, which prohibits business acquisitions which substantially lessen competition.

As an archipelagic nation, shipping and the port sector are crucial to economic performance – almost all goods are carried on ships and cross wharves. Economic growth, of course, alleviates poverty.

The private sector, however, does not constitute the only area of concern. In 2012, the ICCC investigated a potential breach of Section 58 of the ICCC Act which prohibits taking advantage of market power, by PNG Ports Corporation Limited in respect of licensing of marine pilots and marine pilotage providers, the latter being beyond the power of delegation by National Maritime Safety Authority, which has now resumed the power by withdrawing the delegation. The ICCC can still take legal action in respect of the marine pilotage matter.

The ICCC's work is exposing the extent of *anti-competitive regulation* throughout the economy. PNG Ports; international aviation; taxi and PMV regulation in NCD and some provinces; supply of school books; are all characterised by serious regulatory defects which either directly, or through their implementation, involve anti-competitive restrictions on entry, which is key to competition. They also affect either goods and services which particularly disadvantage the poor, for whom such expenditure forms a disproportionately high portion of their disposable income, or reduce their income-earning opportunities, as will be seen in the effect of anti-competitive code-share arrangements for tourism.

2. Specific interventions which reduce poverty

A transformative initiative, the introduction of mobile competition, jointly sponsored by the Treasury and the ICCC, has 'rebalanced' bargaining power in rural areas. Growers of fruit and vegetables in rural and remote areas, usually women, previously exploited by middlemen at markets where they they were compelled to sell their produce or risk it perishing, can now negotiate by phone before becoming 'captive' by transporting their produce to market and selling for a pittance. Bargaining power for rural agriculturalists and horticulturalists is a key poverty-reduction requirement. Even fishermen, bringing in their catch, are known to negotiate prices by mobile telephones, thus increasing their income vis-a-vis without mobile telephone.

Mobile telephony has also assisted in preventing domestic violence, with women communicating with women's support groups in times of crisis. Domestic violence is known to be a contributor to poverty. As a law-enforcement aid, it now allows relatively free travel with less risk of hold-ups, thus enhancing scope for income-earning opportunities.

This reform has removed a long-standing impediment to business and reduced costs, increased efficiency and spurred economic growth, especially in the small business sector, one acknowledged to offer the greatest scope for independent income-earning opportunities for small entrepreneurs, employment, innovation and broad-based contribution to economic growth, to alleviate poverty. The new, dynamic ICT sector is an example, but broad-based efficiency improvements in the existing small-business sector is of greater relevance in quantitative terms in generating employment and small entrepreneur opportunities.

Rural banking has been revolutionised by mobile telephony through 'mobile banking' – use of cell phones for banking. This has removed a key impediment to small entrepreneurship in rural areas.

Even in the urban areas, street-vendors of recharge cards gain income which hitherto was not available.

All these pro-poor benefits could only have been realised through mobile competition, as the previous Government business enterprises was moribund, inefficient and high-priced.

Considerable resources have been devoted to airline code-share matters, the complexity and information requirements of which are demonstrated in the 62 page determination on the application by *Air Niugini for a code-share with Qantas on the POM/Brisbane and POM/Sydney routes*.

Air Niugini Limited (ANL) Code Share Arrangement **-** The ICCC has released its final decision and has granted authorization for ANL to extend its code share arrangement with Qantas Airways Limited for the Port Moresby – Brisbane and the Port Moresby – Sydney routes for a period of three (3) years commencing from 1st October 2012 to 1st October 2015. The authorisation subject to certain conditions which ANL need to comply with.

Why are code-share assessments important? An efficient aviation sector delivers lowest prices and services tailored to best meet market needs. Tourism depends on efficient and low cost aviation. Tourism offers scope for poverty reduction on a sustainable basis. Annexure A includes a more detailed discussion of code-share authorisations, one of which has been rejected (POM/Cairns) while another, POM/Manila, was withdrawn after the release of the draft determination, which highlighted significant competition concerns.

Tourism is a 'grass-roots' sector, with a significant rural component; creating small entrepreneur opportunities for rural people. The supply of accommodation, food, beverages is a basic necessity for tourism. Handicrafts, provision of specialist services such as scuba diving, trekking etc rely exclusively on local expertise and the social structure of clans, which characterise developing economies, are well-placed to capitalise on such opportunities. In PNG, the Kokoda Track; scuba-diving; unique flora and fauna tours and spectacular waterfalls generate substantial and increasing tourism based income-earning opportunities for rural, usually poor, people.

Agricultural development is a key component of long term development plans such as Vision 2050. If the nation is to avoid the dreaded ‘Dutch disease’, then diversification into sustainable economic activities, such as agriculture, is a must. However, the imbalance in bargaining power between 'dedicated' growers and the processors they supply needs to be addressed to ensure ‘competitive and economic’ prices are paid to growers. This will attract resources into the sector, providing a base for expansion of sustainable agriculture throughout the country and income – earning opportunities for rural people – which reduces poverty where it matters most, at the rural level, thus reducing ‘urban drift’, a scourge of cities in developing, poverty-ridden countries.

The adjudication of an authorisation application for grower-processor negotiations for oil palm fresh fruit bunches is described in Annexure A. Such ‘rebalancing’ of bargaining power in favour of growers transfers economic resources to those most in need and attracts resources into agriculture, a key strategy to alleviate poverty. Other cash crops such as coffee, coconuts; vanilla and cocoa may well require examination, but, again, technical capability has limited work in those areas.

Consumer protection - the ICCC has some specific, but limited, responsibilities for consumer protection, nevertheless, it aims to increase and expand its enforcement and compliance activities to empower consumers across the entire country. This will include efforts to take on businesses that market unsafe goods or engage in misleading or deceptive promotions. In 2012, the ICCC embarked on improving the ***product safety*** and it will, in coming months, use its powers to impose interim bans on products that are hazardous or unsafe to consumers.

Increasing incomes is not the only dimension of poverty reduction. Ensuring 'best value for money' means that available income is spent on goods and services that meet expectations, thus obviating 'wasted' expenditure, a contributor to poverty. That includes acquiring goods that are safe; perform in the way advertised or usually expected and, thereby, avoids wasteful expenditure. Wasteful expenditure contributes to poverty and avoiding such expenditure alleviates poverty.

'Consumers' are generally seen as 'middle class' but even the poor are consumers – for the essentials of life. Furthermore, the 'surpluses' generated from consumer protection by the middle class and the poor are spent and 'ripple' or multiplier effects spread the benefits throughout the economy, generating growth and alleviating poverty.

As part of its ***price-regulation function***, the Commission monitors the prices of staple foods which form a significantly higher proportion of disposable income of the poor. The sector is highly concentrated, as is usual in small economies.

A recent inquiry into the price of rice led to an average 18% reduction in prices.

Similar surveillance helps keep the prices of other staples such as flour and sugar at reasonable levels.

3. Improved economic regulation of state-owned essential services providers

As part of its role in regulating prices under the *ICCC Act* and the *Prices Regulation Act* (PRA), the ICCC regularly undertakes ***Pricing Reviews*** for services offered by State Owned Enterprises (SoEs) such as ***electricity, water, postal and ports prices, and for specific regulated products and services such as rice, sugar, flour and stevedoring and handling***. Stevedoring and handling relates to shipping, identified as a key input into almost all costs and prices; while sugar, rice and flour are staple foods, of direct relevance to the poor. Annexure B contains further details.

State-owned enterprises are responsible for delivering 'essential' services, such as electricity, ports, postal services etc, which are key 'enabling' services for 'downstream' industries as well as for public well-being.

The efficiency with which such services are provided influence economic growth as well as public amenity, all of which have 'knock on' effects on alleviating poverty, as the poor are disproportionately affected by the prices of goods and services, into which the costs and efficiency of essential service providers feed.

Of particular significance is the coverage of services provided by utilities The availability of electricity influences school performance by students; amenity of life in villages and enables small-industry development, all of particular benefit to the rural poor.

In the case of water and sanitation, 'communal' based provision in 'settlements' makes living easier for the urban poor. These initiatives are being implemented by utilities in PNG.

4. Anti-corruption aspects of pro-competitive regulation

It is well-known that in developing countries, organisations, whether privately owned or publicly-owned, that have substantial market power, are in a position where, in their inter-actions with the public, their staff can become vulnerable to inducements offered by the public to secure preferential treatment, or even their entitlements. Examples are the securing of a fixed line telephone, particularly before the advent of mobile telephony; a railway ticket on congested trains; a place in a public housing queue; a licence for a factory; supply of a scarce product such as a car; etc.

Without suggesting that the staff of any particular organisation has engaged in such conduct, it is the case that effective regulation obviates such conduct.

Corruption of various kinds are well-known as significant impediments to poverty-reduction and competition authorities can play a key role in limiting or reducing such conduct.

Annexure C outlines the work of the ICCC in these infrastructure industries.

ANNEXURE A: COMPETITION-FOCUSED WORK

1. Enforcement

The Steamships case is the first substantive litigation initiated by the ICCC in its eight-year history. Litigation is not to be lightly undertaken, but a regulator reluctant to enforce the law is seen as a 'toothless tiger'. Litigation is not cheap and a range of factors such as the impact of the alleged conduct on the national economy; living standards of citizens; and inculcating a culture of compliance with economic regulation by the business community; forms part of the decision. Expert assistance in investigation, economic/legal analysis, born of long practical experience, is essential to mount such cases.

As will have been seen earlier in this paper, legal action against PNG Ports is possible for a range of matters arising from its powers over regulated entities.

The ICCC has an ***education and consultation program for business and the community***. It takes the view that most organisations will not consciously contravene the law but it is important for them to know what their obligations under the law are. The ICCC therefore plans to expand its education and consultation program during 2013. However, its capacity to do that is limited by resource constraints.

As a consequence of its educative work, the ICCC is preparing, in 2013, for an increase in complaints regarding unfair and anti-competitive practices and it is expects further requests for exemptions on public benefit grounds flowing from continued strong economic activity.

A community that is informed and educated about the competition and fair trading provisions of the ICCC Act acts as a 'self-enforcing' element. Traders know that contraventions carry significant penalties and consumers can come to the ICCC for redress.

In ***monitoring the market place*** the ICCC looks to key indications of potential anti-competitive conduct and, of its own volition, initiated legal proceedings against Steamships Trading Company Limited and some subsidiaries for acquiring a tranche of shares in Consort Express Lines Limited, which gave the former control over the latter, alleging breach of Section 69 of the ICCC Act, which prohibits business acquisitions which substantially lessen competition.

A range of other investigations are in train, which form a 'pipeline' of work which will require resources in 2013. As the economy grows, so, too, will the private sector, as it should, requiring closer monitoring and enforcement of the law. A regulator must not be seen to be a 'toothless tiger' and a combination of high level of skills in economics, financial analysis and basic legal principles go to make up an enforcement capability.

2. Adjudication

The authorisation process is a transparent process. In assessing ANL's authorisation application, the ICCC conducted public consultation with the relevant stakeholders including ANL and collated all submissions into a draft Determination. The draft Determination was then released to the relevant stakeholders and a conference was held to discuss and finalise the Determination.

Oil palm growers - application for exemption -The ICCC is preparing a final determination on this application. It is an application by growers of oil palm in the Hoskins area for collective negotiations of oil palm fresh fruit bunch prices and other terms and conditions with New Britain Palm Oil Limited and Hargy Oil Palm Limited (the two processors of the crop). The final determination is expected to be published by the end of this year and it is expected to lead to similar work for other agricultural commodities such as oil palm (in other geographic locations), cocoa, coffee, copra and vanilla. The main objectives of the application is to ensure that:

- growers can collectively bargain to get a reasonable price for supply of these commodities to processors;
- the prices reflect the sharing of risks between the growers, millers and exporters in relation to the international prices available for refined and unrefined products; and
- such pricing arrangements comply with the provisions of the ICCC Act.

ANNEXURE B: SECTORAL ECONOMIC REVIEWS

Sectoral reviews are conducted transparently, as is the Commission's work generally, and seek comments from the public throughout the review process. They are time-consuming and resource-intensive, requiring wide-ranging skills in economics and econometrics.

1. Sugar prices review

The prior price control arrangements for sugar products were defined in the Sundry Declared Goods Pricing Review dated 16 August 2007. One outcome of this review was the monitoring of factory gate prices for Ramu sugar. The price monitoring arrangement for the prices of Ramu sugar will end on 31 December 2012. As such, the ICCC started the review process with public consultations in 2012 to determine whether there is a continuing need to regulate the price of sugar. During 2011, there was a shortage of sugar provided to the local market. In response, the Government announced several corrective measures, including agreement to reduce the import tariff on sugar products to 25 per cent. This was to allow the pressure of import competition to workin the sector, to reduce the cost of living to PNG families. The appreciation of the Kina over 2011 was also an important variable that contributed to the appropriate pricing of sugar and other products. The Government will continue monitoring whether the benefits of the nearly 20 per cent Kina appreciation (which should lower prices significantly) are passed onto PNG businesses and families.

The review was completed in 2012 and the determinations by ICCC of the next pricing arrangement will be implemented starting in 2013 and over the next pricing period.

2. Water & Sewerage Services: Mid-Term Capital Expenditure Review

The ICCC undertook a review into the pricing arrangement of water and sewerage services and released a Final Report in 2009. The principal determination in that Report is that the ICCC will set the maximum charges for water and sewerage services provided by Eda Ranu and Water PNG (water companies) for a period of five (5) years commencing 1st January 2010 and ending 31st December 2014.

One of the other determinations is the mid-term review of the capital expenditure of the two water entities. This review allows for the ICCC to examine whether the water companies have undertaken the capital expenditure as forecasted and captured in their pricing formula. The water companies are required to submit the actual capital expenditure undertaken over the period from January 2010 to December 2012. So far the ICCC has only received Eda Ranu's submission. If the assessment by the ICCC reveals that the water companies have not incurred the capital expenditure as captured in their pricing formula, the ICCC will amend their current pricing formula. Such review is important so that the ICCC can protect consumers from paying unnecessarily high prices for capital expenditure not incurred on projects identified by the water companies.

3. Rice

Another staple product for low-income citizens, who form the overwhelming majority of the population, namely rice, was the subject of the ICCC's interest. Following detailed investigations, and while the matter was being assessed for possible breach of the ICCC Act, Trukai reduced its prices by an average of some 18%. This exemplifies the nature of the ICCC's work in grass-roots areas, affecting the vast majority of citizens.

Investigations are continuing to examine supply-chain issues extending to the import level, shipping arrangements and any agreements that may be in place which could impede competition.

4. Flour

The flour sector has also been reviewed by the ICCC and is the subject of ongoing monitoring.

Staple foods are a high priority area of work and a first-order issue for the ICCC.

5. Stevedoring and handling

Related to the shipping and port sector discussed in the main paper, stevedoring and handling, a key part of the sea transport logistical chain, crucial to the nation's development, is the subject of price monitoring by the Commission.

ANNEXURE C: REGULATION OF ESSENTIAL SERVICES PROVIDED BY STATE-OWNED ENTERPRISES

1. Electricity Industry Policy (EIP)

Improving the production and supply of electricity to most areas of the country is important in minimising costs for businesses and households that depend on it to sustain their operations and livelihood. ***Expansion of electricity supply is accepted throughout the world as a key tool to alleviate poverty.*** The Government through the Electricity Industry Policy (EIP), expects to make electricity services more accessible, reliable and affordable in PNG through greater private sector participation in electricity generation; incentives to enhance electricity services to rural areas; and improved regulatory arrangements.

The EIP aims to increase the affordability, accessibility and reliability of electricity services by increasing the scope for greater private sector participation in the electricity industry and strengthening the position of PNG Power as a commercially-oriented business. It will also ensure that there is strong Government oversight of the long-term development of the electricity industry through establishing an Electricity Management Committee (EMC).

An Electrification Trust Fund will be established to expand services in both urban and rural areas of the country. This Trust Fund will expand electricity services through a transparent, competitive tender process to ensure value-for-money. Furthermore, the EIP recommends that the ICCC's price regulation for electricity prices should move towards "cost-reflective pricing", as has already been applied to PNG Ports. The ICCC has been invited to develop a "third-party access" code to encourage greater private sector participation in power generation and it is currently in dialogue with the World Bank to provide technical assistance to develop this code.. Finally, the EIP requires the ICCC to transfer the technical regulatory roles and functions currently delegated to PNG Power to be transferred to the Department of Petroleum and Energy (DPE), provided that DPE can demonstrate to the ICCC that it has the capability to take on this new role. That has to occur within two years.

2. Electricity regulatory contract review

The ICCC regulates the service standards for power supply and the prices that PNG Power Ltd (PNG Power) may charge for the Supply and Sale of electricity, the Scheduled Services and the Excluded Services under an Electricity Regulatory Contract (ERC) which is akin to a general tariff order formerly established under the provision of the ICCC Act 2002 and took effect from July 2002. The ERC will expire in December 2012 and therefore ICCC is undertaking a review, with a view to having in place a new ERC which will set the new price path for PNG Power for the next five (5) year regulatory period commencing 1st January 2013 and ending on the 31st December 2017. The ICCC's review focuses on how PNG Power will utilise its capital spending plan to improve on network reliability, efficiency and service standards performance.

New features being incorporated into the contract review process, not hitherto required, extends to inclusion of adequate reliability standards; transparency of network investment and prioritisation thereof; other 'basic' standards of service regulation; proper demand forecasting, in contrast to previous 'predicted supply capability = demand forecasts'; possible cost-effective peak load demand management approaches; ongoing reporting systems; and effective supervision to secure affordable, reliable and accessible services to citizens, in so far as is practicable.

Such expanded regulation requires additional resources.

3. Electricity network engineering review

The ICCC as part of the ERC review undertook a review of PNG Power's Electricity Network performance for the two main networks for Ramu and Port Moresby Grids. The PNG Power network currently provides performance levels which do not satisfy business and residential customer needs. Whilst PNG Power is actively seeking to improve its performance through operating initiatives and capital expenditure plans, the ICCC has conducted a review (in February 2012) of the capital expenditure proposals and operations in the Ramu and Port Moresby Systems. The PNG Power Capital Investments and Operations report reviews the operational issues and capital investment plans and provides recommendations which are summarised at the end section of the report. This report is available and can be obtained from the ICCC office.

4. Postal services regulatory contract review

The ICCC regulates prices for the domestic and international standard 50grams or less mail stamps and rental of postal boxes by Post PNG Ltd, and is covered through the Postal Services Regulatory Contract. This is the third review of the regulatory contract and it's been undertaken in 2012 to review and determine Post PNG's price path, capital expenditure requirements and the minimum service standards, amongst other things for its regulated services, It is envisaged that the review will be completed and issued by 31 December 2012 so that the term of the next regulatory period will commence on (and from) 01st January 2013.

5. CTP Motor vehicles insurance regulatory contract review

The premiums that MVIL charges vehicle owners are regulated by the ICCC through the CTP Motor Vehicles Insurance Regulatory Contract. The second review is currently being undertaken in 2012 for a new regulatory contract to commence on 1st January 2013. The review is intended to determine MVIL's price path, capital expenditure requirements and the minimum service standards, amongst other things, for its regulated service for the forthcoming regulatory period. It is envisaged that the review will be completed and issued by 31st December 2012.

6. Mid-term review of competition and tariffs for PNG ports

The ICCC has undertaken a Mid-Term Review of Competition for PNG Ports Corporation Limited. This review was done in accordance with clause 4.3 of the PNG Ports Regulatory Contract The request for review of competition was accompanied by a request to vary the regulated tariff to permit preferential discount pricing to certain large customers or classes of customers and products in the ports of Port Moresby and Lae.

Apart from rejecting the claim that competition in Fairfax Harbour effectively constrains PNG Ports from exercising market power; and that discrimination in prices or service quality should not be allowed in Port Moresby and Lae, the report explored a range of other matters and brief findings are listed below:

1. Pilotage should be regulated as it is an 'effective monopoly'. Currently the Department of Transport or the Minister for Transport sets charges and the process is not transparent. This requires reform either by declaration under the ICCC Act or the Prices Regulation Act. PNG Ports submissions were contradictory and self-serving, indicating a poor attitude to compliance with the law.

2. The monopoly structure of the towage sector may be connected with the marine pilotage monopoly and requires investigation;

3. Storage services are likely to be an effective monopoly and, if that is confirmed by further enquiry, the revenue should form part of the revenue cap which converts into the regulated tariff.

4. Stevedoring licensing needs reform to ensure landowner-connected firms do not, in effect, restrict entry;

5. Regulation of stevedoring licensing fees should be transparent and the Department of Transport needs to liaise with the Commission to achieve that;

6. Port pricing structures are archaic, inefficient in themselves and a likely contributor to inefficiency in stevedoring, storage and land transport;

7. Perverse incentives govern the issue of gate-passes, which may account for increases in storage charges;

8. Customs and NAQIA processes are in dire need of fundamental reform;

9. PNG Ports has scant regard for its regulatory obligations which are exemplified by:

    a. Reneging on a common law contractual agreement to re-open the regulatory contract in respect of certain matters, consequent upon its failure to meet its regulatory obligations to furnish its proposed tariff by a date nominated in the regulated contract and the Commission's forbearance from exercising its right to refrain from approving them. The issues identified for re-opening the regulatory contract for review were

        i. pricing structure;

        ii. cost allocation methodology;

        iii. operating expenditure;

        iv. definitions of regulated and unregulated services; and

        v. early commencement of work on the mid-term capital expenditure progress review.

    b. Failure to lodge its Capital Expenditure Progress Report with certification by a registered company auditor 'as being not false or misleading'. This goes to the very heart of the regulatory system. The contract envisages the regulator making decisions on the basis of such audited information and if that is not forthcoming, the regulator needs to forensically examine investment to form an opinion, which PNG Ports has obstructed. The Commission has issued a Provisional Order under Section 38 but PNG Ports has indicated it is unlikely to be able to comply by correcting the deficiency. Hence, while litigation is an option, another remedy needs to be found within a reasonable period of time to overcome the problem.

10. The waterfront sector, with its proliferation of Government regulatory agencies and variety of industry players, each with its own agenda, merits a comprehensive inquiry, which the Commission has recommended.

7. Mid-term review of PNG ports' capital expenditure program

The ICCC is in the process of undertaking a Mid-Term Capex Review of PNG Ports Corporation Limited

8. Significance of port efficiency

As an archipelagic nation, PNG depends almost entirely on its ports for the flow of goods from and to other countries and around the nation. The dependence is substantially increased due to the poor state of key roads connecting population centres and the cost limitations of air transport as an alternative mode of carriage for goods.

The port sector, therefore, is a key enabler of national economic development and, if not operated efficiently, could strangulate the water-borne commerce of the nation, which influences economic growth and bears down on poverty.

The rural poor depend significantly on water-borne commerce and for passenger transport. Efficiency in that sector will disproportionately benefit them.

9. General

The Commission is now emphasising objective KPIs; closer monitoring of capital expenditure effectiveness; 'ring-fencing' of regulated and unregulated businesses; and increasing transparency of investment in its regulation of utilities, which, while State-owned, lack commercial incentives.

PERU

1. Defining poverty and identifying its causes

There are several ways of measuring poverty. In Peru, the main indicator used by the government in the analysis and evaluation of economic and social policies is the percentage of people below the poverty line, which includes two components: the food component (also called extreme poverty line) and the non-food component.[1] Considering this approach, poverty in Peru has declined in the last few years, despite the context of international crisis. In fact, in the year 2011, total poverty in Peru was equal to 27,8%, while extreme poverty was 6,3% (see Table 1). The decrease in the poverty indicator meant that 800 thousand people are no longer in poverty and more than 360 thousand are no longer in extreme poverty.

Table1. Peru: Total and Extreme Poverty
(% of population)

Area of residence	2009	2010	2011
Total poverty			
National	33,5	30,8	27,8
Rural	66,7	61,0	56,1
Urban	21,3	20,0	18,0
Extreme poverty			
National	9,5	7,6	6,3
Rural	29,8	23,8	20,5
Urban	2,0	1,9	1,4

Source: Ministry of Economics and Finance (2012). *Marco Macroeconómico Multianual 2013-2015.*

Different factors cause poverty in Peru. According to Verdera (2007), rural poverty is caused by the pattern of concentration in land tenure[2] and the low returns to land. On the other hand, urban poverty is caused by the low employment intensity in industries with increased production, the lack of demand for labour in relation to the strong growth in labour supply and the low productivity of workers in areas that generate more jobs (which is translated in lower wages).[3] Lack of competition is not directly identified as a source of poverty in Peru.

1 It should be mentioned that the National Household Survey allows many other forms of measuring poverty, which are incorporated by other government bodies -such as the Ministry of Development and Social Inclusion- in their decision making processes.

2 According to the latest National Agricultural Census, 3,1% of farms (producers) accounted for 77,6% of the area under cultivation, while 70,3% of the units (producers) with size up to 4,9 ha, had only 5,8% of surface.

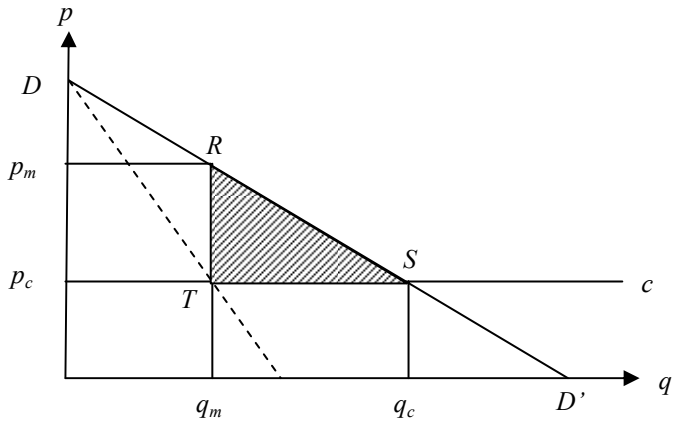
3 Verdera, F. (2007). *La pobreza en el Perú: un análisis de sus causas y de las políticas para enfrentarla*. Lima, Instituto de Estudios Peruanos (Serie Análisis Económico, 24).

2. Competition's effect on markets for essential items, in principle

From the point of view of standard microeconomic theory, competition is expected to promote allocative and productive efficiency in the markets for essential goods and services. In order to illustrate this, assume for simplicity that there is a linear market demand represented by the line *DD'* in Graph 1, as well as constant marginal costs represent by line *c*. Under perfect competition, price equals marginal cost ($p_c = c$) and the quantity sold to consumers is q_c. In this case, welfare (defined as the sum of consumer surplus and producer surplus) is given by the triangle Dp_cS (in this case, firms do not get any surplus, given that profits are equal to zero).

In a monopoly situation, price is set on p_m (higher than p_c) and equilibrium quantity is given by q_m (lower than q_c). Therefore, welfare is given by the area described by the points Dp_cTR, which includes producer surplus (p_mp_cTR) and consumer surplus (Dp_mR) and, as a result of the existence of a monopoly, a deadweight loss is generated (area of the triangle *RTS*)

Graph 1. Equilibrium under Perfect Competition and Monopoly

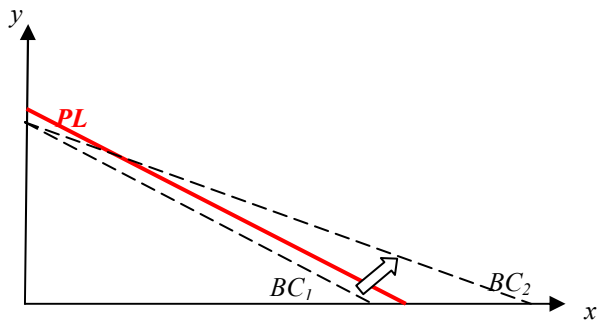


Assuming that we start from a monopoly situation, the introduction of competition will mean an increase in the quantity consumed (from q_m to q_c) and a decrease in price (from p_c a p_m). In other words, starting from a monopoly situation, more competition permits that people who previously could not access this essential good or service can now consume it.

Taking into account the methodology used to measure poverty which was described in Section 1, we can define poverty as consumers whose income is lower than a budget constraint (line *PL* in Graph 2). This is the case of a consumer with a budget constraint given by the dotted line BC_1.

As we mentioned before, the introduction of competition in a market generates a decrease in price level. This means a change in the price relation P_y/P_x, that is, the slope of the budget constraint changes (this is illustrated by the change from BC_1 to BC_2 in Graph 2). As a consequence, consumption possibilities are increased and people who used to be below the poverty line are now above it and poverty is decreased.

Graph 2. Effects of the Introduction of Competition



3. Competition's effect on markets for essential items, in reality

In the last few years, Indecopi has acquired important experience introducing competition in several markets for essential goods such as chicken, sugar, milk, medicinal oxygen, cement and medicines; as well as in markets for essential services such as automobile insurance, notary services and public transportation.

- In the chicken case (1996), the Defense of Free Competition Commission (CLC) and the Tribunal of Indecopi sanctioned the firms of a poultry association for colluding to fix prices and limit the production of chicken, an important component of the Peruvian basket of consumer goods and services.[4]

- In the sugar case (2006), an ex officio investigation was initiated due to the presence of indications of a possible agreement for the fixation of the price and the production of sugar. However, it was found that the supply conditions were determined by external factors, and not by the behaviour of the firms under investigation.[5]

- In the milk case (2007), an association of dairy farmers filed a complaint against a firm with a dominant position in the production of evaporated milk because of the imposition of excessively low prices. Nonetheless, given that the nature of the practice could not affect competition (and could potentially reduce the price of milk products) the claim was found inadmissible.[6]

- In the medicinal oxygen case (2008), CLC sanctioned the firms that provided medicinal oxygen to EsSalud (a state owned social insurance and medical provider), a product which demand is inelastic because it is essential for the preservation of life and health of people who cannot afford private medical facilities. CLC was determined that between the years 1999 and 2004 the providers of medicinal oxygen divided geographically their tenders for the acquisition of this item by EsSalud.[7]

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4 Resolution 276-97-TDC, 19 November, 1997. Available at: http://aplicaciones.indecopi.gob.pe/ArchivosPortal/articulos/2005/3/1-66/Re276-1997.pdf

5 Resolution 029-2009/CLC-INDECOPI, 7 May 2009. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES029-2009/Res029-2009.pdf

6 Resolution 005-2010/ST-CLC-INDECOPI, 15 Abril 2010. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_005_2010_ST_CLC/Res005-2010ST.pdf

7 Resolution 051-2010/CLC-INDECOPI, 13 August 2010. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_051_2010_CLC/Res051-2010.pdf

- It should be mentioned that in 2010 two cases were initiated and are still under investigation. The first one is about the possible establishment of a vertical scheme to boycott a new entrant into the Peruvian cement market, which is highly concentrated and geographically distributed.[8] The second one is a sanctioning procedure against several pharmacy chains for allegedly fixing the prices of some medicines and supplements.[9]

- Regarding essential services, in 2004 CLC sanctioned the firms which offered automobile insurance nationwide because they fixed the amount charged for premiums and minimum insurance deductibles between the years 1999 and 2003.[10]

- There have also been several cases regarding transportation services in different areas. In these cases, associations and groups of carriers (cargo and passenger) allegedly decided and imposed tariffs to users. Some of these cases are still under investigation.[11]

- Finally, in the notary services case (2011), a procedure was initiated against a notary association for allegedly fixing prices and conditions of notary services related to security interests normally used in small loans.[12]

Unfortunately, we do not have any study about the real impact of these decisions on poor consumers.

4. Competitive markets versus "pro-poor" government controls/interventions

There is usually pressure on the government to directly intervene on markets through the provision of goods and services, either through public firms or establishing subsidies to the demand or supply. These claims for a greater intervention of the State in the economy are risky if they are not adequately focused, given that they can exclude private competitors from the market.

The Peruvian Political Constitution of 1993 limits the intervention of the State in the economy through a public firm which directly provides goods or services. This kind of activities is allowed but conditioned to the fulfilment of three requirements: (i) the State intervention must be authorized by means

8 The brief note of the beginning of this procedure is available at: http://www.indecopi.gob.pe/repositorioaps/0/2/jer/notas_interes_clc/NotasInicioProc/Res-004-2010-ST-CLC-INDECOPI.pdf

9 The brief note of the beginning of this procedure is available at: http://www.indecopi.gob.pe/repositorioaps/0/2/jer/notas_interes_clc/NotasInicioProc/Nota017-2010-ST-CLC-INDECOPI.pdf

10 Resolution 009-2008/CLC-INDECOPI, 25 February 2008. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES009-2008/Res009-2008.pdf

11 Information about some of these cases can be found in:

Resolution 085-2009/CLC-INDECOPI, 22 December 2009. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_085_2009_CLC/Res085-2009.pdf

Resolution 069-2010/CLC-INDECOPI, 6 October 2010. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_069_2010_CLC/Res069-2010.pdf

Resolution 055-2011/CLC-INDECOPI, 11 October 2011. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_055_2011_CLC/Res055-2011CLC.pdf

Resolution 056-2011/CLC-INDECOPI, 11 October 2011. Available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_056_2011_CLC/Res056-2011CLC.pdf

12 Procedure initiated by Resolution 019-2011/ST-CLC-INDECOPI, 27 December 2011.

of a special law; (ii) the activity must be "subsidiary"[13] and (iii) there must be an overriding "public interest" or "manifest national benefit" supporting the State intervention.[14] It should be mentioned that, according to article 14.3 of Legislative Decree 1044[15], the Overseeing of Unfair Competition Commission of Indecopi is in charge of analyzing the subsidiary role of public firms.

To date, several of these cases have been analyzed by Indecopi. Some of the most important cases are the allegations made against the services provided by two hospitals and four specialized institutes of the Ministry of Health under differential tariffs[16]. In the cases of the two hospitals, Indecopi determined that the services provided under differential tariffs were not expressly authorized by law[17], while the cases of the four institutes are still under investigation.

5. Competition's effect on poor, small entrepreneurs and job seekers, in principle

From a standard economic theory perspective, competition promotes efficiency, driving markets towards the equilibrium of supply and demand and making prices equal to marginal costs. This way, a signal is given to markets so that allocative and productive efficiency are achieved. In other words, the introduction of competition pursues the maximization of economic welfare.

The effect of the introduction of competition on poor, small entrepreneurs and job seekers is not clear, at least not in the short run. For instance, it may protect them from the abuse of a dominant firm and could also eliminate the harm produced by corruption and inefficient practices like nepotism and other forms of favouritism associated with practices such as bid rigging.

Another way in which competition may benefit job seekers and poor entrepreneurs to earn more is through the increase in productivity. In fact, in the presence of more competition, there is pressure on job seekers and poor entrepreneurs to become more productive, either through the accumulation of knowledge and abilities or through the improvement in productive processes, which in the end should benefit job seekers and poor entrepreneurs through higher wages and higher benefits, respectively.

However, competition may also harm small entrepreneurs by driving them out of the market because of the reduction of market prices. Nonetheless, as stated in Motta (2004)[18], if small entrepreneurs are not

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13 The "subsidiarity" principle means that the State can participate in the provision of goods or services as long as there is no supply from the private sector capable of satisfying the demand for those goods or services; or that, even in the presence of private firms supplying those goods or services, there are segments of the population which are not met by the private supply because of their characteristics and conditions. In other words, the State should not replace private firms in the provision of goods or services.

14 "Artículo 60º.- El Estado reconoce el pluralismo económico. La economía nacional se sustenta en la coexistencia de diversas formas de propiedad y de empresa.

Sólo autorizado por ley expresa, el Estado puede realizar subsidiariamente actividad empresarial, directa o indirecta, por razón de alto interés público o de manifiesta conveniencia nacional.

La actividad empresarial, pública o no pública, recibe el mismo tratamiento legal."

15 Legislative Decree which approves the Repression of Unfair Competition Act, given on 25 July 2008.

16 The services provided under differential tariffs are the ones provided by the hospital or specialized institute for a higher price in exchange for receiving a service with special characteristics such as lower waiting time, private rooms, etc.

17 See Resolutions 2549-2010/SC1-INDECOPI and 2550-2010/SC1-INDECOPI, 14 September 2010. Available at: http://sistemas.indecopi.gob.pe/sdc_Jurisprudencia/documentos/1-93/2010/Re2549.pdf and http://sistemas.indecopi.gob.pe/sdc_Jurisprudencia/documentos/1-93/2010/Re2550.pdf, respectively.

18 Motta, M. (2004). *Competition policy: theory and practice*. Cambridge University Press. P. 22.

operating in an efficient scale of production, artificially protecting them is in contrast with economic welfare objectives since it would encourage inefficient allocation of resources and it would contribute to keep high prices in the economy.

6. Competition's effect on poor, small entrepreneurs and job seekers, in reality

To date, we do not have any study about a case handled in the competition agency in which greater competition clearly affected poor, small entrepreneurs or poor job seekers/wage earners.

In order to ensure that the benefits of competition "trickle down" to the poor, competition authorities should focus on making sure that there are no structural, legal or behavioural barriers that may prevent small entrepreneurs to enter the market. This can be done through their usual work of enforcement of competition laws, as well as using advocacy to create a culture of competition. This includes, for example, the identification of existing or proposed laws and/or government programmes which may unduly restrict competition. Furthermore, competition authorities must advocate for the strengthening of courts, the promotion of transparency and the elimination of corruption in the government.

To this respect, it should be mentioned that Indecopi, through its elimination of Bureaucratic Barriers Commission, identifies and eliminates rules and regulations of Public Administration entities which constitute bureaucratic barriers that irrationally limit or restrict access or permanence of economic agents in the market and contributes to simplify the administrative process through a subsequent control of rules and regulations. Mínguez (2011) found that the elimination of bureaucratic barriers during the year 2010 meant a benefit of 0,004% of the Peruvian GDP.[19]

7. Competition policy toward poverty

Competition policy toward the poor should not be different than it is toward the rest of society. We believe that competition policy contributes to solving problems of access of poor consumers to essential goods and services, but it does not appear to be enough. Therefore, governments should use other policies to combat poverty.

The prioritization of ex officio interventions has been carried out on the basis of the presence of evidences of the existence of anticompetitive practices and taking into account if the good or service in question is essential or not. Thus, even though the potential effects on poverty are not explicitly incorporated in determining the areas to be investigated, ex officio investigations are performed mainly in markets of essential goods or services.

Finally, we believe that most of the enforcement activities should be focused in big trusts of national presence; while in the case of small, highly localized monopolies we should use more competition advocacy, in particular, looking forward to identifying the reasons behind their formation and removing the possible barriers to entry into these markets.

[19] Mínguez, R. (2011). *Estudio de medición del impacto de las barreras burocráticas en el mercado. Informe final.* Available at: http://www.indecopi.gob.pe/repositorioaps/0/3/par/estudio/estudioimpactobarrerasmercado.pdf

ROMANIA

Competition has a direct relationship to poverty reduction. When competition leads to lower prices for the basic necessities of life, the greatest benefits may accrue to the least well off, as their access to necessities improves and, potentially, resources are freed up for discretionary spending that can allow them to invest in improvements to their lives.

Where competition policy is part of an open and well-regulated economy, it can help encourage both domestic and foreign investment, because it encourages investor confidence by setting a consistent framework within which the business sector operates. An effective competition policy allows innovative new entrants an important role in the development process, and promotes growth. More effective competition reduces opportunities for corruption and rent seeking, and creates more space for entrepreneurs and small and medium sized-enterprises.

Developing countries and economies in transition tend to be more vulnerable to anti-competitive practices. This scenario may be attributed to high entry barriers, less diversified and smaller markets, rather asymmetric firms, and in general conditions that allow dominant firms to abuse their position.

1. Areas of intervention of competition authorities

Barriers to competition are pervasive and harm innovation, productivity and growth – in developing countries. Fair competition matters, both for economic growth and for reducing poverty. Helping markets to work better, by removing unnecessary distortions to competition, can lead to significant reforms of the business environment. These factors make competition policy and law a priority area for reform in developing countries. There is a need for a wider understanding at policy levels in government, in the business sector and by consumers, of the beneficial impact of effective competition and of competition policy on an economy.

Further, by addressing governmentally-imposed measures that prevent the benefits of competition from reaching the poor, they allow the potential of free markets to enable the poor to lift themselves from poverty.

By focusing on anticompetitive conduct that increases costs to disadvantaged individuals, competition agencies may directly improve the lives of their countries' poorest citizens. That is why detecting cartels is a key issue for anti-trust authorities in developed countries, since cartels can cause welfare losses for consumers and purchasers of productive inputs. In developing countries cartels may be even more harmful, because the higher prices they generate can drastically affect the real income of the poor.

2. Advocacy – general

Distortions to competition are not always obvious: "they have to be dug out in each market". Governments can distort markets, and thus reduce welfare also through unwise regulation. But, given the prevalence and significant effects of barriers to competition in developing countries, it is important that policy makers are equipped with the appropriate operational tools to identify and assess their nature and impact.

In Romania the Romanian Competition Council (RCC) advocated the implementation of the OECD competition toolkit in the regulatory impact assessment process.

In 2010, the "competition filter", part of the OECD Competition Assessment toolkit has been introduced in respect to the draft legislation subject to the approval by the Romanian Government. Therefore, competition assessment of proposed public policies is now an integrated component of policy making process in Romania at an early stage. When the government asks us, they normally take into account our opinion; the trick is whether they ask us or not.

In order to ensure that initiators of draft normative acts fill in the OECD competition filter in the grounding note of proposed public policies, an RCC expert attends on a regular basis the preparatory Governmental meetings, surveying and assisting law makers in carrying out the preliminary competition impact assessment as part of the Regulatory Impact assessment system. If the draft legislation is likely to have an anticompetitive impact as a result of the preliminary competition impact assessment performed by the initiators of draft normative acts, a thorough analysis of proposed public policies is carried out with RCC's support in order to identify alternative and less anti-competitive policies.

3. Setting priorities – key sectors of the economy with outstanding impact on overall population

A productive way of finding where significant barriers to competition exist is by looking at the situation in key sectors of the economy. It is an approach that can help policy makers in developing country governments design a competition policy that meets their needs. Broadly, a sector should be both important to the economy or to consumers, and have characteristics suggesting the possibility of competition problems. The questions address the sector's role in the economy, its importance for consumers, evidence of concern about prices or availability of the sector's products, the record of the sector's past performance, entry barriers and the level of market concentration in the sector.

Competition agencies need to be aware of the combined effect of all government policies that influence the level of competition in markets. Many factors influence the level of competition, and a holistic approach is needed to assess it. Barriers to competition stemming from inappropriate government policies or anti-competitive behavior by firms are common in developing countries. They diminish opportunities for innovation and growth, and make consumers worse off. Markets are often dominated by big business with close ties to government, and more effective competition reduces opportunities for corruption and creates more space for entrepreneurs and SMEs to grow. Competitive public procurement increases the effectiveness of expenditure on publicly provided services, such as education and infrastructure

Even before accession, in 2004, RCC identified 13 key sectors of the economy where preserving fair competition may be considered of outmost importance for Romania's economy and for the benefit of consumers. These sectors have been identified based on the European Union liberalization policies and the Romanian Government economic programme. The sector list was obviously not exhaustive. Other sectors relevant for Romanian economy were included, as the list was reviewed regularly on a yearly basis. Later

on, RCC analyzed these sectors with the help of market studies and sector inquiries. The reports were made public and formulated policy advice on the effects of anti-competitive practices in these key markets.

The findings of these reports were also the starting point of a specific advocacy initiative or of several enforcement actions, or even a combination of both in certain sectors. To illustrate this, I would like to show you a few examples.

4. Banking sector

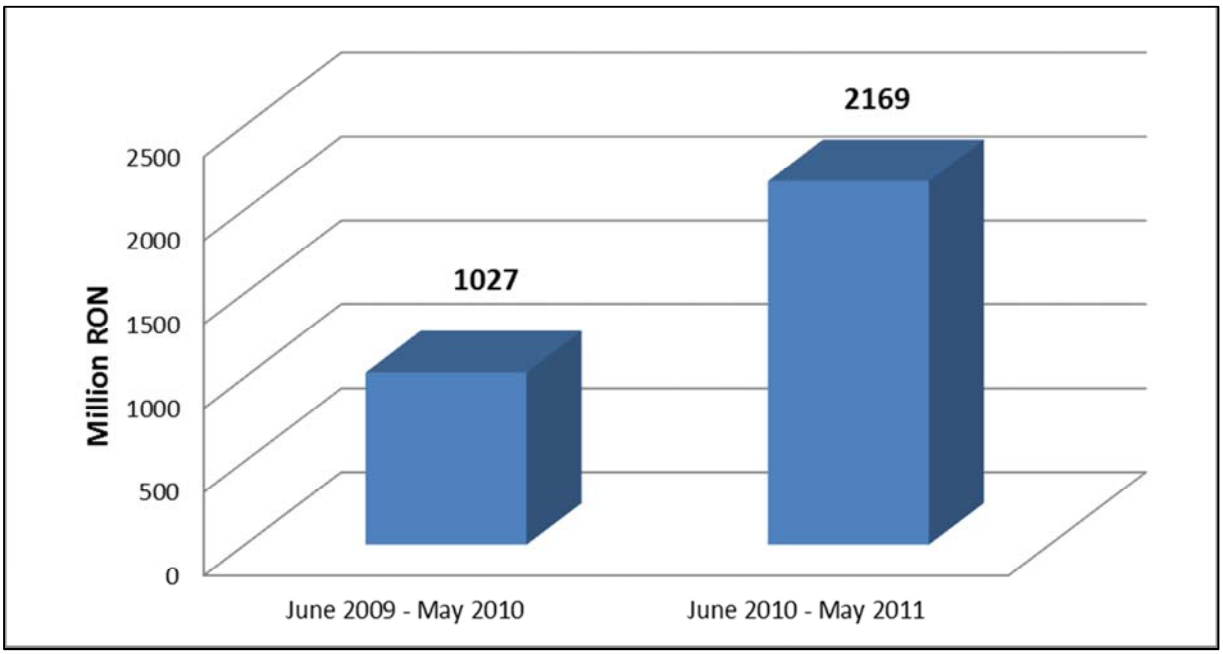
Together with the consumer protection agency, we convinced the government and the Parliament to eliminate the penalty for early reimbursement for all bank consumer loans, ahead of the rest of EU.

RCC proposed to the National Authority for Consumer Protection to extend the elimination/reduction of the early reimbursement fee to all types of consumer loans, including on-going loans. Our proposal was supported by the NAPC and also intensively lobbied to the Parliament and the Romanian Government. Finally, it was implemented via Governmental Ordinance.

The measure has generated increased client mobility, lower switching costs and, implicitly, higher competition on the retail banking market. This allowed consumers to refinance or re-negotiate their loans (see graph to be projected), thus lowering the burden on low-income consumers heavily stricken by the post-2008 financial crisis.

The graph presents a comparison between the cumulated volume of the refinancing loans granted in RON during June 2009 – May 2010 (RON 1,027 million), and the one granted during June 2010 – May 2011 (RON 2,169 million). During 12 months after the adoption of the Ordinance, the total volume of the refinancing loans has doubled compared to the corresponding previous period.

Cumulated volumes of refinancing loans
- before and after Ordinance -



5. Public procurement

Setting public procurement as a priority for our competition authority meant first an internal restructuring process that was finalized in 2010 with the creation of a special unit within RCC (Romanian Competition Council) for the specific purpose of fighting bid rigging in public procurement. An important early goal of the unit was to establish a close working relationship between officials within RCC and key officials within other parts of the Romanian government with attributions in public procurement.

The second step was to conclude Memoranda of Understanding with all governmental bodies in the public procurement sector: the national sector regulator on public procurement (ANRMAP), the National Council for Solving Complaints (CNCS), the Ministry of Finance unit in charge with coordinating and supervising public procurement (UCVAP). A cooperation protocol was also concluded with the National Anticorruption Body.

The provisions of these cooperation protocols instituted a Bid Rigging Module, a working tool designed to ensure rapid and efficient exchanges of information between experts of the above mentioned institutions. The Romanian Court of Accounts is also involved in the activities of the Module. The Module is coordinated by the RCC.

One important initiative taken by RCC in order to increase the awareness of collusion in public procurement consisted in sending official letters signed by the president of RCC to all contracting authorities with the purpose of disseminating the Guidelines for Fighting Bid Rigging which were approved by the OECD Competition Committee in February 2009. The main objective followed by RCC with that occasion was to get procurement officials more engaged in detecting bid rigging, to help them better understand what evidence to look for, and what steps they might take to prevent bid rigging from occurring. The key message RCC sent through this dissemination activity was that contracting authorities should watch for anticompetitive practices such as collusive tendering and any evidence of suspected collusion in tendering should be brought to the attention of RCC. The Checklist is now placed on RCC's website portal.

An additional notable example of successful advocacy initiatives of the RCC is the introduction by the National Authority for Monitoring Public Procurement, in 2010, of the mandatory Certificate of Independent Bid Determination, at the proposal of the RCC.

All these measures increased by three times the number of investigations on anticompetitive agreements in public tenders launched by RCC in 2011 and 2012 relative to 2009. Also, the cooperation with the National Anticorruption Body brought in 2011 the first big investigation of RCC alleging suspected bid rigging in public procurement, which was concluded two weeks ago, with fines totaling approx. EUR 5.6 million.

6. Liberal professions

We are involved in a fight to keep liberal professions open: we have fined self-regulatory bodies of dental technicians (2008), accountants (2010) and bailiffs (2012) for establishing barriers to entry and/or minimum prices, and are fighting in Parliament to liberalise the notary profession, and to oppose re-regulation of cab drivers.

Successful advocacy interventions were made also in other areas of the liberal professions: minimum and/or maximum fee limits were eliminated for accountants, architects, lawyers, veterinarians and geodesists; geographical and demographic barriers to entry were removed in the case of dentists and should be removed soon for pharmacists;

Current competition issues in the notary profession: fixed minimum fees, demographic barriers to entry and advertising restrictions. To address some of these issues, the Competition Council signed a Memorandum with the Ministry of Justice and the respective professional body (UNNPR) that sets up a pilot project. The goal of the project is to eliminate regulatory interventions on fees for a certain part of notary procedures, for a set period of time. At the end of the respective time period, the three institutions will make an analysis of the effects of the project on the market and decide on future steps to deregulate the notary profession. The legislative act that creates the framework for the project comes into force in January 1st, 2013.

As a result of our intervention, minimum tariff levels for taxi services were eliminated in 2007. In 2012 a draft law on public transportation, including taxi services, was presented to the Parliament, which proposes to re-regulate the sector either by reinstating minimum tariff levels or by setting fixed tariffs. Our opinion in this respect that was sent to the Parliament clearly stated that setting fixed or minimum tariff levels for taxi services, with the consultation of professional taxi associations can only have an anticompetitive effect, by facilitating cartelization in the market.

7. Food retail sector

In an increasingly competitive economic environment, trade relations between producers active in the food industry, distributors and consumers are evolving by means of complex models. Against this background, sector inquiries have been launched by RCC to give a comprehensive image over the food sector while entailing to study the market mechanism. One example is offered by the sector inquiry into the milk market.

RCC published the Final Report of its sector inquiry in the milk sector in February 2011. RCC had launched the sector inquiry in February 2009, aimed at analyzing the market structure in the milk sector (supply and demand), the specific market mechanisms (i.e. quota mechanism, state intervention), the participants' behavior and the competition level on the market. The objectives pursued were set in order to identify the factors that influence milk price composition/formation on this market, as well as the economic conditions having the potential to distort competition.

In the sector inquiry report, specific aspects of the milk production sector in Romania were presented to illustrate the fragmentation of producers (Romania has the largest number of cow milk sites in Europe), the large share of family sites (about 90% of all sites comprise only 1 or 2 cows), the seasonality of the milk production collected for processing (with higher values during the summer time and with approx. 30% lower during the winter time) and the milk quota allocated to direct sales to consumers, which is higher than that allocated to deliveries to collectors or processors.

Due to the structure of the Romanian farms, the national milk production is divided as follows: 40% for own consumption, 36% for direct sale and 22% for processing. Specifically, the production fragmentation leads to a lower bargaining power of farmers, who are forced to accept the price offered by processors. According to the Report, two aspects strengthen the asymmetry in the bargaining power: the raw milk, as a perishable product, with limited possibility of stocking and the production quota system that limits the potential number of undertakings (processors, independent buyers, etc) that could be approved by the Agency for Payments and Interventions in Agriculture. The conclusions of the Sector Inquiry Report reflect the impact of the EU agricultural policy on the functioning of the milk sector in Romania. Subsequently, the report concludes on the relevant factors having an impact on the sector, i.e. the asymmetry of the bargaining power among parties, the role of contracts and the price transparency.

As regards the asymmetry on bargaining power, the report highlights the difference existing between Romania and other EU member states, where milk producers are also in many cases shareholders in

processors' firms, being vertically integrated. This situation largely avoids conflict among producers and processors. In Romania, this structure is difficult to implement as the processors are private companies having a sole or controlling shareholder.

The issue of imbalances of bargaining power is subject to discussions at EU level. In this context, the Report recalls that in the framework of the ECN Joint Working on Milk, the national competition authorities have not opposed to the adoption of codes of conduct / best practices by undertakings in the milk sector. Such codes could provide certain technical criteria for the conclusion of contracts between producers and buyers/processors, but they should not lead to the standardization of the content of the contracts, thereby limiting the freedom of contract, nor constitute an additional barrier for the free negotiation between parties. In its assessment of the price transparency, a high degree of price transparency may lead to price alignment at the lowest level (reference price), having anticompetitive effects in the detriment of producers.

The recommendations made in the Sector Inquiry report refer to the legislative framework (in order to complement the national law on the types of associations in the agricultural sector with national competition rules applicable to this sector), market mechanisms (i.e. milk quota, milk traceability and state intervention) and correction of the asymmetry on bargaining power (i.e. framework contract).

8. Conclusions

Having a good law is not enough. The introduction of a competition law needs appropriate supporting policies, and effective enforcement. Governments must show support for market economies and must recognize adequately the impact of other legislation and regulations on competition. To be fully effective, a competition policy must be supported by a „culture of competition", where the objectives of competition are widely understood and form a natural part of the background to decisions by government, firms and consumers. Civil society and a vigorous consumer movement in particular, can play a constructive and valuable role in the development of a culture of competition. Vested interests that oppose reforms and fair competition have to be overcome. An open media and an informed judiciary are needed if competition policy and law are to be fully effective. Above all, politicians must be committed to wanting to make markets work well, to ensuring that the government's responsibilities to markets are well understood and to help build the technical capacity needed for this task.

RUSSIAN FEDERATION

Introduction

The official statistics data evidence that the poverty is being gradually reduced in Russia. According to the preliminary results of the research, carried out by the Russian Federal State Statistics Service, the poverty level in Russia in 2011 constituted 12, 8% of the total number of population. In 2010 this figure was 12, 6%. However, in 2011 the level of Russian citizens with the lowest income was 5, 2%, in comparison to 6% in 1992. Preliminary statistics data shows that the average salary in January 2012 was 23 500 Rubles which is 13, 5% higher than the salary in January 2011.

The statistics demonstrates that the poor are mainly people of working age (in 2011 this category amounted to 63, 5% to the total number of poor people), which is 60 years for men and 55 years for women (while the average life expectancy at birth in 2011 was 64.04 years for men and 75.61 years for women)[1]. The figure 63, 5% shows that this percentage of population could contribute to developing business and economics in Russia. Should there be working places, people could work and earn shifting from the lower social layer to the higher one.

In the Russian legislation there is no official definition of "poverty", the notion close to it is an "economically disadvantaged person (people)", whose average income is less than a minimum subsistence line[2]. The law defines "minimum subsistence line" as a monetary measure of the consumer (subsistence) basket (hereinafter "CB"), as well as mandatory payments and contributions. The volume and composition of the CB is set forth by respective normative legal acts that are reviewed on a periodic basis (every 5 years). The CB foresees a certain amount of goods and services that are necessary for a person with a relatively average income. Should the income be less than the CB, the person is considered as poor and becomes entitled to the help from the state[3].

1. FAS Russia and poverty reduction

A number of reforms, aiming at improving social, economic and political situation, with particular emphasis on the socially beneficial effect thereof, have recently been carried out in Russia. The poverty reduction issue has been addressed there within. Starting from the year 2000 up to the present moment the problem of fighting poverty is one of the key issues addressed by the President of the Russian Federation to the Federal Assembly[4]. The Federal Assembly is a legislative body, which is to take the poverty-related issues into consideration every time when it initiates or drafts a law. The poverty reduction policy is,

1 In the year 2000 these figures were 59.03 and 72.26 respectively, and in the year 2005 58.92 years and 72.47 years respectively.

2 The official data state that in 2011 it was 6369, in 2010, 2009 and 2008 – 5688, 5153, 4593 respectively.

3 The CB, *inter alia*, lists certain categories of goods vitally important for a person. Thus, a level of the poor could be measured on the basis whether a person is able to provide himself or herself at least with this minimum list of products (though this poverty-measurement is rather comparative). The aforementioned categories contain, *inter alia*, goods that are enlisted in the Governmental Regulation N 530 of July 5, 2010.

4 The texts are available at the official web-site www.kremlin.ru/transcripts

therefore, implemented nationwide and on all levels of public authorities. This top-priority objective is directly or indirectly set before them. Therefore, the whole state authority system, including the FAS Russia, as a federal executive authority, conducts their activities within the avenue of social welfare.

The FAS Russia, as an authority responsible for competition policy and law enforcement, is authorized to exercise control and monitor such vitally important spheres as agriculture, trading activity, social sphere, public procurement placement, fuel sector, transport and communication, power and energy, unfair competition, financial markets, and etc. Moreover, the FAS Russia is empowered to fight against cartels, as one of the most socially and economically damaging evil, and has successfully conducted a certain number of investigations, which influenced the markets to a certain degree.

By means of exercising control, the FAS Russia is involved into the process of creating a more competitive, thus, healthy, social and economic environment, with indirect impact on the poverty reduction.

This impact is more evident on the market of food products. As one of the state authorities in charge, the FAS Russia monitors product markets and respective price situations, from the healthy competition environment point of view, for socially important goods[5] and other price situation on the consumer market of food products, *inter alia*, milk and dairy products market. Along with other state authorities the FAS Russia takes timely necessary measures to keep under control sharp prices fluctuations, *inter alia*, for raw milk and dairy products, in the agricultural sector and takes additional measures to stabilize the consumer prices. The results of monitoring are reported to the Government on a regular basis[6].

Making the food products available for a larger number for people, and reducing the ratio of the amount of money spent on them to the total amount of income left for other goods and services might be illustrative of the poverty level reduction.

2. Cases considered by the FAS Russia

As it was mentioned above, trade activity is another sphere of the FAS Russia controlling expertise.

In 2010 a special regulation of trade activity was implemented – the Federal Law of December 28, 2009 № 381- FZ «On the basic principles of state regulation of trading activities in the Russian Federation» was adopted.

Under this Law, it is prohibited to include into the price of contracts on supply of goods to a trade net the following: any type of remuneration for execution by the trade network of any other condition apart from the admissible ones; conditions on the supplier performance of actions or services to promote goods (advertising services, marketing and other services) and coercion of the supplier to conclude such contracts so as to conclude sale-and-delivery contracts, responsibility to place (submit) information on conditions for eligibility of a counterparty to conclude a sale-and-delivery contract and terms of such contracts.

The Law also contains antimonopoly rules and list of prohibited actions, 25% - rule (restrictions on acquisition and lease of trading sales premises), and sets forth antimonopoly requirements to public authorities.

The above mentioned might have direct or indirect impact on reduction of poverty, since trade activity of the socially important goods, enlisted in the aforementioned Governmental Regulation, falls under the regulation of the FAS Russia.

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5 They are enlisted in the Governmental Regulation N 530 of July 5, 2010

6 Usually, on a monthly or quarterly basis.

Thus, within its powers the FAS Russia conducted investigations concerning, *inter alia*, very important fish and dairy products markets.

- **Fish cartel case**

  The FAS Russia, as it was mentioned *supra,* is empowered to conduct anti-cartel investigations. Currently, it considers three different cartel cases concerning fish markets. The alleged cartels have lead to establishing excessive prices for certain types of fish (i.e. Pollock, salmon, pangasius)[7]. The frozen whole fish is included into the list of socially important food products. Therefore, fighting cartels on these markets and making the price come down will make fish available to a larger number of people, including the poor.

- **Juice and dairy market**

  Supervision of a transaction on the market of such socially important food product as milk contributed to competition development on the market, and beneficial price situation for consumers.

  The FAS Russia approved the submission of PepsiCo on acquisition of 100% of shares of Wimm-Bill-Dann Foods OJSC, since the transaction in question was of significant importance for foreign investments into development of production of juice and dairy products which is socially important. The transaction was approved, however, subject to certain structural and behavioral remedies.

Controlling the fuel sector is within the scope of responsibility of the FAS Russia. The price for certain goods and services is formed with the fuel price taken into account. The FAS Russia monitors the oil and petroleum products prices, and takes necessary measures, should the situation require it. During the period from 2008 to 2011 the FAS Russia initiated three series of cases against the biggest oil companies (Lukoil OJSC, Gazprom Neft OJSC, TNK –BP Holding OJSC and Rosneft OJSC).

The violations were the following: fixation of monopolistically high prices for oil products, creation of discriminatory conditions for Russian wholesale oil market, fixation of groundlessly different prices for oil products, exemption of goods out of circulation**.**

The fact of collective dominance was found during the case consideration. The Russian territory was recognized as geographic market boundaries. The decisions of the FAS Russia were upheld in all the court instances, *inter alia* in the Supreme Commercial Court of Russia.

Public procurement placement is another sphere of relations which is under control of the FAS Russia. Public procurement allows procuring entities to procure services and goods of the best quality at the lowest price. This mechanism is an effective measure to support the poor who enjoy the state help.

One of the great achievements in this field is introduction of electronic auctions. For this purpose 5 sites (electronic platforms) were created. It also presumes free participation for all the participants except for the winner; information is placed uniformly, the search system is universal. Electronic platforms bear administrative liability. The economy of budget funds for the period 2006-2011 amounted to more than 1 trln. 448 bln. rubles. (more than 36 bln. Euro).

Another sphere being socially and economically important is natural monopolies:

Cargo Railway transport is important in particular. On 5th October 2012 “Russian Railways” OJSC issued No. 16 676 telegram that restricted the volume of shipments and approvals of consignors’

[7] More detailed information is available at the official web-site of the FAS Russia www.fas.gov.ru

applications for freightage. The telegram abolished continuous planning of freightage provided for Article 11 of the Railway Transport Statues of the Russian Federation, and determined the procedures for monthly transportation plans. Such actions of "Russian Railways" OJSC prevented access of consignors, including fuel-and-energy companies, which make shipments upon the results of "exchange trading" rather than according to monthly planning, to the services of natural monopoly – freightage by railway transport. The company also did not take into account the interests of small and medium consignors (shipping agents, plants, factories producing finished products rather than raw materials, etc.) that make the so-called "just-in-time" shipments and typically have a shipping schedule for no more than two weeks ahead – solely depending on the received payments. "Russian Railways" OJSC executed the FAS Russia warning and on 14th January 2012 issued No. 379 telegram to abolish No. 16 676 telegram of 5th October 2012.

Undeniably, developed communications is one of the crucially important factors for effective business activity, from the socially and economic points of view, in such a geographically great country as Russia.

In 2010, the FAS Russia along with other antimonopoly bodies of the CIS members-states started investigations on the markets of roaming services. The investigations were completed in October 2010; on the basis of the findings the FAS Russia found that "the big three" of mobile operators MTS OJSC, VympelCom OJSC, and MegaFon OJSC abused their market dominance.

As for the cases investigated by the FAS Russia, Russian operators reduced their rates in December 2010 by two - four times. In 2012 prices continued going down but without involvement of the antimonopoly bodies.

The problems of telecommunications with use of roaming in the CIS and the countries of Europe are regulated to a greater degree. For other regions, however, additional coordination of the efforts of the antimonopoly bodies is required. Therefore, in June 2012 the FAS Russia and the Turkish Competition Authority discussed the possibility of forming the International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming), the first session of which was held on September 12, 2012, within the framework of the Russian Competition Day. The Working Group will continue its operations in 2013.

3. Competition advocacy and poverty

Apart from fighting poverty by regulating the objects, the FAS Russia is putting much effort into developing of entrepreneurship on different social levels through, *inter alia*, competition advocacy, which is gained through the following.

Transparency and openness of the FAS Russia activity are guaranteed.[8] There are Public Consultations Council and Experts Councils for key markets functioning under the FAS Russia. The FAS Russia is presented in social media and successfully leads fruitful dialogues with individuals.

4. Antimonopoly legislation development

The FAS Russia develops and improves the legislation: the third antimonopoly package of amendments was introduced in January 2012[9].

8 Pursuant the Federal Law on Protection of Competition the FAS Russia: i) submits to the Government of the Russian Federation an annual report on the competition situation in Russia and places it on the official web-site www.fas.gov.ru; ii) places Decisions and Instructions on cases on the antimonopoly legislation violation and Decisions on submissions.

9 Legislation development: 2006 – 2010: new stage of the antimonopoly legislation development

Moreover there are two general competition documents of significant importance: the Program on Competition Development in Russia, which was approved by the Ordinance of the Government of the Russian Federation № 691-r of May 19, 2009, and the Road map "Competition Development and Improvement of Antimonopoly Policy", foreseeing, *inter alia*, Elaboration of Proposals Concerning Actions, Aimed at Competition Development, which was approved by the Ordinance of the Government of the Russian Federation № 2579-r of December 2012.

The Program sets the priorities and principal avenues of activity of the competition policy applied in Russia up to the year 2015. The Plan on measures to realize the Program on Competition Development in Russian for years 2009-2015, *inter alia*, includes: general measures for reaction of administrative barriers, measures on antimonopoly regulation, measures for development of competition policy in regions, measures for development of competition mechanisms or tariff and non-tariff regulation, measures on development of small and medium enterprises.

As to the Road Map, the competition development presumes not only the whole system activities, but rather sectoral regulation, which also requires dynamic step-by-step approach and regular update of sectors requiring both competition development and key sectoral actions. The Road Map defines the top-priority actions aimed at competition development in certain sectoral markets", which implementation will allow to improve the quality of life of the Russian citizens within a short period of time. The elaborated measures encompass the pharmaceuticals market, market of medical services, aviation carriage, communication services, preschool education services, petroleum products. The Road Map sets forth a principle of stirring to activity of competition development, which provides for drawing a list of top-priority sectors and systematic activities on a regular basis.

5. "Pro-poor" interventions versus Competition

The Russian competition authority, as an authority responsible for competition policy and law enforcement, is authorized to exercise control and monitor such vitally important spheres as agriculture, trading activity, social sphere, public procurement placement, fuel sector, transport and communication, power and energy, unfair competition, financial markets, and etc.

FAS Russia monitors prices for some commodities of social importance. The results of this monitoring can be the subject to antitrust investigation and detection of violation of the Law on Protection of Competition. In particular, cases on abuse of dominant position by means of excessive pricing, discriminatory pricing, and also cases on uncompetitive agreements on price fixing were detected. The violations of the law "On Trade" were also detected.

Sometimes cases can be opened against food products producers, more often against resellers, sometimes against trade associations. More and more frequent the activity of large trade networks on retail markets becomes the subject of the competition authorities' attention in a many jurisdictions.

2006: the *«first antimonopoly package» ;* 2009: the *«second antimonopoly package» ;* 2011: the *«third antimonopoly package»;* Requirements for anticompetitive agreements and concerted practices ("cp") were set forth, criteria of the monopolistically high prices were specified. The Russian Government determines rules for non-discriminatory access to the infrastructural objects of trade markets of monopolies. The cartel notion was introduced for the first time. CPs were decriminalized. Antimonopoly bodies are entitled to send warnings to undertakings. Mitigating and aggravating circumstances were introduced into the CoAV.

The actions of authorities should be clear, effective and adequate to changing situation. This is of high importance in unstable, sometimes crisis, economic conditions. One of such actions can be a regulation of prices. At the same time for our understanding the following mandatory conditions should be met:

- price regulation may be implemented for a limited period of time;
- during this limited period of time the necessary measures aimed at promotion of competition in the relevant market should be prepared.

In accordance with the law "On Trade" adopted in 2009, if during 30 calendar days a growth of retail prices for socially important commodities exceeds 30 per cents per month, the Russian Government has a right to establish a regulated prices for the period that doesn't exceed 90 calendar days. There has been no case on introducing of a price regulation in accordance with the law "On trade" so far.

It should be highlighted that it is very important to develop market infrastructure.

In addition to exercising control, the FAS Russia, in frames of state policy, is involved into the process of creating a more competitive environment. As a result, a more healthy, social and economic environment with an indirect impact on the poverty reduction is created.

One example. In accordance with the Russian Government's decision, which is drafted by the Ministry of Agriculture and the FAS Russia, grain interventions to the market are performed. This take place in case an extraordinarily high grain demand and/or low grain production. The grain is at the beginning of almost all food production chains. So, this measure allows making grain and food prices stable and a situation in the domestic market sustainable.

The very important thing is that the grains interventions are carried via exchange. A seller of grain is the state owned company which operates state grain reserve. Buyers are food producers. From the end of 2012 to the beginning of 2013 on such a manner it has been sold around 2 mln. tons of grain at an exchange.

Another example. The FAS Russia initiated introducing of a united system of public procurement for federal, regional and municipal needs in the form of competitive electronic auctions. So, in 2012 the total sum of contracts for small and medium enterprises was more than 5 billion euros. It allows supporting small and medium enterprises and also improving a social and economic situation in the country. So, it should be highlighted once more that it is very important to develop market infrastructure.

6. Conclusion remarks

Though the FAS Russia is not directly involved into poverty reduction process, *i.e.* it protects competition, and the powers it is vested with do not explicitly stipulate fighting against poverty or carrying out other poverty-related issues; the activity of the FAS Russia has certain impact on creating better social and economic environment for the consumers, and the poor are among them, and for the economic entities, which through competition might provide the former with better goods at the lowest price, and not abuse their market power and set excessive prices for goods and services necessary for people with relatively small income.

Therefore, the FAS Russia activity is aimed at developing competition, which contributes to the existence of more market players, i.e., including, more working places for people. Competition is a fight for the consumer who should have a choice, and can make it within the price range from the at the lowest price ones to the highest, but always of a decent quality. The principle of fair price shall be fair for all social levels.

The FAS Russia is still under the process of launching and elaborating the statistics on the effects of its actions for the population and the economic situation. Having launched, the aforementioned data accumulating and processing, it will be more evident what impact competition has on the poverty reduction.

SÉNÉGAL [*]

--Version française --

Selon l'usage le plus courant, la pauvreté caractérise la situation d'un individu qui ne dispose pas des ressources réputées suffisantes pour vivre dignement dans une société et son contexte. Il s'agit de l'insuffisance de ressources matérielles affectant la nourriture, l'accès à l'eau potable et à la santé, les vêtements, le logement ou les conditions de vie en général. Il s'agit également de l'insuffisance de ressources intangibles telles que l'accès à l'éducation, l'exercice d'une activité valorisante, le respect reçu des autres citoyens ou encore le développement personnel.

En 1990, la Banque mondiale fixait le seuil de pauvreté absolue à 1 dollar (1$) par jour et par personne. Depuis 1997, le programme des Nations-Unies pour le Développement (PNUD) évalue la pauvreté à l'aide d'un indice composite variable selon qu'il s'applique aux pays en développement (PED) ou aux pays industrialisés. A titre d'exemple, dans les PED, il est tenu compte de l'espérance de vie, du taux d'analphabétisme des adultes, des personnes privées de l'accès aux services de santé et à l'eau potable, du taux de malnutrition des enfants.

Au Sénégal, pour définir la pauvreté, des critères monétaires et non monétaires ont été alignés.

La part de la population vivant en dessous du seuil de pauvreté est passée de 67,9 % en 1996-1999 à 57,1% en 2001-2002.

Le seuil de pauvreté stratifié atteint 1053 FCFA, 798 FCFA et 598 FCFA en 2011, respectivement dans l'agglomération de Dakar, les autres centres urbains et le milieu rural. De 2001/2002 à 2010/2011, il a connu une hausse respective de 19,8%, 11,9% et 20,1%. Cette évolution incorpore le niveau de l'inflation mesuré par l'indice (synthétique) harmonisé des prix à la consommation. Les facteurs de l'évolution des prix s'expliquent par le cours mondial (inflation importée), la politique économique en cours au niveau national (notamment politique budgétaire et monétaire) et la politique concurrentielle ou imposée sur les prix des biens et services. Dans le même temps, l'incidence de la pauvreté au niveau national a lentement baissé en passant de 55,2 % en 2001/2002 à 46,7 % avec une augmentation du nombre de pauvres depuis ces cinq (5) dernières années.

L'indicateur de pauvreté retenu est un agrégat de consommation qui inclut des dépenses alimentaires, non alimentaires et l'autoconsommation.

Le panier de référence est composé des 26 biens les plus consommés représentant 80 % des dépenses totales des ménages. Chaque bien est représenté dans le panier en proportion de sa part dans les dépenses totales, en quantités telles que le panier procure au total 2400 K calories (2400 Kcal) par jour et par équivalant adulte.

Du point de vue subjectif, la pauvreté est perçue comme «l'absence d'avoir, de savoir et de pouvoir ». Les populations interrogées dans le cadre de l'enquête sur les ménages effectuée en 2001-2002, définissent

[*] Contribution soumise par le Président de la Commission de la concurrence du Sénégal.

l'extrême pauvreté comme la situation d'une personne « qui n'a rien, qui ne peut régler ses besoins sociaux primaires, qui vit sans accès à des opportunités ». C'est, en d'autres termes, la traduction du langage wolof selon lequel « le pauvre est celui qui existe mais qui dénué de tout. Celui qui vit mais qui est dénué de tout.» Ces mots font écho à ceux de Rutebeuf « De mon avoir, ne sais la somme car je n'ai rien».

Mais quelles sont les causes de la pauvreté ? Elles sont nombreuses (guerre, calamités naturelles, incapacité physique, chômage…). Au Sénégal, à titre indicatif, on retient :

- la taille importante des ménages qui influe sur le niveau de consommation. (Comp. avec le proverbe brésilien : «la table du pauvre est maigre mais le lit de la misère est fécond»)

- les faibles revenus, en particulier des ménages dont le chef n'a pas un niveau d'éducation élevé (rappel : indice PNUD)

- le niveau élevé du sous-emploi.

L'on pourrait ajouter l'environnement socioculturel avec les mécanismes socioculturels générateurs de pauvreté intervenant aussi bien en milieu urbain que rural (modèles de consommation extravertis et non adaptés aux revenus des ménages, comportements ostentatoires comme les gaspillages dans les cérémonies familiales et les nombreuses fêtes familiales et religieuses, la forte hiérarchisation traditionnelle des structures qui réduit l'égalité des chances y compris chez les femmes (rem : même si la pauvreté touche de manière générale plus les femmes que les hommes, l'incidence de la pauvreté est plus faible parmi les ménages dirigés par les femmes), la tolérance sociale de la mendicité qui génère des comportements d'assistés, l'ajustement structurel …

Une chose est de définir la pauvreté et d'en déterminer les causes, une autre est de trouver les moyens de l'éradiquer ou de la réduire.

Comme dans tous les pays pauvres très endettés (PPTE), au Sénégal, la politique de lutte contre la pauvreté est le cadre de référence des politiques publiques. Elle trouve son expression la plus complète dans le document stratégique de réduction de la pauvreté (DSRP) établi en 2003-2005 et réactualisé en 2011 pour devenir, actuellement, la Stratégie nationale de développement économique et social (S.N.D.E.S).

Mais, jusqu'à aujourd'hui, la proportion de la population pauvre, surtout en milieu rural, demeure élevée. Or, pour atteindre les Objectifs du Millénaire pour le Développement (OMD), notamment celui de réduction de la pauvreté, ou, au moins, pour s'en rapprocher ou tendre vers elle, les différentes politiques publiques, avec à leur centre, celle de concurrence pour en assurer la cohérence, doivent être associées. Il faut dire que si la politique de concurrence et, avec elle, ses instruments que sont le droit de la concurrence et la sensibilisation pour l'instauration d'une véritable culture de la concurrence, ne sont pas, en eux-mêmes, suffisants pour réduire la pauvreté, celle-ci ayant des causes multiples, ils peuvent, cependant, contribuer à la réduire. Cette affirmation ne résulte pas seulement d'une conception théorique de la concurrence (1-1) mais aussi d'observations qui, pour n'être qu'empiriques dans nos sociétés où la politique de concurrence cherche encore ses marques, révèlent un impact négatif que l'absence de concurrence a sur la pauvreté (2.1) mais, également, quelques opportunités qui s'offrent aux plus démunis grâce à la concurrence (2.2). Les développements suivants vont porter sur l'ensemble de ces questions sans oublier les réserves légitimes sur l'effet de la concurrence dans la lutte contre la réduction de la pauvreté. (1-2) Après, il y'aura de quoi, dans une partie conclusive, pour justifier la nécessité d'une bonne politique de concurrence dans la lutte contre la pauvreté. (3)

1. L'effet de la concurrence dans la lutte contre la réduction de la pauvreté

D'un point de vue théorique, la concurrence est un instrument qui contribue à la réduction de la pauvreté (1.1). Cependant, cet aspect positif n'est pas, pour certains, attesté dans la réalité (1.2).

1.1 L'effet positif de la concurrence dans la lutte contre la réduction de la pauvreté

La concurrence telle qu'enseignée dans la théorie économique permet aux consommateurs d'obtenir les biens et services à un prix faible qui permet de rémunérer les facteurs de production des entreprises sans nuire à leur objectif de rentabilité. En effet, dans un marché parfaitement concurrentiel, le prix se fixe au niveau du coût marginal et il n'y a pas de surprofit. En cela, elle est bien une arme contre la pauvreté puisqu'elle permet aux agents économiques d'accéder aux ressources au meilleur prix. De plus, chaque entreprise, dans un marché de concurrence, cherche à minimiser ses coûts. La concurrence favorise le progrès technique, l'innovation et l'efficience et milite ainsi en faveur du non gaspillage des ressources.

Cependant, la concurrence pure et parfaite, terme générique, n'est pas réalisable dans le monde réel. Les axiomes sous-jacents ne sont jamais entièrement vérifiés. Néanmoins, ce modèle sert de cadre de référence pour l'analyse des marchés, notamment la concurrence monopolistique et les marchés d'oligopole qui se présentent souvent sous forme de fusion ou concentration pour l'intérêt des producteurs et au détriment des consommateurs. C'est ce qui justifie le droit de la concurrence pour préserver l'intérêt des consommateurs mais aussi des producteurs

Si le droit de la concurrence ainsi que le plaidoyer en faveur de la concurrence sont des instruments pour favoriser un environnement proche de la concurrence en favorisant l'atomicité du marché, c'est-à-dire la levée des barrières à l'entrée sur un marché de façon à motiver la création d'entreprises, l'établissement d'un juste prix qui couvre les coûts de production de sorte à ne nuire à aucun acteur (consommateur ou producteur) du marché, et en décourageant la spéculation, alors, ils peuvent entrainer la réduction de la pauvreté par la création d'emplois et la diminution du pouvoir d'achat par la baisse des prix.

La concurrence est une arme contre la spéculation sur les prix. Il faut aussi savoir que la politique de prix dépend de l'environnement (marché de concurrence ou non) mais également du prix des facteurs de production et de la rareté des ressources. La rareté de certains facteurs de production comme le pétrole détermine très souvent la volatilité du prix de certains produits. Lorsque, du fait de la rareté des ressources, l'offre est inférieure à la demande, on observe une augmentation des prix qui n'est pas due au non respect des règles de la concurrence mais à une augmentation des coûts de production. Dans ce contexte, la concurrence favorise l'innovation et le progrès technique et on peut substituer les techniques de production en cours par des techniques plus efficaces et bénéficier d'économies d'échelle.

1.2 Les réserves apportées quant au rôle de la concurrence dans la réduction de la pauvreté

Selon certains, l'observation de la pratique révèle des résultats mitigés de la concurrence quant aux résultats escomptés sur le bien-être. Si le modèle théorique de la concurrence pure est une situation qui, sans conteste, améliore le bien-être du consommateur sans nuire aux intérêts du producteur, les pratiques imparfaites de la concurrence plutôt observées dans la réalité conduisent très souvent à une perte de bien-être et une «désincitation» quant aux efforts d'investissement, de développement technologique et de création d'emplois. Pour les tenants de cette conception, le concept libéral de poursuite de la liberté individuelle ne pourra pas forcément se traduire, sous l'hypothèse de concurrence, par la prospérité générale.

Il est même soutenu qu'une politique concurrentielle n'est pas une politique pro-pauvre à court terme et que la concurrence, entendue comme mise en œuvre du droit et de la politique de la concurrence ne peut pas entraîner la réduction de la pauvreté. Par définition, le prix du bien (ici, bien mixte du panier au seuil

de la pauvreté monétaire), à l'équilibre de l'offre et de la demande défini dans une situation de concurrence ne peut être atteint par le pauvre. Il manque de moyens pour se payer ce panier de base car il ne dispose pas de revenus nécessaires. Une question taraude les esprits : pourquoi existe-t-ils toujours des pauvres dans les pays développés en dépit des différentes politiques publiques mises en place, y compris celle de concurrence ?

Nonobstant cette conception pessimiste sur le rôle de la concurrence dans la réduction de la pauvreté, force est de constater que dans les pays développés comme dans ceux en développement, l'existence d'une politique de concurrence efficace a rendu accessible à une grande majorité de la population bien des produits, biens et services (transports aériens, télécommunications …). Dans nos jeunes Etats, notamment au Sénégal, deux constats peuvent être faits : l'impact négatif de l'absence de concurrence sur la pauvreté et les opportunités induites par la concurrence dans certains secteurs.

2. L'impact négatif de l'absence de concurrence sur la pauvreté et les opportunités induites par la concurrence dans certains secteurs

2.1 L'impact négatif de l'absence de concurrence sur la pauvreté au Sénégal

Dans beaucoup de secteurs au Sénégal, la concurrence est faible du fait d'une forte concentration, ou de l'inefficacité d'entreprises bénéficiant de protection politique ou juridique, avec comme conséquences des niveaux de prix élevés sur le marché et le maintien de rentes indues.

Comme déjà indiqué, le niveau des prix, qui détermine l'accès aux produits de consommation retenu dans le panier servant à délimiter le seuil de pauvreté au Sénégal est important. Les prix des produits de consommation courante ont connu des hausses élevées ces dernières années non pas seulement du fait de la crise alimentaire mondiale, mais également du fait des dysfonctionnements sur le marché national liés à des pratiques anticoncurrentielles, de monopoles ou d'abus de position dominante.

A titre d'exemples, dans les secteurs de la meunerie, de la cimenterie et d'autres secteurs caractérisés par une forte concentration, le niveau des prix restent encore élevé. Les interventions multiples de l'Etat pour fixer les prix de la farine, du pain et du ciment témoignent des dysfonctionnements sur ces différents segments de marchés. De 2008 à 2011, plus de 700 millions de dollars de subventions directes et indirectes ont été effectuées sur des produits comme le riz, l'huile, le gaz, le lait, le sucre etc. Ces interventions publiques visant à fixer les prix et à subventionner les produits n'ont pas produit les résultats escomptés.

Par ailleurs, malgré l'ouverture du marché des télécommunications, d'importants efforts restent à faire sur l'amélioration de la qualité de service, la portabilité des numéros et l'accès et le développement de services à valeur ajoutée par les PME. Le nombre d'acteurs dans la fourniture d'accès internet s'est considérablement réduit ces dernières années, occasionnant des pertes d'emplois importantes.

En outre, les prix des hydrocarbures sont uniformes sur l'ensemble du territoire et se situent toujours au niveau du prix plafond fixé par l'Etat. C'est d'ailleurs la raison pour laquelle le carburant a été sorti du champ d'application du code des marchés publics en 2011.

Dans le secteur bancaire, les taux d'intérêt se situent encore à des niveaux élevés (plus de 12%). Le financement de l'investissement privé, en particulier des PME-PMI, est ainsi affecté par ces taux d'intérêt élevés appliqués presque uniformément par les banques. Cela impacte également les possibilités de remboursement des populations pauvres souscrivant des prêts de consommation.

Dans le domaine de la distribution des biens, en particulier dans le secteur de la grande distribution, la pression concurrentielle est inexistante. Il s'y ajoute que le commerce de détail de proximité constitue un

enjeu majeur pour les consommateurs qui s'approvisionnement en produits de première nécessité à des prix élevés.

Les marchés publics, qui représentaient 5% du PIB en 2009, constituent une source importante d'opportunités d'affaires pour les entreprises, en particulier les PME. Cependant, les soumissions concertées ou « bid rigging » dont le contrôle n'est pas correctement assuré alourdissent le budget des autorités contractantes et nuisent à l'efficience de la dépense publique.

Enfin, 70% de la population active travaille dans l'agriculture, en milieu rural où l'incidence de la pauvreté est supérieure à 60%. Les marchés agricoles sont confrontés à des difficultés liées à la concurrence, surtout dans les marchés en amont (marchés des fertilisants, des semences) et en aval (industries de transformation des produits agricoles) qui plombent les efforts conjugués des producteurs, de l'Etat et des ONG. En effet, les paysans sont souvent obligés de vendre leurs productions aux entreprises de transformation à des prix bas, ce qui contribue ainsi à la paupérisation du monde rural.

2.2 Les opportunités induites par la concurrence dans la réduction de la pauvreté

Il s'agit, ici, de montrer, par quelques exemples, à titre indicatif, qu'une bonne politique de concurrence, peut contribuer à réduire la pauvreté par la diminution des prix et la création de petits emplois sources de revenus pour des personnes qui n'en avaient pas et qui vivaient dans une précarité absolue :

- certains produits maraîchers sont moins chers selon les endroits
- l'ouverture du marché de l'arachide vis-à-vis de l'extérieur et la concurrence qui s'en est suivie ont contribué à augmenter les revenus des producteurs (les paysans du monde rural qui sont les plus touchés par la pauvreté). Alors que le prix de commercialisation fixé par l'Etat est de 190 F, les paysans ont préféré vendre leur récolte à des étrangers qui leur proposaient un prix plus intéressant, c'est-à-dire de 5 à 10% supérieur au prix officiel
- la concurrence sur le marché monétaire peut faciliter l'accès au microcrédit et ainsi permettre de développer des activités génératrices de revenus au bénéfice de la réduction de la pauvreté. Elle permet, par ailleurs, de faciliter les transferts d'argent. La multiplicité des sociétés de transfert d'argent a eu comme impact la baisse des prix des services de transfert d'argent. Tout récemment, alors que toutes les agences spécialisées dans ce type d'activités s'étaient alignés à 500 F pour tous les frais, la Poste propose dorénavant 200 F pour les frais de transfert d'argent
- la concurrence liée à la demande sur certains produits essentiels de base (huile, sucre, lait en poudre, savon en poudre, etc.) a entraîné l'émergence de nouvelles entreprises individuelles qui ont remplacé la vente des produits précités faite, auparavant, à la cuillère, au verre ou dans de petits sachets en plastique. Ces entreprises du « micro-détail » ont innové en lançant sur le marché, des sachets de 25, 50, 100 grammes plus hygiéniques et à des prix compétitifs. On y trouve aussi des sachets de 100 grammes d'eau distillée plus sécurisant que la vente d'eau à la sauvette de qualité douteuse
- la concurrence effrénée que se livrent les opérateurs de téléphonie mobile (3 au Sénégal) à coup de promotions et d'avantages aux clients a créé des vendeurs à la sauvette qui vendent des cartes de crédit rechargeables.

Certes, il s'agit de petits emplois mais ils peuvent être la source de revenus qui n'existaient pas et de la naissance d'un véritable esprit d'entreprise pour l'émergence d'activés plus innovantes, plus rémunératrices et pourvoyeuses d'emplois.

3. Conclusion

En définitive, au regard de ce qui précède, y'a-t-il un lien entre concurrence et réduction de la pauvreté ? Cette question ne cache-t-elle pas une autre, celle du rapport entre concurrence et développement ? Mais alors, qu'est-ce que le développement ?

La présente étude ne peut avoir pour prétention de donner une réponse à ces questions. Mais, certains constats peuvent en être tirés.

- La concurrence, elle seule, ne semble pas suffire, à première vue, pour réduire la pauvreté puisque celle-ci a des causes diverses qui ne dérivent pas toujours de pratiques anticoncurrentielles. La concurrence peut même être vue comme favorisant les nantis en premier lieu. Pour certains, elle n'est pas profitable à court terme aux pauvres qui ne sont pas, par définition, des employeurs.
- Aussi, le premier réflexe de nos jeunes États ne va pas en faveur de la concurrence. Lorsque les prix des denrées de base augmentent par l'effet de la volatilité des prix des matières premières, ils recourent à des subventions, à la suppression ou à la réduction de taxes. Ce faisant, la hausse est transférée à l'État. Certaines politiques sociales en faveur des pauvres en sont affectées (santé, éducation…).
- Au Sénégal, les nouvelles autorités ont décidé, au coté de « la couverture maladie universelle de base», l'allocation annuelle d'une bourse de sécurité familiale destinée aux familles les plus pauvres. Il est aussi envisagé la création, par l'Union Nationale des Commerçants et Industriels du Sénégal (l'Unacois), de milliers et de milliers de boutiques «Jaapo»*[1] qui, à l'abri de toute spéculation, vendraient au prix le plus bas, les denrées de première nécessité.
- Mais de telles mesures ne devraient pas être exclusives de toute politique de concurrence. En effet, l'absence de concurrence a des effets négatifs sur les prix qui peuvent être maintenus à des niveaux élevés et peut entrainer une stagnation de l'économie au détriment, en premier lieu, des personnes les plus démunies (les pauvres).
- Une action efficace et durable de la concurrence sur les prix et sur l'économie en général ne peut avoir que des effets bénéfiques pour les pauvres si, par l'abaissement des prix, ils peuvent accéder et disposer de produits et services diversifiés et de bonne qualité.
- Ainsi, la concurrence peut contribuer à réduire la pauvreté si elle est considérée comme un facteur de croissance. Or, la réduction de la pauvreté nécessite une croissance forte et durable, créatrice de richesses et d'emplois, ce qui suppose, au préalable, un cadre macroéconomique sain et une gestion saine et transparente des ressources, le tout sous-tendu par une bonne gouvernance économique et judiciaire.
- Dans cette bonne gouvernance économique, la politique de concurrence doit occuper une place centrale et, au besoin, assurer la cohérence des différentes politiques publiques.
- Une telle conception confère aux autorités de concurrence, au travers d'une application effective et efficace du droit de la concurrence et de la sensibilisation constante de toutes les parties prenantes aux bienfaits de la concurrence, un rôle majeur dans la lutte pour la réduction de la pauvreté.

[1] Jaapo : Le terme wolof Jaapo pourrait être traduit par le mot << solidarité>>. Les boutiques Jaapo rappellent les magasins témoins et les boutiques de référence qui n'ont pas eu le succès escompté. Les boutiques <<Jaapo>> réaliseront-elles les espoirs qu'elles font naître ou ne sont-elles qu'un moyen adroit de contourner les règles de concurrence dans le cadre d'une organisation professionnelle élargie ? Seul l'avenir permettra de répondre à ces questions.

SENEGAL [*]

--English version --

Poverty is most commonly defined as the situation of an individual who does not have the resources deemed sufficient to be able to live decently in society and its context. Poverty entails a lack of material assets with regard to food, access to drinking water and health care, clothing, housing and overall living conditions. It also implies a lack of intangible assets such as access to education, engaging in meaningful employment, respect from fellow citizens and personal fulfilment.

In 1990, the World Bank set the absolute poverty line at USD 1 per person per day. Since 1997, the United Nations Development Programme (UNDP) has measured poverty using a composite index that is variable, depending on whether it refers to developing countries or industrialised nations. For example, in developing countries, the index takes into account life expectancy, the adult illiteracy rate, the number of people without access to health care and drinking water, and the child malnutrition rate.

In Senegal, monetary and non-monetary criteria have been aligned in the definition of poverty.

The proportion of the population living below the poverty line fell from 67.9% in 1996-1999 to 57.1% in 2001-2002.

The stratified poverty line stands at XOF 1 053 (West African CFA francs) in the Dakar conurbation, XOF 798 in other urban centres and XOF 598 in rural areas. Between 2001/2002 and 2010/2011 this line rose by 19.8%, 11.9% and 20.1% respectively. This increase factors in the level of inflation measured by the harmonised (composite) index of consumer prices. Price increases are due to world commodity prices (imported inflation), current domestic economic policy (particularly fiscal and monetary policy) and competition policy or policy with regard to the prices of goods and services. At the same time, the country-wide poverty incidence has fallen slightly, from 55.2% in 2001/2002 to 46.7% although there has been an increase in the number of poor Senegalese over the past five years.

The poverty indicator used is a consumption aggregate that includes expenditure on food, non-food items and own consumption.

The market basket measure comprises 26 of the most commonly consumed items that make up 80% of households' total expenditure. Each item is shown in the basket in proportion to its share of total expenditure, in quantities such that the basket provides a total of 2 400 calories (2400 Kcal) per day per adult equivalent.

From a subjective point of view, poverty is perceived as the "lack of assets, knowledge and power". People questioned during the 2001-2002 household survey gave the following definition of absolute poverty: "persons are poor if they have nothing, cannot satisfy their basic social needs, and have no opportunities." This is a translation from the vernacular Wolof which describes a person living in poverty

[*] Contribution submitted by the Chairman of Senegal's Competition Authority (*Commission de la concurrence*).

as, “someone who is alive but lacks everything”. A similar idea is found in another native language, Rutebeuf, with the proverb, “I cannot count all I own since I have nothing”.

But what are the causes of poverty? There are many (war, natural disasters, physical disability, unemployment, etc.). In Senegal, the main factors are:

- the large size of households, which affects the level of consumption. A Brazilian proverb seems particularly apposite in this respect: “The poor man’s table is bare, but his bed is fertile”;
- low incomes, particularly among heads of households with low education levels (see UNDP index);
- the high level of under-employment.

Also, poverty-generating sociocultural mechanisms are active in both the rural and urban sectors. These include extrovert consumption patterns that are inconsistent with household incomes, ostentatious behaviour such as extravagant family ceremonies and the many family and religious festivals, the traditionally rigid hierarchical structuring of institutions that hampers equal opportunities, including for women (while poverty tends to affect women more than men, the poverty incidence is lower in households run by women), social tolerance of begging that generates a hand-out culture, structural adjustments, etc.

It is one thing to define poverty and establish its causes; it is another to find ways of eliminating or alleviating it.

In Senegal, as in all Heavily Indebted Poor Countries (HIPCs), the fight against poverty is the framework for government policy. This is most comprehensively expressed in the Poverty Reduction Strategy Paper (PRSP) prepared in 2003-2005 and updated in 2011, and which has become the current National Strategy for Economic and Social Development (SNDES).

However, there is still a significant proportion of the population living in poverty today, particularly in rural areas. But to attain the Millennium Development Goals (MDGs), especially the alleviation of poverty – or at least to work towards it – public policies need to be combined and coherent with competition policy at the core. Admittedly, since poverty has many causes, competition policy and its related instruments of competition law and greater awareness to build a truly competitive culture cannot reduce poverty on their own. Nonetheless, they can help alleviate it. This statement is not just the result of a theoretical approach to competition (1.1) but is based on observations which, although grounded on evidence from our societies where competition policy is still in its infancy, show that the absence of competition tends to aggravate poverty (2.1). They also indicate that competition can open up opportunities for the poorest members of the population (2.2). The following discussion will consider all these issues while keeping in mind the legitimate reservations as to competition’s effect in the fight against poverty (1.2). The conclusions will then set out the need for an effective competition policy as part of the approach to combating poverty (3).

1. The effect of competition in combating poverty

From a theoretical standpoint, competition is a mechanism that helps alleviate poverty (1.1). However, in the view of some, this positive effect is not always borne out in reality (1.2).

1.1 The positive effect of competition in combating poverty

Competition, as taught by economic theory, enables consumers to buy goods and services at a low cost which can then remunerate enterprises for their factors of production without detracting from their

goal of profitability. Indeed, in a perfectly competitive market, prices are set at the marginal cost level and there are no excess profits. In this case, competition is an effective weapon in the fight against poverty because it enables economic operators to access resources at the optimum price. Furthermore, each enterprise in a competitive market strives to minimise its costs. Competition fosters technical progress, innovation and efficiency and works to prevent resources being wasted.

However, pure and perfect competition, as a general term, is not feasible in the real world. The underlying premises can never be fully verified. Nevertheless, this model does serve as a framework for analysing markets, particularly monopolistic competition and oligopoly markets which often take the form of mergers or concentrations which put the interests of producers ahead of those of consumers. It is precisely such circumstances that justify the use of competition law to protect consumers' interests but those of producers as well.

While competition law and arguments in favour of competition are mechanisms for promoting a competition-friendly environment by fostering an atomised market, *i.e.* removing market-entry barriers to encourage the creation of companies, and setting a fair price which covers production costs to the detriment of no economic stakeholder (consumers or producers), and by discouraging speculation, then they can contribute to alleviating poverty by creating jobs and boosting purchasing power through lower prices.

Competition is a weapon against price speculation. It must also be kept in mind that pricing policy is dictated by the environment (competitive market or not) as well as the price of the factors of production and the scarcity of resources. The scarcity of some of those factors, such as oil, is frequently reflected in the volatility of certain product prices. When scarce resources make supply less than demand, the ensuing price increases stem not from any breach of the rules of competition, but from higher production costs. Against this background, competition spurs innovation and technical progress as more efficient production techniques can replace current processes and usher in economies of scale.

1.2 Reservations as to competition's role in combating poverty

Some observers claim that practical experience shows that competition achieves mixed results in terms of the expected outcomes with regard to well-being. While the theoretical model for pure competition presents a situation that unquestionably improves consumer well-being without harming producers' interests, the imperfect competition practices of real life often result in a loss of well-being and a disincentive to invest, seek technological developments or create jobs. For this school of thought, the liberal concept of the pursuit of individual freedom cannot necessarily be translated, on the assumption of competition, into prosperity for all.

It is even argued that a competition policy is not a pro-poor policy in the short term and that competition, considered as the implementation of competition law and policy, cannot contribute to reducing poverty. By definition, the price of a particular good (here a composite good from the income poverty line market basket), when there is a balance between supply and demand in a competitive market, is beyond the reach of poor consumers. They lack the means to buy this basic basket of goods because of insufficient income. There remains one niggling question: why then are there still poor people in developed countries despite the various public policies that have been implemented, including competition policy?

Notwithstanding this pessimistic view of the role of competition in alleviating poverty, it is clear that in developed and developing countries alike, the existence of an effective competition policy has made many products, goods and services (air travel, telecommunications, etc.) accessible to a great majority of the population. In our new States, particularly Senegal, two conclusions can be drawn: that a lack of competition tends to aggravate poverty; and that competition generates opportunities in certain sectors.

2. The aggravation of poverty from the lack of competition; and the opportunities generated by competition in certain sectors

2.1 The aggravation of poverty from the lack of competition in Senegal

Competition is weak in many sectors in Senegal as a consequence of high concentration and inefficient enterprises which enjoy political or legal protection. This results in high market prices and continued unwarranted earnings for companies.

As already mentioned, price levels that determine access to the consumer products included in the market basket used to measure the poverty line in Senegal are important. The prices of consumer staples have risen considerably in recent years, not only as a result of the global food crisis, but also because of dysfunctions in the domestic market due to anti-competitive practices, monopolies and abuses of dominant positions.

By way of example, in the milling, cement and other highly concentrated sectors, price levels remain high. The State's many interventions to set the prices of flour, bread and cement are evidence of the dysfunctions that reign in these market segments. Between 2008 and 2011, direct and indirect subsidies of over USD 700 million were paid out for basic necessities such as rice, cooking oil, gas, milk, sugar, etc. These attempts by the government to set prices and subsidise essential items have not brought about the desired outcomes.

Also, despite the opening up of the telecommunications market, major efforts are still needed to improve service quality, ensure mobile number portability and provide access to and develop value added services by SMEs. The number of internet service providers has shrunk drastically in recent years, resulting in significant job losses.

Furthermore, hydrocarbon prices are uniform across the country and are always at the government-set price ceiling. This is why fuel was removed from the scope of the Public Procurement Code in 2011.

In the banking sector, interest rates are still high (over 12%). Private-sector investment, particularly for SMEs-SMIs, is thus affected by these rates that are applied almost universally by the banks. This also makes it more difficult for poor lenders to repay consumer loans.

For the distribution of goods, particularly in large-scale retailing, competitive pressure is non-existent. On top of this, the local retail trade is vital for consumers who buy essential items at high prices.

Public procurement, which accounted for 5% of GDP in 2009, is a major source of business opportunities for enterprises, particularly SMEs. However, collusive tendering or bid rigging, which is insufficiently investigated, inflates the budgetary appropriations of the contracting authorities and stifles efficiency in public spending.

Lastly, 70% of the labour force works in agriculture, in rural areas where the poverty rate is above 60%. Agricultural markets are facing difficulties as a result of competition, especially in upstream markets (for fertilisers, seeds) and downstream markets (agro-processing industries) which undermine the combined efforts of farmers, the State and NGOs. Indeed, farmers are often forced to sell their crops at low prices to food processing firms, which further impoverishes rural communities.

2.2 Opportunities generated by competition in poverty reduction

This section will provide several examples to illustrate that a sound competition policy can contribute to alleviating poverty by lowering prices and creating low-paying jobs as sources of earnings for people who previously had no income and were living in a state of absolute poverty:

- Prices for some farm produce are not as high in certain areas.

- The opening up of the groundnut market to foreign buyers and the ensuing competition have helped increase growers' incomes (farmers in rural areas who are the most affected by poverty). Although the State-set market price is XOF 190, growers preferred to sell their crops to foreign buyers who offered better prices, *i.e.* 5% to 10% above the official price.

- Competition on the money market can foster access to microcredit and enable the development of income-generating activities which help to alleviate poverty. It also makes it much easier to transfer money. The proliferation of money transfer companies has led to a drop in the price of remittance services. Recently, while specialised money transfer agents were offering their services at a fee of XOF 500, the Senegalese post office introduced a charge of just XOF 200 for cash transfers.

- Competition as a result of demand for certain staple items (cooking oil, sugar, powdered milk, soap powder, etc.) has led to the creation of new sole-proprietor businesses which have transformed the way these products - previously dispensed by the spoonful, glassful or in tiny plastic bags - are sold. These "micro-retail" enterprises have innovated by launching the sale of more hygienic and competitively priced packets containing 25, 50 or 100 grammes. They also sell 100-gramme packages of distilled water which are safer than buying water of dubious quality from street vendors.

- Unbridled competition among mobile telephone operators (three in Senegal) through promotions and customer benefits has led to the emergence of street vendors selling mobile top-up cards.

Admittedly these are low-paying jobs, but they can be a source of income that was previously non-existent and foster the birth of a true entrepreneurial spirit to encourage the emergence of more innovative and more rewarding activities which help create jobs.

3. Conclusion

Ultimately, in light of the above, is there a link between competition and poverty reduction? Or does this question prompt another one, *i.e.* the connection between competition and development? But then, what is development?

This paper cannot claim to answer all these questions. Nonetheless, certain conclusions can be drawn from it.

- At first sight, competition alone does not appear sufficient to alleviate poverty since there are many different causes which do not always stem from anti-competitive practices. Competition may even be perceived as favouring the well-off first. For some observers, it brings no short-term benefits to the poor, who are not, by definition, employers.

- Also, the first instinct of our new States is not always to favour competition. When the prices of staple foods increase as a consequence of the volatility of commodity prices, governments rely on

subsidies and repealing or cutting taxes. By doing so, price hikes are simply shifted to the State. And some pro-poor social policies are affected, such as those for health care, education, etc.

- In Senegal, the new government has decided to introduce, alongside basic universal health cover, the annual family protection allowance for the poorest families. And the National Union of Merchants and Industrialists (*l'Union Nationale des Commerçants et Industriels du Sénégal - Unacois*) is planning to open thousands of *Jaapo*[1] shops which, free from all forms of speculation, will sell essential items at the lowest prices.

- But such initiatives must not preclude the existence of any competition policy. Indeed, the absence of competition has an adverse effect on prices which may be maintained at high levels and cause the economy to stagnate to the detriment, first and foremost, of the poorest sections of the population.

- The efficient and lasting impact of competition on prices and the economy in general can only be beneficial for the poor if, through lower prices, they can afford to buy a wide range of good quality products and services.

- Thus, competition can contribute to alleviating poverty if it is considered as an engine for growth. Poverty reduction requires strong and sustained growth which creates wealth and jobs. This presupposes a sound macroeconomic framework and the proper and transparent management of resources, all underpinned by strong economic and judicial governance.

- Competition policy must play a central role in good economic governance and, where necessary, ensure coherence between the various public policies.

- This vision gives the competition authorities a major role in combating poverty by ensuring the effective and efficient application of competition law and constantly reminding all stakeholders of the benefits of competition.

[1] *Jaapo*: the Wolof word *Jaapo* can be translated as "solidarity". The *Jaapo* stores are reminiscent of the shops known as *magasins témoins* and *boutiques de référence* which implemented price controls but were not as successful as expected. Will the *Jaapo* outlets live up to expectations or are they simply a clever way of circumventing competition rules within the framework of a large business organisation? Only time will tell.

SOUTH AFRICA

1. Introduction – competition policy as embedded in society's context

Competition policy emerges out of a particular context. It is, in its general character, a reflection of the economic choices that a society makes with regard to the role and bounds of the market mechanism and of the state in the economy.[1] It is also society's response to challenges and issues arising out of a specific historical trajectory. For example, in the United States, the competition regime grew as a counter-point to the abuse of power by trusts such as Standard Oil; in East Asian countries it was introduced within the context of rapid industrialisation driven by the developmental state and in many Latin American countries it was spurred by concerns over inequality.[2] In developing countries, poverty is a key feature of the context.

To borrow a phrase from modern political economy, the development and implementation of competition policy can be viewed as an exercise in 'embedded autonomy'.[3] This phrase describes a relationship between state institutions and society whereby the state is embedded adequately in society so as to be responsive to society's needs, but also autonomous from narrow private interests. This formulation can be applied to the experience of competition authorities, as they seek to contribute to the resolution of society's most pressing challenges, such as poverty, whilst taking care not to be overladen with policy goals beyond what is achievable in the realm of competition policy. Embedded autonomy also implies that competition authorities construct their enforcement and advocacy agenda in alignment with society's priorities; doing so in a transparent, rigorous and impartial manner.

In response to the questions raised in the call for contributions for the 2013 Global Forum on Competition, this submission will grapple with broad theme of how competition law and policy contribute to poverty reduction. It will reflect on how this has translated into the work of the Competition Commission of South Africa (CCSA) in practice. It will also consider the topic from the 'demand' (the poor as consumers) and 'supply' (the poor as small entrepreneurs and as employees) side as formulated in the call for contributions.

Though the need to contribute towards poverty reduction may shape an authority's strategy towards enforcement and advocacy, the causal relationship between competition law implementation and poverty outcomes is complicated by various factors. Though increased competition is expected to lead to lower prices, innovation and also higher rates of participation in the economy; specific competition law interventions can appear to have neutral or even counter-intuitive effects in the market. The effects of enforcement action on a market take time to manifest themselves in pro-competitive outcomes (such as lower prices), making it difficult to attribute market outcomes to competition authorities' interventions. Market outcomes are also influenced by a range of domestic and global factors, further bedevilling attempts at drawing causality. In the short run, prices may rise or stay the same in spite of anti-competitive conduct being uncovered and penalised. And in assessing the impact of their interventions, authorities rarely consider the effect on poor consumers as a discrete group. Thus to demonstrate the linkage between

1 Gerber (1994), Constitutionalising the Economy: German Neoliberalism, Competition Law and the "New" Europe, American Journal of Comparative Law, Vol 42.

2 ibid.

3 Evans (1995), Embedded Autonomy, Princeton University Press, Princeton.

competition policy and poverty reduction is a difficult and tenuous endeavour, as the bread cartel case study will demonstrate.

2. Poverty in South Africa

Poverty appears in different forms across and within countries, and over time. In South Africa, poverty is located within a history of colonialism, which gave way to an apartheid state that systematically 'under-developed' the majority black population. In their recent book, '*Why nations fail*', scholars Acemoglu and Robinson characterise the institutions that governed South Africa's economy and society for centuries during colonial and apartheid times as 'extractive'.[4] The logic of economic management under these dysfunctional institutions was driven by the interests of primary industries (mining and agriculture), which mostly sought to create an elite class of white farmers who faced no competition from their black counterparts, and also to aid the mining industry in generating a class of unskilled black labour to work underground. This dysfunctional mode of governance naturally had implications on the state of competition in the country. Through various legal and policy instruments, competition in the economic sphere was severely curtailed.[5]

South Africa is considered an upper middle-income country, with GNI per capita in 2011 at USD 6 960.[6] There is some debate as to the extent to which the living standards of the majority black population have improved since the onset of democracy in 1994. Income measures paint an ambiguous picture, with most studies showing either real income declines or at best modest income growth amongst the poorest households.[7] What is clear is that the rate of poverty has remained high in the post-apartheid period. By 2008, 54% of households lived below the poverty line of R515 (USD121) per month. Applying a higher standard of R949 (USD223) per month, 70% of households were living in poverty in 2008. However, it should be noted that using the oft-cited 1.25 dollar-a-day metric, the ratio of South African households living in poverty is a relatively low 14%.[8]

Table 1. Poverty trends in South Africa[9]

	Population	Poverty headcount ratio: poverty line R949 per month (USD223)*	Poverty headcount ratio: poverty line R515 per month (USD121)*	Poverty headcount ration: poverty line USD1.25 a day (USD38)**
1993	40m	72%	56%	24%
2000	42m	71%	54%	26%
2008	49m	70%	54%	14%

* at 2008 purchasing power parity dollar values
** at 2005 purchasing power parity dollar values

4 Acemoglu, D. and J. Robinson (2012), Why Nations Fail, Random House.

5 Networks that straddled the state and business where encouraged by the state. To cite a few examples; agricultural co-operatives were appointed as agents of state control boards and the cement industry was allowed to run a cartel. Recent competition cases have revealed cartels in industries such as concrete pipes, cement, reinforcing steel, scrap metals, flour and bread, illustrating the persistence of these networks.

6 World Bank Development Indicators. http://data.worldbank.org/country/south-africa Accessed 13/01/2013.

7 Leibbrandt et al (2010), Trends in South African Income Distribution and Poverty since the Fall of Apartheid, OECD Social, Employment and Migration Working Papers No. 101.

8 World Bank PovCalNet database. http://iresearch.worldbank.org/PovcalNet/index.htm?2 Accessed 13/01/2013.

9 Leibbrandt et al (2010).

Poverty in South Africa continues to be marked by race, gender and geography; with black, female-headed and rural households experiencing the highest rates of poverty and economic vulnerability. [10] [11] The labour market is also not integrating young people effectively, thus increasing rates of youth unemployment.[12] To develop the capabilities required to transcend poverty, access to opportunity is key. However, in South Africa, it has been found[13] that poverty and inequality is reproduced from one generation to another through lack of opportunity.[14] A child's circumstances at birth; especially whether they are born in a township, informal settlement or rural area, as opposed to an (non-township) urban area; and the education of the household head determine access to opportunity and ultimately its lifetime prospects. This limits the rate of inter-generational mobility in South Africa, despite popular perceptions about the growth of the black middle class.

Poverty is one of the most significant challenges facing South African policymakers. There are two key mechanisms that contribute towards poverty reduction; namely private sector employment and government's fiscal policy, as expressed through expenditure programmes such as social grants (income support) and direct provision and subsidisation of services such as water, electricity and housing. The labour market has been unable to provide adequate opportunities to working age adults. Over the past decade, the unemployment rate is stubbornly high at over 24%.[15]

Table 2. Unemployment rates by income decile[16]

Decile	1993	2000	2008
1	**49**	**44**	**69**
2	**34**	**44**	**46**
3	**27**	**41**	**47**
4	**22**	**39**	**37**
5	23	34	30
6	19	33	26
7	15	26	20
8	9	21	16
9	4	13	9
10	2	4	5
Overall	**14**	**26**	**24**

Social grants and government provision of services has compensated for this lack of economic activity thus providing a crucial safety net and a base for capability development for poor households. Empirical studies suggest that these grants are well targeted, with means testing ensuring that the most important grants are provided to the poorest households. It is estimated that social grants make up more than 70% of household income for the bottom quintile in South Africa, up from 15% in 1993 and 29% in 2000.[17]

10 Leibbrandt et al (2010).

11 StatsSA (2012), Income and Expenditure Survey of Households 2010/2011, Statistical Release P01000.

12 Leibbrandt et al (2010).

13 World Bank (2012), South Africa Economic Update: Focus on Inequality of Opportunity.

14 The World Bank defines opportunity as a set of goods and services available to children, such as access to safe water, electricity and education that are critical in determining the opportunities for economic advancement in life.

15 Leibbrandt et al (2010).

16 Ibid.

17 World Bank (2012).

Ultimately, sustainable poverty reduction will depend on generating wage-earning opportunities in the economy. Competition policy, to the extent that it challenges economic exclusion, lack of innovation and lack of rivalry can play an important role in placing the economy on a higher growth and development trajectory.

Lack of competition in product markets for essential goods and services is arguably more harmful for poorer households than for higher income households. As expected, poor households spend a higher proportion of expenditure on essential goods and services. [18] The average South African household spends 12.8% of its expenditure on food and non-alcoholic beverages. In contrast, the poorest ten per cent spend above a third of their expenditure on food and non-alcoholic beverages.[19] The same pattern is repeated with housing, water, electricity, gas and other fuels, where this category accounts for 17.1% of household consumption expenditure for the average household; but accounts for 26% of expenditure for the poorest ten per cent of households.[20]

Given the extent to which lack of employment opportunities drives poverty and inequality amongst adults, employment generation has become an important consideration for economic policy. This has influenced how competition law is applied, especially in the realm of merger control. Taken from the perspective of the role of the poor as workers and small entrepreneurs, the tensions between competition policy and poverty reduction have been most apparent, including in the Wal-Mart/Massmart merger discussed below.

3. Competition law and poverty in practise

The stated purpose[21] of the South African competition law encompasses orthodox concerns related to efficiency, prices and choice. In addition to this, the statute also articulates the purpose of the Competition Act as promoting competition in order to realise goals related to employment creation and retention, equitable participation in the economy by small and medium-sized enterprises, a broader and more racially diverse spread of ownership and international competitiveness. The Act thus envisages a role for the competitive process in rectifying the distortions and inequities wrought on the economy and society by the *apartheid* regime. These elements of the legislation ultimately relate to the government's economic, development and social policies. This addresses considerations on the 'supply' side (the poor as small business owners) as formulated in this Global Forum.

In line with broader economic growth and development concerns, the merger assessment provisions contain public interest considerations. The Commission is required to determine whether or not a merger can be justified on substantial public interest grounds, taking into account its impact on a particular region or industrial sector, employment, the ability of small business or firms controlled by historically disadvantaged persons to become competitive, and the ability of national industries to compete in international markets.

Criteria for exemptions also reflect policy concerns related to poverty. In granting exemptions, the Commission should consider whether the practise or agreement to be exempted contributes to the promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; the productive capacity necessary to stop decline in an industry or the economic stability of an industry designated by the executive branch of government.

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18 Income and Expenditure of Households 2010/2011. StatsSA Statistical release P0100.

19 Bottom decile – 35%; Second decile – 35.2% and third decile 33.9%.

20 Bottom decile – 26%; Second decile – 22.5% and third decile – 22.3%.

21 Section 2 of the Competition Act no 89 of 1998 as amended, and also the Preamble.

In South Africa, the implementation of competition law by the authorities has taken into account the growth and development imperatives of a highly unequal society that is also characterised by high rates of poverty. The Competition Commission's enforcement and advocacy activities are guided by a Prioritisation Framework, which represents the organisation's over-arching strategy.[22] This Framework, adopted in 2008, explicitly incorporates poverty reduction, as it draws on the country's key economic policies that are directed towards the same goal.

The Prioritisation Framework directs the Commission to intervene in sectors of the economy that have a big impact on consumers (especially low income consumers) and that determine the enabling environment for business and economic development. The framework is located within the context of the policy focus on labour-absorbing growth to address the high unemployment and poverty levels in South Africa.

The Prioritisation Framework identifies specific priority sectors, namely, food and agro-processing; infrastructure and construction; intermediate industrial products and energy; construction services; and banking as focus areas for the Commission's enforcement and advocacy programmes. Cartel conduct, given its well accepted egregious effects on consumers, is also prioritised as an area of investigation. Within priority sectors, investigations are also prioritised depending on criteria such as likelihood of success, evidentiary burden, nature of competition issues (for instance, whether it would be a precedent setting case), resource availability and extent of harm.

Proactive measures taken by the Commission in priority sectors include reviewing available information and evidence on potential anti-competitive conduct and screening various markets for signs of potential anti-competitive outcomes. This has assisted the Commission in initiating and in some instances concluding investigations in key consumer and input markets such as poultry, bread, wheat and milling, animal feed, steel, polymers, fertiliser, cement, concrete pipes and bricks. It also resulted in an increase in the number of abuse of dominance investigations.

By focusing its energies on identified priority sectors selected on the basis of criteria that include impact on poor households (and industrial development with implications for employment), the Commission has been able to optimise on its resources whilst also contributing towards poverty reduction.

4. Wheat to Bread value chain case study

The South African competition authorities' enforcement action in the bread value chain provides a stark illustration of the linkage between poverty reduction and competition policy. In May 2008, the Competition Commission of South Africa produced various scoping reports which highlighted concerns in staple foods. As discussed above, food accounts for a significant proportion of poor households' expenditure. The scoping study occurred against the backdrop of mounting evidence of competition contraventions uncovered by the Competition Commission, including information received between 2006 and 2007 about cartel conduct in the markets for bread baking and wheat and maize milling. Investigations revealed that four major firms dominating the bread value chain had been colluding to set prices and to allocate markets from 1994 to early 2007.

These investigations culminated in the imposition of penalties with the most notable being the substantial and unique settlement entered into between Pioneer and the Commission. According to that settlement, Pioneer would:

[22] Makhaya, Mkwananzi and Roberts (2012), How should you competition authorities approach competition enforcement? Reflections on South Africa's experience, South African Journal of International Affairs, Vol 19, No 1, pp 43 – 64.

- Desist from conduct which contravened or might contravene the Act.
- Continue its compliance programme to prevent future contraventions and co-operate with the Commission in its prosecution of others.
- Pay an administrative penalty of R500 million to the National Revenue Fund. In addition, the Competition Commission, National Treasury and the Economic Development Department separately agreed that the Economic Development Department would submit a budgetary proposal and business case motivating for the creation of an Agro-processing Competitiveness Fund of R250 million drawn from the penalty which will be administered by the Industrial Development Corporation.
- Adjust the prices of certain of its products for an agreed period of time (up to six months) so as to reduce its gross profit by an amount of R160 million.
- Maintain its capital expenditure and increase it by an amount of R150 million.

These measures were expected to facilitate entry into formerly cartelised markets and to stimulate rivalry in the market as competitors respond to the price reductions.

The investigations in the bread case generated wide-spread interest from the South African public, including non-governmental organisations involved in the fight against poverty and the labour movement. Some of these NGOs have sustained interest in the matter, and are now seeking relief for consumers by pursuing civil damages claims against the implicated firms.

This case study also demonstrates the difficulties in seeking to draw causation (at least in the short term) between competition law interventions and poverty reduction. In spite of uncovering anti-competitive behaviour in the value chain for such an essential staple food and imposing remarkable penalties and remedies, price outcomes in the market have not met expectations. During the margin reduction period, Pioneer sacrificed over R170m over the period 1 December 2010 to 31 March 2011; R70m on external wheaten flour sales, and R106m on the selected bread products that had been identified as part of the settlement. The remedy sought to go beyond purely punitive measures by offering direct relief to consumers and small bakeries (who procure flour) who had been victims of the cartel.

According to information obtained by the Commission from major retailers, Pioneer's major competitors had responded to its price reductions by either reducing the wholesale prices they charged to the major retailers, or by not passing through significant cost shocks experienced prior to and during Pioneer's profit sacrifice period. However, when this period ended, prices for three of the four players increased for both brown and white bread products.

Outcomes in wheat flour milling were also similar in that it was difficult to see pro-competitive results in the short term. Yet in this case, there were grounds to suspect that this was due to co-ordinated outcomes being sustained by vertically integrated competitors through information exchange via an industry association. This matter was resolved through recommendations made by the Commission for less problematic mechanisms of information exchange in the market. Regional comparisons across the country also suggest that in regions with high concentration and no entry during the post-cartel period, the main firms have been able to maintain high margins and high market shares.[23]

Recent data suggests that price increases in the wheat-to-bread value chain have remained significantly above consumer inflation. Data also suggests that the margins of one of the cartelists have increased to levels higher than during the cartel period. This reversion towards pre-enforcement price

[23] Competition Commission South Africa Internal Documents.

trends has drawn questions about the effectiveness of competition enforcement in this market. Nonetheless, in the absence of the scrutiny, penalties and remedies imposed on this market, the counter-factual scenario may actually involve even higher prices and margins.

5. Competition policy, small enterprise development and employment

The call for submissions note for this Global Forum acknowledges the ways in which increased competition can present challenges for poverty reduction. Indeed, the transition from a highly concentrated economy to a more competitive one creates winners and losers. Entry by new domestic players or multinationals disrupts supply chains and displaces old modes of production. These dynamics may benefit the poor as consumers, through lower prices, but there are instances where, at least in the short term, intensified competition seems to displace the poor.

For instance, in the market for formal grocery retail in South Africa, established corporate retail chains have begun to penetrate formerly un-served market segments by opening new stores in township (predominantly black urban areas) and rural areas. This competition by established retailers for the lower end of the market often leads to the closure of small, locally owned retail stores, with implications for local small business development.

The competition authorities explicitly dealt with the nexus between competition policy and small business in *Nationwide Poles*.[24] [25] In this case, Nationwide Poles, a small pole manufacturing firm complained that Sasol did not supply it with a key input on the same terms as its larger competitors. In its ruling, the Competition Tribunal argued that the Competition Act had the development of small business in mind, as demonstrated by its preamble and, looking back in time, the explanatory memorandum that accompanied it. The "special treatment" accorded to price discrimination, with its own section separate from other abuse of dominance provisions, is also seen as reflecting legislative concern with maintaining accessible and competitively structured markets in which entrants can compete effectively against incumbents.

Though the Tribunal did not succeed in its particular use of the public interest arguments in favour of small business in *Nationwide Poles* (where it was arguing for a different standard of showing substantiality where a small business is harmed), its remarks about the potential of competition law to contribute to an enabling environment for small business development retain merit. The Competition Appeal Court, in overturning the Tribunal, was careful to make it clear that its decision did not seek to diminish the ability of small and medium businesses to "use the Act to protect their ability to compete freely and fairly."[26]

As mentioned earlier, the South African regime, attuned to the employment and industrial development challenges of the country, requires the Commission to consider various public interest grounds in the assessment of mergers. These provisions require the authority to determine whether or not a merger can be justified on substantial public interest grounds, taking into account its impact on a particular region or industrial sector, employment, the ability of small business or firms controlled by historically disadvantaged persons to become competitive, and the ability of national industries to compete in international markets.

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24 Case number 72/CR/Dec03

25 This section relies heavily on Makhaya (2011), The intersection between competition policy and entrepreneurship, Competition News, Edition 41 December 2011.

26 Case number 49CACAPRIL05

The Commission's approach to the impact of mergers on employment is based on a case-by-case approach through examining factors that include the skills levels of employees, the regional economy in which affected employees are based and the prospect of re-employment elsewhere. In giving effect to the employment provisions of the legislation, the Commission acts to restrict job losses, and where losses occur to ensure that the affected employees are retrained in a manner that enables them to obtain employment or pursue self-employment opportunities.

The entry of Walmart into South Africa, through a partial acquisition of locally listed Massmart, bought the 'supply-side' position of the poor into focus. The strict application of competition principles would suggest that this is pro-competitive entry. However, it generated opposition based on supply-side considerations with regards to the impact of the transaction on workers and domestic suppliers.[27] This transaction raised concerns about employment losses and the potential displacement of local producers by imports in the merged entity's supply chain. These concerns were ultimately resolved through conditions limiting employment losses and the establishment of a supplier development fund to help integrate small South African suppliers into the merged entity's supply chain.

The extent to which the South African competition authorities can interpret their mandate and legislation in favour of poverty reduction remains a matter of contestation between various segments of society. Broadly speaking, those in the labour movement and non-governmental organisations advocate for the balancing act between competition and public interest considerations to tilt far more towards preserving jobs and expanding economic opportunity. The private sector tends to favour a more restrictive approach to the interpretation of the public interest mandate and is insistent on imposing clear limits on the competition authorities' role in supporting employment, equity and industrial policies.

6. Conclusion

The Competition Commission of South Africa, through a transparent prioritisation framework, focuses its resources on those sectors that provide products and services that make up a significant proportion of poor households' expenditure and also those that have been ear-marked by government as important for employment generation and infrastructure provision. The poverty reduction imperative is also reflected in the merger assessment regime, which incorporates public interest provisions that focus the Commission's attention on issues with a bearing on poverty and development, such as employment and small business development.

Nonetheless, competition law interventions need to be complemented by wider and consistent application of competition policy across government to encourage entry and effective rivalry in the economy.

The nature of poverty in South Africa places employment generation as the key to achieving sustainable poverty reduction. The effectiveness of competition policy as an instrument for inclusive, employment-generating growth depends on effective policies in areas such as access to finance, training, research and development to eliminate other constraints to employment creation.

[27] Case number 73/LM/Nov10

TUNISIA*

Abstract: Reducing poverty in Tunisia through competition policy

This paper is devoted to give an overview on poverty in Tunisia, with a discussion of its main characteristics and causes. Actually, the inland regions, in particular rural areas, remain the most affected regions by poverty. The latter has been arisen from two main factors which are corruption and imbalanced development strategies. In addition to the known mechanisms undertaken by the Government to get rid of poverty, this paper points out the contribution of the competition policy in fighting poverty. Also, we put emphasis on the role of the Tunisian competition law and the Tunisian Competition Council in reducing poverty and enhancing consumer's welfare.

1. Introduction

Tunisia has a special story with poverty since the latter has been the main cause triggering a social instability leading to a revolution in 14 January 2011, later known as the Arab Spring. In fact, since the independence in 1956, Tunisia has paid attention to poverty phenomenon and has implemented several policies to reduce poverty. Among these policies we cite the free education for all children in all regions of the country, the birth control through family planning policy, the participation of women in development efforts through policy emancipation of women and the promulgation of the Civil Code. These policies have yielded significant improvement in the rate of poverty and have contributed in enhancing the living standards of Tunisian people.

Convinced by the fact that competition is a stimulus for economic growth and poverty reduction, Tunisia relies on its competition policy for poverty alleviation. In fact, Tunisia has a well-established competition policy and was the first country in the Arab world in enacting a competition Act in 1991. In this paper, we attempt to give an overview on poverty in Tunisia. We discuss how Tunisian competition policy could contribute in reducing poverty. This paper is organized as follows. Section 2 gives a background on poverty in Tunisia, its characteristics and its causes. Section 3 is devoted to exhibit the contributions of competition policy in reducing poverty through the Tunisian competition law and the role of the Tunisian Competition Council. Section 4 summarizes this paper.

2. Poverty in Tunisia

2.1. Characteristics of Tunisian poverty

Historically, Tunisia has witnessed three main phases of poverty. The first phase, which lasted from 1956 to 1970, was known as the mass poverty phase and characterized by a lot of poor people. In 1960s, the poverty rate was estimated at 40%[1]. In the second phase, which lasted from 1970 to 1985, Tunisia has

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1 Poverty Alleviation: Preserving Progress while Preparing for the Future. Republic of Tunisia, Report No. 13993-TUN, World Bank, August 1995.

implemented several development programs to fight poverty. Among these programs we cite the Regional Development Program (1973) and the Integrated Regional Development Program (1984). In that period, the deployed efforts of the State have been focused on the creation of sources of income for poor people, especially rural poor, and enhancement of their purchasing power. The third phase, which lasted from 1985 until today, was characterized by intensive intervention of the State to handle the problem of urban poor. The actions undertaken by Tunisia were essentially the creation of Integrated Urban Development Program (1992), the creation of the National Fund of Solidarity (1993) and the creation of the Tunisian Bank of Solidarity (1997).

One of the most important feature that characterizes poverty in Tunisia is its rural dimension. In fact, rural areas in inland regions are the most affected Tunisian zones by poverty. Poor people in these areas are generally landless families who live on the outskirts of population centers in rural areas, the laborers, illiterate small holder agriculture, women and young people in general by their lack of economic autonomy and lack of decision making. It is worth noticing that in 2010 rural population represents about 32.7%[2] of Tunisian population. Regional imbalances as those that exist between rural and urban areas are, in Tunisia, the result of the historical legacy of the relationship between urban and rural areas and between regions, but they are also the result of political and development choices, since independence.

2.2. Causes of Tunisian poverty

The Arab Spring has revealed that the first cause of poverty in Tunisia was corruption. In the literature, there are two models explaining how corruption could affect poverty: the economic model and the governance model. In the economic model, corruption affects growth factors, which in turn, increase income inequality and impact poverty levels. Actually, corruption impedes economic growth by discouraging foreign and domestic investment, creating inefficiencies by increasing the costs of doing business, deteriorating the quality of public infrastructure and distorting the composition of public expenditure. In the governance model, corruption reduces governance capacity, which in turn, increases poverty levels.

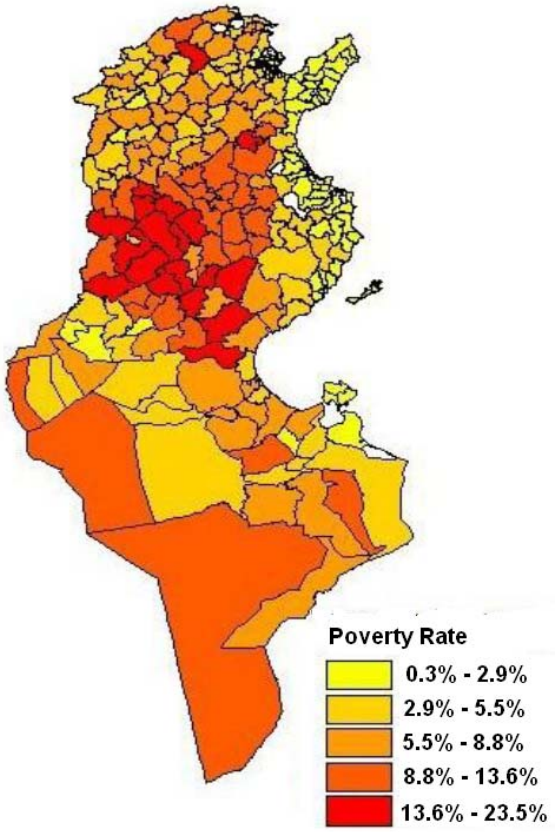
Tunisia can be seen as a good example for illustrating both economic and governance models of the relationship between corruption and poverty. Within the previous political system, Tunisia has been for a long time ruled by a narrow group of cronies, with corruption, clientelism, and nepotism. The corrupt practices of Ben Ali and Trabelsi Family have affected all spheres, yielding low investments, unemployment and inflation. Ben Ali and Trabelsi Family have acquired for about 50% of the businesses in Tunisia. The financial sector was the most affected one. It gave a lot of non-performing loans and the members of Ben Ali's clan refuse repayment.

In addition, a good example explaining how corruption in Tunisia has contributed in the impoverishment of Tunisian people is the National Fund of Solidarity (NFS). The objective of the latter was to help poor people in rural areas. The NFS revenue comes from the donations of private citizens and institutions. However, the revolution of 14 January 2011 has revealed that NFS was a fake project and did not achieve its goals due to corrupt practices affecting its management system.

Another important factor which is deeply involved in enlarging the poverty disparity between Tunisian regions was the development strategies undertaken by the State. These strategies, transmitted by the five-year economic development plans, have created imbalances between regions by orienting a big part of investment flows towards coastal zones. In fact, Tunisia has suffered for a long time from an unequal regional distribution of growth benefits between regions. Figure 2 shows the distribution of poverty between Tunisian regions.

[2] See statistics at http://www.ruralpovertyportal.org/country/statistics/tags/tunisia.

Figure 2 : Distribution of poverty between Tunisian regions



Source: Adapted from National Institute of Statistics, September 2011).

3. Contributions of competition policy in reducing poverty

There is no doubt that competition policies have a central role in fighting poverty and enhancing consumer's welfare. In fact, the main purpose of competition policy is to promote competition which leads to an efficient allocation of resources in an economy. This results in lower prices of goods and services with equitable distribution, as well as adequate supplies to consumers. In Tunisia, the competition policy is based on the competition Act enacted in 1991[3] . It should be bore in mind that the Tunisian competition policy has not a direct impact on poverty. It has a direct impact on consumer's welfare, which in turn, contributes in reducing poverty level. Note that the notion of consumer includes both poor and non-poor people. Also, it should be mentioned that the effects of the Tunisian competition policy on poverty are long-term effects. In the following, we show how the Tunisian competition law could contribute to the alleviation of poverty.

3.1. Role of the Tunisian competition law

The first role of competition law, in its fighting against poverty, is to determine anti-competitive practices that could impede competition in market and impose sanctions. The better is the determination and definition of anti-competitive practices, the better will be the impact of competition regulations on

[3] Law N° 1991-64 on competition and prices was enacted in July 29, 1991. It was amended and completed by Law N° 93-83 of July 26, 1993; Law N° 95-42 of April 24, 1995; Law N° 99-41 of May 10, 1999; Law N° 2003-74 of November 11, 2003; Law N° 2005-60 of July 18, 2005.

poverty reduction. In fact, anti-competitive practices such cartels and abuse of dominant position are harmful for competition and consumers. Therefore, competition regulations that prohibit these practices are required. The Tunisian competition law has defined four main categories of anti-competitive practices, which are:

- Restrictive agreements: that intend to make obstacle to the fixing of the prices by the rule of offer and supply, limit the access to the market to other enterprises or the free exercise of the competition, limit or control production, investments or technical progress, and share the markets or the sources of provision.

- Abuse of dominant position: the Tunisian competition law gives some examples of an abuse of dominant position such as refusal to buy or to supply, tied sales, and discriminatory sales conditions. The abuse of dominant position requires the fulfillment of two conditions: the firm must hold a dominant position, measured by the market share and power market indicators, and the firm must exercise its dominant position.

- Abuse of economic dependency: which consists of the abusive exploitation by one undertaking of the economic dependence of another undertaking, due to the absence for the latter of an equivalent solution for the supply of goods or the provision of services. Three essential elements must be present in an abuse of economic dependency, which are: the existence of a vertical relation between the firm that conducts an abuse of economic dependency and the firm submitting abuse of economic dependency, such as supplier-dealer relation, the firm which is in an economic dependence position has not equivalent solutions for either the supply or distribution of its goods and services, and the abuse of economic dependency must disturb the functioning of the market and affect the competition.

- Predatory pricing: this has as goal to drive competitors out of the market.

In addition to the determination of anti-competitive practices as tools for fighting poverty, the Tunisian competition law has established merger control regulations in favor of poor consumer. In fact, merger operations may be allowed if they can prove its contribution to the increasing economic efficiency[4]. Furthermore, the evaluation of any merger operation should take into consideration the necessity to consolidate the competitiveness of national enterprises. Several other criteria are also taken into consideration when evaluating a merger operation such as the strategic choices and consumer's welfare.

Besides, the Tunisian competition law has defined the plaintiffs that have the right to submit complaints to Tunisian Competition Council[5]. Among these plaintiffs, we find consumer associations which have as role the protection of consumer rights. This favor for consumer associations could give an idea on how much the Tunisian competition law is interested in protecting consumer's welfare including poor consumer.

3.2 Role of the Tunisian Competition Council

As the authority in charge of enforcing Tunisian competition law, the Tunisian Competition Council (TCC) has acquired a prominent role in promoting consumer's welfare and reducing poverty. Actually,

4 First paragraph of Article 9 of the Tunisian competition law.

5 Article 11 of the Tunisian competition law has determined an exhaustive list of plaintiffs, which are: (i) the Minister of Trade, (ii) firms, (iii) consumer associations, (iv) professional organizations and unions, (v) chambers of commerce and industry, (vi) authorities of regulation, and (vii) local collectivities. Natural persons are not entitled to submit complaints.

there are three mechanisms by which the TCC contributes in reducing poverty and enhancing poor consumer's welfare mainly: rigorous enforcement of competition law, dissemination of competition culture and the advisory function.

A rigorous and successful enforcement of competition law remains the unique solution for fighting anti-competitive practices and consequently reducing poverty. The TCC has conducted a rigorous application of competition law by imposing severe sanctions on anti-competitive practices. The amount of fines imposed by TCC in 2010 was estimated at 1.209.500 TND against 3.346.000 in 2009 and 85.000 TND in 2008. The increasing amount of imposed fines reflects the rigor of TCC in dealing with infringers.

In addition to its adjudicatory mission, the TCC ensures an advisory function which consists in advising the Government on a variety of competition-related matters, and giving its opinion on draft regulations that could affect competition in the market. Whatever the concerned economic sector, the opinions of TCC often take into consideration the purchasing power of consumers including poor people and try to ensure fair access to goods and services. In addition, within its advisory function, the TCC has elaborated several market studies on different economic sectors. These studies constitute a powerful tool to determine the competition level in a given relevant market and detect any potential anti-competitive practice that could deteriorate the purchasing power of consumers.

It is argued in the literature that a lack of competition culture harms poor people. The TCC has insisted in each annual report on its role in disseminating competition culture[6]. On this basis, the methodology of TCC consists in establishing general principles on competition related matters that could help practitioners to master theoretical and practical aspects of competition. In addition, the jurisprudence of the TCC is another key element in disseminating of competition knowledge by innovating new competition principles and rules.

4. Conclusion

Despite the substantial progress in alleviating poverty, the efforts deployed by Tunisia in its fight against poverty should be fostered by other instruments, in addition to competition policy. The new democratic transition phase that has witnessed Tunisia could constitute a good opportunity to reduce poverty. Some tools like transparency and freedom of expression may play a key role in fighting poverty in the future.

[6] See Chapter 5, Section 2 of TCC's annual report of 2010.

UNITED STATES

Competition law and policy can help ameliorate some of the effects of poverty. When competition leads to lower prices for the basic necessities of life, the greatest benefits may accrue to the least well off, as their access to necessities improves and, potentially, resources are freed up for discretionary spending that can allow them to invest in improvements to their lives. By focusing on anticompetitive conduct that increases costs of items essential to consumers, including disadvantaged individuals, competition agencies may directly improve the lives of their countries' poorest citizens. Further, by addressing governmentally-imposed measures that unnecessarily impede competition, competition advocacy can help allow the potential of free markets to benefit consumers, including the poor.

This submission will review the intersection of competition law and policy and poverty reduction, briefly identify the potential for competition to benefit the poor, along with other persons, and then focus on the experience of the United States, emphasizing the activities of the U.S. antitrust agencies, the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) (the Agencies).

1. Competition's effect on markets for Essential items, in principle

Competition has the potential not only to improve the lot of impoverished economies as a whole, but also to improve the lives of individual consumers. Economies with competitive domestic markets tend to have higher levels and rates of growth in *per capita* income.[1] Competition in the domestic market, regardless of its origin, begets efficient, productive firms that are better able to compete on global markets, which in turn increases economic growth and standards of living. This relationship is demonstrated by a 12-year study by the McKinsey Global Institute that sought to determine why some nations remain wealthy, while others remain poor even after years of international aid. In his book presenting the results of the study, William Lewis explained that, "economic progress depends on increasing productivity, which depends on undistorted competition. When government policies limit competition . . . more efficient companies can't replace less efficient ones. Economic growth slows and nations remain poor."[2] Similarly, the World Development Report 2000-01 states that "markets work for the poor because poor people rely on formal and informal markets to sell their labor and products, to finance investment, and to insure against risks. Well-functioning markets are important in generating growth and expanding opportunities for poor people."[3] It follows that when anticompetitive practices interfere with the functioning of markets -- for example, a cartel raises the price of a farmer's fertilizer or of a family's basic foodstuffs, or exclusionary practices impede establishment of small businesses or lead to artificially high telecommunications costs --, this will have a disproportionate impact on the poor.

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1 *See* R. S. Khemani, *Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries,* FIAS, Occasional Paper 19, 2007, at 3; *see also* World Bank, *Global Economic Prospects and the Developing Countries*, 2003.

2 W. Lewis, *The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability*, 2004, at 103. *See also* D. P. Majoras, Chairman, Federal Trade Commission, *National Champions: I Don't Even Think it Sounds Good* (Mar. 27, 2006), at 3, *available at* www.ftc.gov/speeches/majoras/070326munich.pdf.

3 World Bank, *World Development Report 2000/2001, Attacking Poverty*, 2001, at 6-7.

While the more affluent may be able to absorb anticompetitive overcharges by reducing discretionary spending – possibly without even recognizing that they are doing so – a poor person may have to curtail spending on basic necessities such as food or health care. Paying more for necessities means that fewer resources will be available to make longer-term investments, such as opening a small business, investing in equipment that will make a farmer more productive, or investing in education.[4]

Further, poorly designed government policies may unwittingly or unnecessarily impede the competitive process, and thereby impose undue, and perhaps unintended, burdens on consumers. In such a case, the poor often pay higher prices, face more limited access to goods and services, and receive lower-quality goods and services than a competitive market would deliver.[5] Ill-designed regulation may also make it difficult for poor consumers to legally establish small businesses, such as farms, retail establishments, and taxis that might compete with established firms. Through their competition advocacy functions, competition agencies can urge reconsideration of regulatory measures that are not serving their intended goals or are unnecessarily impeding competition.

Finally, supplier collusion in public procurement imposes costs on consumers, especially poor ones. It has been observed that "even small improvements in the performance of public procurement programs can yield large social benefits, especially for the least affluent citizens. Public procurement outlays account for just under twenty percent of GDP in the United States; in formerly planned economies, the state's share can exceed fifty percent. Many of these expenditures are for infrastructure and social services that are designed in large measure to assist economically disadvantaged populations."[6]

2. Competition's effects on markets for essential items, in reality

This section provides real-world examples of how, in practice, promoting competition can lead to lower prices, higher quality, and other benefits to the poor.

In addition to competition, the FTC's consumer protection arm also addresses issues affecting the poor. For example, the FTC has shut down numerous scams that take advantage of the most financially fragile consumers through deceptive mortgage servicing practices, abusive debt collection tactics, bogus credit repair services, mortgage, tax, and debt relief offers, and fraudulent job and business opportunity schemes.[7]

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4 Department for International Development Investment Climate Team, *A Competition Assessment Framework: An Operational Guide for Developing Countries*, 2007, at 29; *see also* R. S. Khemani, *supra*, note 1.

5 For example, a World Bank (2004) report states that there was improved quality and delivery of food grains at lower prices when competitive market-oriented measures were introduced in state-dominated food distribution systems. Other studies by the World Bank Group and various development organizations also point out that "the poor pay more or receive lower quality for such services as water, sanitation, electricity, and even primary school education than do residents in the formal economy." *See* R.S. Khemani, *supra,* note 1.

6 W. E. Kovacic, *Competition Policy, Consumer Protection, and Economic Disadvantage,* 25 WASH. U. J.L. & POL'Y 101, 105-106 (2007).

7 *See*, *e.g.*, FTC Press Release, *FTC Sends Refunds to Consumers Allegedly Deceived by First Universal Lending Mortgage Loan Modification Scheme*, Sept. 8, 2012, *available at* http://ftc.gov/opa/2012/08/firstuniversal.shtm; FTC Press Release, *Bank of America Subsidiary Reversing or Refunding $36 Million in Fees to Resolve FTC Allegations That it Overcharged Struggling Homeowners*, Sept. 2, 2012, *available at* www.ftc.gov/opa/2012/02/bachomeloans.shtm; FTC, *Tennessee Attorney General Permanently Halt Medical Discount Scheme*, Jul. 11, 2011, *available at*

2.1 The experience in the United States: the health care story

The Agencies have addressed competition issues throughout the economy, targeting areas in which the Agencies could provide the greatest benefit for consumers. While the Agencies have addressed competition issues that impact the poor in many sectors, notably, food,[8] energy,[9] telecommunications,[10] and banking,[11] this submission will focus on the Agencies' efforts to promote competition in health care markets and thereby protect consumers, including, in particular, less affluent consumers, from higher prices and lower quality service. If the poor have to pay more for health care due to anticompetitive mergers or conduct, they may face restricted access to care. Moreover, to the extent that they can afford care, they may have less money available to spend on other basic necessities.

Health care consumes nearly 18 percent of the U.S. GDP.[12] Many Americans are uninsured or underinsured and must pay nonemergency health care costs out of pocket or do without certain needed care or medicines.[13] Even for the insured, the high cost of health care may be reflected in the cost of insurance premiums, various co-payment, deductible or other cost-sharing mechanisms, or reductions in the scope of their insurance benefits, which do not necessarily cover all essential services.[14] Moreover, as the U.S. public health agencies have noted, competition is important to improving health care quality and access to health care, for the publicly insured as well as private consumers.[15] The sector has long been a major enforcement priority of the Agencies.

2.1.1 Hospitals

The *FTC v. ProMedica Health System* matter involved a merger of two hospitals serving Toledo, Ohio. Toledo is characterized by a declining industrial base, high unemployment, and a relatively high poverty rate. The FTC challenged the transaction out of concern that it would significantly harm

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www.ftc.gov/opa/2011/11/usbenefits.shtm; *see also* Address by Commissioner Edith Ramirez, *Last Dollar Fraud: The FTC's Response to the Foreclosure Crisis*, Women in Housing and Finance, Jan. 27, 2011, *available at* www.ftc.gov/speeches/ramirez/110127whf.pdf.

8 See, *e.g.*, In *the Matter of Tops Markets LLC, et al.,* FTC Docket C-4295, *available at* www.ftc.gov/os/caselist/1010074/index.shtm.

9 *See* Section II/B.

10 *See*, *e.g.*, *United States v. AT&T, Inc.,* 1: 11-CV-01S60, 2011 (D.D.C., August 31, 2011), *available at* www.justice.gov/atr/public/press_releases/2011/274615.htm.

11 *See, e.g., In the Matter of First Niagara Bank N.A. and HSBC Bank USA N.A., available at* www.justice.gov/atr/public/press_releases/2011/277266.htm.

12 *See* Prepared Statement of the Federal Trade Commission, *The FTC in FY2013: Protecting Consumers and Competition*, Before the House Committee of Appropriations, Mar. 5, 2012, *available at* www.ftc.gov/os/testimony/120305appropriationstestimony.pdf.

13 The Patient Protection and Affordable Care Act of 2010 aims to address some of these issues and make health care more affordable and accessible, among other goals, through such means as an individual mandate and subsidies for less affluent consumers. *See* Patient Protection and Affordable Care Act, Public Law 111-48, 124 Stat. 119 (2010).

14 *See*, *e.g.*, Dep't Health and Human Serv's, ASPE Issue Brief, Essential Health Benefits: Individual Market Coverage, Dec. 16, 2011, *available at* http://aspe.hhs.gov/health/reports/2011/IndividualMarket/ib.pdf (noting, for example, that 62 percent of insured patients lack maternity coverage and 9 percent lack prescription drug coverage).

15 Dep't Health and Human Serv's, Centers for Medicare & Medicaid Serv's, 42 CFR Part 425, Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations, Final Rule, 76 Fed. Reg. 67802, 67809 (Nov. 2, 2011).

consumers in the Toledo area by creating a combined hospital system with an increased ability to raise prices. This would increase the burden on both uninsured and underinsured poor people seeking elective care,[16] as well as on the insured working poor and near poor because the hospitals could obtain supra-competitive reimbursement rates on necessary services, such as inpatient obstetric care, from commercial health plans, and, ultimately, from their members. At the FTC's request, a court enjoined the merger, and the Commission ultimately determined that it would be anticompetitive.[17] ProMedica filed an appeal with the 6th Circuit Court of Appeals where the case is currently pending.

In *FTC v. Phoebe Putney Health System*, the FTC challenged the attempt by Phoebe Putney, one of two hospitals in Albany, Georgia, to acquire Palmyra Park Hospital from HCA, Inc. Albany is in one of the poorest counties in the United States. Post-transaction, the combined entity would have a market share in excess of 85 percent. The FTC alleged that the transaction would enhance Phoebe Putney's ability and incentive to increase reimbursement rates charged to commercial health plans and their members, leading to higher health care costs in the area. Phoebe and Palmyra had been close rivals that competed for patients in the general acute-care hospital services market. That competition spurred each to increase the quality of its patient care; the FTC argued that this important "non-price" competition would be eliminated by the proposed transaction to the detriment of consumers in Albany.[18] While the court agreed with the FTC's assertion that the merger would reduce competition, the court concluded that the merger was immune from challenge because a regulatory scheme under Georgia law immunized the transaction from federal antitrust review under the state action exemption. That conclusion, which was affirmed on appeal, was ultimately overturned by the U.S. Supreme Court. The Supreme Court held that because the State of Georgia did not clearly articulate and affirmatively express a policy allowing hospital authorities to make acquisitions that substantially lessen competition, state action immunity did not apply to this acquisition.[19]

The Agencies also prosecute other anticompetitive practices by hospitals. For example, in 2011, DOJ reached a settlement with United Regional Health Care System, the largest hospital in its area, requiring United Regional to abandon anticompetitive contracts with insurance companies. These contracts had effectively prevented insurers from including other facilities in their networks, thereby (a) delaying or preventing expansion of services and capacity by existing rivals and entry by new competitors, likely leading to higher health care costs and higher insurance premiums and (b) reducing quality competition between United Regional and its competitors, among other anticompetitive effects.[20]

A common argument raised in hospital matters is that hospitals that are freed from competitive pressures are able to offer more charity care to poor consumers because insured patients, particularly

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16 Under U.S. law, hospitals may generally not refuse emergency treatment to anyone, whether insured or not. However, even insured patients may feel effects similar to the uninsured. First, high hospital care prices may be reflected in high insurance costs, paid both directly and indirectly by individual beneficiaries. Also, in some cases, insurance policies available to poor people may have low maximum benefits and high deductibles, imposing direct out-of-pocket costs for health care services even for the insured.

17 *In the Matter of ProMedica Health System, Inc.*, FTC Docket No. 9346, Opinion of the Commission, Jun. 25, 2012, *available at* www.ftc.gov/os/adjpro/d9346/120328promedicabrillopinion.pdf (noting that the insurers or managed care organizations "would not themselves absorb the higher rates; the higher rates would be passed on to the community-at-large.").

18 FTC Press Release, *FTC and Georgia Attorney General Challenge Phoebe Putney Health System's Proposed Acquisition of Palmyra Park Hospital as Anticompetitive*, Apr. 20, 2011, *available at* www.ftc.gov/opa/2011/04/phoebeputney.shtm.

19 *FTC v. Phoebe Putney Health System, Inc.*, 568 U.S. ____ (2013), *available at* http://www.ftc.gov/os/caselist/1110067/130219phoebeopinion.pdf.

20 Competitive Impact Statement at 4, *United States v. United Reg'l Health Care Sys.*, No. 11-cv-00030 (N.D. Tex. Feb. 25, 2011), *available at* www.justice.gov/atr/cases/f267600/267653.pdf.

managed care and privately insured patients, cross-subsidize a hospital's charity care.[21] The FTC's Bureau of Economics analyzed the argument that increased competition in the health care sector inhibits a provider's ability to offer charity care, and concluded that there is little relationship between the absence of competition and the provision of charity care.[22] To the extent that there is a relationship, the study found, in fact, that increased concentration is associated with reduced charity care and that reduced competition may lead to higher prices for uninsured patients.[23] The study noted "the lack of any statistically significant evidence for the cross-subsidization hypothesis. The data provides no statistically significant evidence that increased competition leads to reductions in charity care. The claim that hospitals will use market power to increase services to the poor is largely unsupported."[24]

2.1.2 Health Insurance

DOJ vigilantly polices anticompetitive practices in the health-insurance sector. These practices can inflate the price of health insurance, making it more difficult for less affluent consumers to afford appropriate health insurance.

In recent years, DOJ has challenged a variety of anticompetitive conduct by health insurers. For example, DOJ has a pending lawsuit challenging Blue Cross Blue Shield of Michigan's use of most-favored-nation clauses—including clauses requiring hospitals to charge other insurers more than it charges Blue Cross—in contracts with hospitals. These clauses, DOJ alleges, have prevented entry and expansion in health-insurance markets in Michigan, likely increasing prices for health insurance and hospital services.[25] Similarly, in November 2011, DOJ challenged an agreement between the owners of New West Health Services, Inc., an insurer operating in Montana, and Blue Cross Blue Shield of Montana that likely would have caused New West to exit the market. A settlement required the divestiture of New West's commercial health-insurance business to a third party, thereby preserving New West as a competitive factor and likely preventing an increase in prices and a decrease in quality.[26] Additionally, in 2010, Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan abandoned their proposed merger after DOJ announced its intention to challenge the transaction. DOJ determined that the merger would have engendered higher prices, fewer choices, and a reduction in the quality of health-insurance plans purchased by residents and employers in the Lansing, Michigan, area. Additionally, the merged firm would have had the ability to control physician reimbursement rates in a manner that could have harmed the quality of health care delivered to consumers.[27]

DOJ's activities have extended to public health-insurance programs, namely, Medicareand and Medicaid. For example, in 2012, the Division determined that WellPoint Inc.'s proposed acquisition of Amerigroup would have resulted in a merger to monopoly in Medicaid managed care in certain areas. The

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21 *See* B.C. Vladeck, *Paying for Hospitals' Community Service*, Health Affairs, v25, Jan./Feb. 2006, at pp. 34-43.

22 C. Garmon, Bureau of Economics, Federal Trade Commission, *Hospital Competition and Charity Care* Working Paper No. 285 October 2006, at 15, *available at* www.ftc.gov/be/workpapers/wp285.pdf.

23 *Id*., at 17-18.

24 *Id*., at 18.

25 Complaint ¶¶ 1-6, *United States v. Blue Cross Blue Shield of Mich.*, No. 10-cv-15155 (Oct. 10, 2010), *available at* www.justice.gov/atr/cases/f263200/263235.htm.

26 Competitive Impact Statement at 2-5, *United States v. Blue Cross & Blue Shield of Mont.*, No. 11-cv-00123 (Nov. 8, 2011), *available at* www.justice.gov/atr/cases/f277100/277173.pdf.

27 Press Release, Antitrust Div., U.S. Dep't of Justice, Blue Cross Blue Shield of Michigan & Physicians Health Plan of Mid-Michigan Abandon Merger Plans (Mar. 8, 2010), *available at* www.justice.gov/atr/public/press_releases/2010/256259.htm.

divestiture of Amerigroup's Virginia operations addressed DOJ's concern that the transaction would have substantially lessened competition in the provision of Medicaid managed-care plans in Northern Virginia.[28] Similarly, in March 2012, DOJ reached a settlement requiring significant divestitures before Humana, Inc. proceeded with its acquisition of Arcadian Management Services, Inc. Specifically, the settlement required the divestiture of Medicare Advantage plans in 51 counties and parishes in 5 states. Without the divestitures, the transactions likely would have resulted in higher premiums and reduced benefits and services.[29] In short, antitrust enforcement has helped ensure that these public programs are able to harness the forces of competitive markets to the benefit of their participants.

2.1.3 Pharmaceutical prices

Another good example of where competition policy can impact a market for essential goods is in the area of so-called "pay-for-delay" patent settlement cases. The FTC has challenged agreements between generic and patented drug manufacturers through which patented drug manufacturers settle patent infringement litigation by paying generic manufacturers to stay out of the market. These agreements effectively block all other generic drug competition for a growing number of branded drugs. According to an FTC study, pay-for-delay agreements cost consumers and taxpayers $3.5 billion in higher drug costs every year.[30] The FTC has challenged a number of these agreements in court;[31] the results in these cases have been mixed,[32] and the U.S. Supreme Court is considering one of the matters, which may result in a decision clarifying the law in this area. The FTC also supported legislation in Congress that would restrict pay-for-delay settlements.[33]

Competitive drug prices may be key to access or the ability to follow recommended treatment for many people. As an article noted, "when costs are high, people who cannot afford something find substitutes or do without. The higher the cost of health insurance, the more people are uninsured. The higher the cost of pharmaceuticals, the more people skip doses or do not fill their prescriptions."[34]

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28 Press Release, Antitrust Div., U.S. Dep't of Justice, Amerigroup Corp.'s Divestiture of its Virginia Operations Addresses Department of Justice's Concerns with Wellpoint Inc.'s Proposed Acquisition of Amerigroup (Nov. 28, 2012), *available at* www.justice.gov/atr/public/press_releases/2012/289428.htm.

29 Competitive Impact Statement at 1, *United States v. Humana Inc.*, No. 12-cv-00464 (Mar. 27, 2012), *available at* www.justice.gov/atr/public/press_releases/2012/289428.htm.

30 *See* Jon Leibowitz, Pay-for-Delay Settlements in the Pharmaceutical Industry: How Congress Can Stop Anticompetitive Conduct, Protect Consumers' Wallets, and Help Pay for Health Care Reform (The $35 Billion Solution), Speech at Center For American Progress, Jun. 23, 2009, at 12, *available at* http://ftc.gov/speeches/leibowitz/090623payfordelayspeech.pdf.

31 See, e.g., In the Matter of Schering-Plough Corp., Upsher-Smith Labs., and American Home Products *Corp.*, Docket No. 9297, Opinion of the Commission (Dec. 18, 2003), *available at* www.ftc.gov/os/adjpro/d9297/031218commissionopinion.pdf, *vacated*, 402 F.3d 1056 (11 Cir. 2005), *cert. denied,* 126 S. Ct. 2929 (2006); *In re Cardizem CD Antitrust Litig.*, 332 F.3d 896, 908 (6th Cir. 2003); *Bristol-Myers Squibb Co.*, No. C-4076 (April 18, 2003), *available at* www.ftc.gov/os/2003/04/bristolmyerssquibbdo.pdf; *Abbott Laboratories*, No. C-3945 (May 22, 2000) (consent order), *available at* www.ftc.gov/os/2000/03/abbott.do.htm; *Hoechst Marion Roussel, Inc.*, No. 9293 (May 8, 2001) (consent order), *available at* www.ftc.gov/os/2001/05/hoechstdo.pdf.

32 *Compare*, *e.g.*, *In re K-Dur Antitrust Litig.*, 2012 WL 2877662 (3d Cir. July 16, 2012), *with In re Tamoxifen Citrate Antitrust Litig.*, 429 F.3d 370 (2d Cir. 2005).

33 *See* Statement of Federal Trade Commission Chairman Jon Leibowitz on K-Dur 20 Matter, *available at* www.ftc.gov/opa/2012/07/kdur.shtm; *see also* Federal Trade Commission, *Pay-for-Delay: When Drug Companies Agree Not to Compete*, *available at* www.ftc.gov/opa/reporter/competition/payfordelay.shtml.

34 W. Sage, D.A. Hyman & W. Greenburg, *Why Competition Law Matters to Health Care Quality,* 22 Health Affairs 31, 35 (Mar./Apr. 2003).

2.1.4 Professional services

The Agencies also has been active against professionals that conspire to raise prices or limit output to the detriment of poor consumers. A few cases illustrate the Agencies' approach to this problem.

In 2000, the South Carolina legislature eliminated a statutory requirement that a dentist examine each child before a hygienist could perform preventive dental care in a public health setting. The goal was to allow schoolchildren, particularly those from low-income families, to receive preventive dental care. In July 2001, however, the South Carolina Board of Dentistry adopted an emergency regulation that re-imposed the dentist examination requirement. As a result of the Board's actions, a hygienist-owned company that had begun sending hygienists to schools to provide preventive care was forced to change its business model and was able to serve far fewer patients. The FTC challenged the Board's action, alleging that they "hindered competition in the delivery of preventive dental services to school-aged children and deprived thousands of school children – particularly economically disadvantaged children – of the benefits of preventive oral health care."[35] The case was resolved by a consent order that required the Board to publicly announce its support for the current state policy – that hygienists can provide such care in public health settings without a dentist's examination – and to notify the Commission before adopting rules or taking other actions related to preventive dental services provided by dental hygienists in public health settings.[36]

Similarly, in January 2013, the Division reached a settlement preventing the Oklahoma State Chiropractic Independent Physicians Association from jointly determining prices and negotiating contracts with insurers on behalf of competing chiropractors. The settlement put an end to conduct that had caused consumers to pay higher fees for chiropractic services in Oklahoma.[37]

Another recent example involved the use of competition advocacy to seek to eliminate anticompetitive state scope-of-practice regulations that made it more difficult for lower-cost health care practitioners to serve low income patients. In the state of Louisiana, state law prohibited Advanced Practice Registered Nurses (APRNs) to serve Louisiana health care consumers unless they had written "collaborative practice" agreements with physicians before they can offer health care services within the APRNs' scope of practice. Those agreements may be costly or difficult to establish in some areas. Without competition from APRNs, the least well off are likely to be harmed. FTC staff wrote to the Louisiana state legislature in support of a proposed law that would remove this requirement for certain APRNs who practice in medically underserved areas or treat medically underserved populations.[38] The letter noted reports of shortages affecting both the availability and accessibility of primary health care providers in many parts of Louisiana, and a recent Institute of Medicine (IOM) report pointing out that excessive regulatory restrictions impede APRNs' ability to help alleviate such shortages.[39] The staff letter stated that removing undue restrictions on APRNs "may improve access and consumer choice for primary care

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35 *In the Matter of South Carolina State Board of Dentistry, Docket. No. 9311,* Complaint, at 1, **Error! Hyperlink reference not valid.**.

36 *See* FTC Press Release, *South Carolina Board of Dentistry Settles Charges That it Restrained Competition in the Provision of Preventive Care by Dental Hygienists*, Jun. 20, 2007, *available at* www.ftc.gov/opa/2007/06/dentists.shtm.

37 Competitive Impact Statement at 2-4, *United States v. Okla. State Chiropractic Indep. Physicians Ass'n*, No. 13-cv-21 (N.D. Okla. Jan. 10, 2013), *available at* www.justice.gov/atr/cases/f291200/291221.pdf.

38 FTC Staff Comment Before the Louisiana House of Representatives on the Likely Competitive Impact of Louisiana House Bill 951 Concerning Advanced Practice Registered Nurses, Apr. 20 2012, *available at* www.ftc.gov/os/2012/04/120425louisianastaffcomment.pdf.

39 *Id.*

services, especially for rural and other underserved populations, and may also encourage beneficial price competition that could help contain health care costs."[40] The FTC staff asked the legislature to carefully consider expert findings on APRN safety – such as those of the IOM – and its own experience, to determine whether such formal regulations are in fact necessary to assure patient safety.

2.2 Energy

The FTC and DOJ carry out a broad program of antitrust law enforcement in the energy sector, which comprises a number of industries of critical importance to consumers. Energy – in the form of electricity, crude oil, refined petroleum products, natural gas, and others – is indispensable to the functioning of the entire U.S. and world economy. Ensuring that competition prevails in energy industries is vital to consumers at all income levels. Consumers at the lower end of the income spectrum spend relatively more of their incomes on such necessities as electricity, gasoline, home heating oil, and natural gas, and they experience more deeply than affluent consumers the direct and indirect effects of price increases brought about by anticompetitive conduct in those industries. The U.S. agencies vigilantly protect competition in the energy sector: the agencies closely review proposed mergers among energy companies and also scrutinize possibly anticompetitive conduct.[41] This careful oversight of the energy industry, with strong remedies where appropriate, can benefit consumers at all income levels, but redounds in particular to the benefit of low income consumers who can least afford to pay prices inflated by anticompetitive behavior.

2.3 Bid rigging

Cartels are recognized as "the supreme evil of antitrust."[42] Research has shown that consumers in developing countries suffer from widespread effects of global cartels.[43] Since the 1990s, DOJ's efforts to aggressively investigate cartels and criminally prosecute cartelists has led to the detection of wide-ranging global cartels affecting basic commodities sold worldwide, and uncovered domestic schemes affecting distressed and disadvantaged consumers.

2.3.1 The international lysine and vitamins cartel cases: Examples of cartel enforcement affecting basic commodities

- Lysine

  Undercover audio and video tapes of secret meetings among senior executives from the world's major lysine producers captured an international cartel in the act of fixing prices in the mid 1990's. Lysine is a key feed additive used in swine and poultry feed by farmers around the world, with over $600 million annual worldwide sales of lysine at the time of the cartel (1992 -1995).

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40 *Id.*, at 2.

41 *See*, *e.g.*, *In the Matter of Irving Oil Limited, a Canadian corporation, and Irving Oil Terminals Inc., a corporation*, FTC File No. 101 0021, *available at* www.ftc.gov/os/caselist/1010021/index.shtm; *In the Matter of Union Oil Company of California*, FTC Docket No. 9305, *available at* www.ftc.gov/os/adjpro/d9305/index.shtm. Gasoline and diesel price variations have a large impact on food pricing largely due to transportation costs. *See* http://ftc.gov/ftc/oilgas/gas_price.htm. In the electricity sector, DOJ successfully challenged mergers (*e.g.*, Exelon and Constellation, *available at* www.justice.gov/atr/cases/f284900/284934.pdf) and agreements (*e.g.*, U.S. v. KeySpan Corporation, *available at* www.justice.gov/atr/cases/f266700/266778.htm) that affect electricity prices to consumers.

42 *Verizon Communications v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 408 (2004).

43 *See* Margaret Levenstein and Valerie Y. Suslow, "Contemporary International Cartels and Developing Countries: Economic Effects and Implications for Competition Policy," Antitrust Law Journal, vol. 71 (2004), p. 801, *available at* www-personal.umich.edu/~maggiel/ALJ.pdf.

The tapes show executives from lysine companies in the US Korea, Japan, and other countries carving up the worldwide market for lysine, agreeing on the exact tonnage each of them would produce the next year, and fixing global lysine prices down to the penny, to be effective the very next day. DOJ introduced these tapes as powerful evidence at the trial of some of these executives, and the tapes are well-known to the international antitrust community.[44] Individuals convicted of participating in the lysine cartel were sentenced to jail terms in the U.S., and the firms paid criminal fines as high as $100 million in the United States for their participation in the cartel. The lysine cartel affected pork and poultry consumers around the world, raising prices for basic food commodities and harming the most vulnerable residents of many countries.

- Vitamins

The decade-long vitamins cartel was one of the most wide-ranging global cartels DOJ ever prosecuted, with harmful effects extending to the poorest consumers around the world. Vitamins cartel members agreed upon prices and sales volumes on a country-by-country basis for every major vitamin sold throughout the world for human or animal consumption, including vitamins A, B2, B5, C, E, Beta Carotene, and vitamin premixes, which are used to enrich breakfast cereals and many other foods. The conspiracy artificially inflated the cost of such everyday necessities as milk, bread, orange juice, and cereal, which were fortified with the vitamins produced by these conspirators. The vitamins conspirators reaped hundreds of millions of dollars in additional revenues at the expense of consumers around the world simply trying to fill their pantries with basic foodstuffs. The cartel resulted in a monumental $500 million against F. Hoffmann-La Roche—at the time the largest criminal antitrust fines ever imposed.[45]

2.3.2 *Real estate foreclosure auctions and e-rate: Examples of domestic collusion and fraud affecting distressed and disadvantaged Americans*

- Real estate foreclosure auctions

In recent years, DOJ has partnered with the U.S. Federal Bureau of Investigation (FBI) to investigate and prosecute bid rigging and fraud targeting the real estate market. While the U.S. faced unprecedented home foreclosure rates, conspirators eliminated competition at real estate foreclosure auctions around the country and artificially drove down foreclosed home prices, enriching the colluding real estate investors at the expense of distressed homeowners and lending institutions. These schemes also have far-reaching effects for struggling communities and homeowners because they negatively affect home prices in the neighbourhoods where the foreclosed properties are located. To date, the initiative has resulted in guilty pleas from 51 individuals and two corporations around the U.S. Similar collusive conduct has also been detected among bidders for public tax liens.

DOJ's efforts to combat bid rigging and collusion at real estate foreclosure auctions is part of the work of President Obama's Financial Fraud Enforcement Task Force (FFETF), which was created in November 2009 to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The FFETF has more than 20 federal agencies, 94 U.S. attorneys' offices and state and local partners, partnering in the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to facilitate increased investigation and

44 *See* Scott D. Hammond, "Caught in the Act: Inside an International Cartel," OECD Competition Committee, Paris, France (October 18, 2005), *available at* www.justice.gov/atr/public/speeches/212266.htm.

45 See www.justice.gov/atr/cases/indx136.htm and www.justice.gov/atr/public/criminal/sherman10.html.

prosecution of financial crimes, enhance coordination and cooperation among federal, state and local authorities, address discrimination in the lending and financial markets, and conduct outreach to the public, victims, financial institutions and other organizations. Over the past three fiscal years, DOJ has filed more than 10,000 financial fraud cases against nearly 15,000 defendants, including more than 2,700 mortgage fraud defendants. [46]

- Nationwide e-rate investigation

From 2005 through 2011, DOJ conducted a nationwide investigation of bid rigging and fraud in the Federal E-Rate program. Congress created the E-Rate program to help economically disadvantaged schools and libraries obtain computer and telecommunications services, but the Division investigation uncovered extensive fraud and collusion in this industry by criminals who took advantage of the program to enrich themselves. As a result of DOJ's investigation into fraud and anticompetitive conduct in the E-Rate program, a total of seven companies and 24 individuals pled guilty, were convicted at trial, or entered civil settlements. Those companies and individuals were sentenced to pay criminal fines and restitution totalling more than $40 million. Eighteen individuals were sentenced to serve prison time.

3. Conclusion

Competition law and policy can play an important role in combating poverty. Enforcement activities may focus on ensuring access to lower-priced, higher-quality goods and services, which can directly impact the nutritional, health, and educational needs of the poorest in developing countries. Challenges to anticompetitive conduct in those sectors can bring disproportionate benefits to low income sectors of society.[47]

The lower prices that can result from increased competitive pressures expand markets and make goods and services more affordable, especially to poor populations. Indeed, "through the use of its research and advocacy tools, the competition agencies can identify barriers to competition and seek to persuade legislatures and regulatory bodies to adopt measures that yield important economic and social benefits."[48]

46 For more information on the Financial Fraud Enforcement Task Force, visit www.stopfraud.gov.

47 T. K. Cheng, *Convergence and its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law*, 12 Chi. J. Int'l L. 478 (2012).

48 W. E. Kovacic, *supra*, note 6.

ZAMBIA*

1. General introduction

Zambia is a developing southern African country that has for a long time suffered from this global phenomenon, poverty. Poverty levels in the history of the country hit 90.0% of the population (living below the poverty datum line of US $1 per day) during the liberalization decade of the economy (1991 – 2000). During this decade (1991-2000), the Zambian economy recorded the worst macroeconomic performance in terms of all the key macroeconomic indicators. See comparison of key macroeconomic indicators for three decades from 1980 – 2012 in Table 1 below:

Table 1. Developments in Key Macroeconomic Indicators

	Real GDP (RGDP)	RGDP per capita(USD)	GNS (% of GDP)	GIR	Inflation
1980 - 1990	1.3	487.6	8.8	1.1	46.3
1991 - 2000	(0.1)	361.4	7.4	1.2	68.1
2001 - 2012	5.8	854.2	16.9	2.5	14.2

Source: IMF World Economic Outlook (WEO), released on 9th October 2012

This negative trend in the performance of the economy however, has been slowly reversing especially after the year 2000. Positive growth started to show in the economy and poverty levels started falling from a national average of 90.0% in the 1990's to 60.0% currently[1]. According to the Central Investigations Agency (CIA) fact book, Zambia is ranked the 12th poorest nation in the world with 60.0% of its population living below the poverty datum line. In terms of GDP per Capita, the Global Finance Magazine ranks Zambia to be the 28th poorest nation in the world with an estimated GDP per capita of about US $1,714.61 as at end 2012[2].

The economy has continued posting impressive growth with an estimated GDP growth rate of above 6.0% for the last 6 years except in 2008 (5.8%). This year (2012), the economy is expected to grow at about 6.4%. This growth could be attributed to several factors but there is general consensus among scholars that the principal factor for this turn around in the economic performance of the country is due to the liberalisation of the economy which opened up the economy to private sector investment which necessitated the establishment of commercial presence by several business enterprises both local and international.

The newly adopted economic management paradigm shift from command to a free market economy of the 1990's and the ensuing investment-friendly economic environment in Zambia witnessed the flow of

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* Contribution submitted by Wesley S. Kalapula and Emmanuel M. Chokwe, Competition and Consumer Protection Commission.

1 As at end year 2012. Of the 60.0% of the poor people in Zambia, 70.0% live in rural area while 30.0% live in urban areas.

2 http://www.gfmag.com/tools/global-database/economic-data/12147-the-poorest-countries-in-the-world.html#axzz2G9aESZWP

foreign private capital by multi-national corporations (MNC's) especially in the mining sector[3], cement sector, sugar sector, railway and road transport, retail and agricultural related investments, commercial banks etc. There was an avalanche of mergers and acquisitions in the economy especially in the above sectors which in turn led to the establishment of allied companies which are mainly locally owned. The entities under new management were recapitalised by new capital and increased their efficiencies and output and also offered more employment and business opportunities for the local people.

Some of the takeovers and acquisitions which took place before the Commission started its operations in 1997 led to the transfer of public monopoly companies to private monopoly companies. This development especially in the sugar and cement sectors is what has brought about concerns about high domestic prices of these products. In each of these sectors the new entrants have not yet reached the level where they could offer effective competition to the dominant incumbent firms.

The liberalisation of the economy came up with a new set of economic management policies including competition law. It is the Commission's submission that competition law can serve as a pivotal instrument in the alleviation of poverty by curbing anti-competitive trade practices engaged in by competitors especially through abuse of dominance and cartel behaviour. The paper will explore the instances in which the competition authority has attempted to prevent competitors from engaging in conducts that are detrimental to the consumers but more so to the poor people.

2. What is poverty

2.1 Definition of poverty

Poverty is a multi-dimensional concept which has been defined differently by different scholars and organisations. Poverty can be defined in two ways namely quantitatively and qualitatively. In the qualitative sense, some countries benchmark living below US $1.25 per day to signify absolute poverty. However, in Zambia, quantitative definition of poverty uses a benchmark of living below US $1 per day. As mentioned above, poverty is also defined qualitatively. The descriptive definition of poverty seems to capture the real concept of poverty as it covers a broad spectrum of factors that constitute poverty. The qualitative definition of poverty can also be desegregated in two parts; absolute and relative poverty. Generally, poverty can be defined in two ways namely absolute and relative poverty. The United Nations in 1995 after the World Summit on Social Development in Copenhagen adopted a definition of absolute poverty as;

> *"a condition characterised by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services[4]".*

Relative or overall poverty on the other hand was considered as taking various forms. These included;

> *"lack of income and productive resources to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments and social discrimination and exclusion. It is also characterised by lack of participation in*

[3] The mainstream of the Zambian economy which is the single most predominant contributor to foreign exchange earnings

[4] Contained in "Indicators of Poverty & Hunger", Dr David Gordon Professor of Social Justice, School for Policy Studies, University of Bristol, Expert Group Meeting on Youth Development Indicators, United Nations Headquarters, New York, 12th – 14th December 2005

decision making and in civil, social and cultural life. It occurs in all countries: as mass poverty in many developing countries, pockets of poverty amid wealth in developed countries, loss of livelihoods as a result of economic recession, sudden poverty as a result of disaster or conflict, the poverty of low-wage workers, and the utter destitution of people who fall outside family support systems, social institutions and safety nets, (UN, 1995)[5] *".*

Further, the United Nations statement which was signed by heads of all UN agencies in June 1998 defined poverty as;

"Fundamentally, poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and cloth a family, not having a school or clinic to go to, not having the land on which to grow one's food or a job to earn one's living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation[6] *".*

From the foregoing formal definitions of poverty, it is evident that poverty is indeed a multi-dimensional concept and its definitions may vary by gender, age, culture, and other social and economic contexts. For instance, men may associate poverty with a lack of material assets, whereas for women, poverty may be defined as food insecurity; Younger men may consider the ability to generate an income as the most important asset, whereas the status connected to a traditional agricultural lifestyle may be the most important for older men. Nonetheless, despite these formal definitions of poverty, the underlying intuition of poverty can be summarised in lack and deprivation of various material, social and economic privileges.

2.2 Causes of poverty

Poverty never results from the lack of one thing but from many interlocking factors that cluster in poor people's experiences and definitions of poverty. Perceived causes of poverty are affected by one's status and location. For example, poor farmers may link poverty to drought; the poor in the city to rising prices and fewer employment opportunities; the rich to "deterioration in domestic and international terms of trade, neglect of traditions and norms, lack of motivation among certain classes and groups of people, price liberalization and devaluation, lack of education and absence of governance among other things. The causes of poverty are just as multi-faceted as its definition. In our analysis of the many causes of poverty, we shall explore four categories namely social, economic, political and external factors.

2.2.1 Social factors

2.2.1.1 Overpopulation

Overpopulation is defined as the situation of having large numbers of people with too few resources and too little space. Overpopulation can result from a high population density (the ratio of people to land area), from low amounts of resources, or from both.A high population density pressures the available resources, as the resources can only support a certain number of people. The causes of overpopulation which have aggravating consequences on poverty comprise of high birth rates which is characteristic of many developing countries as children are viewed as sources of labour, lack of access to birth control facilities and generally anti-birth control traditions and societal norms.

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5 Ibid

6 Opcit

This situation is further aggravated by low productivity especially agricultural productivity which is the mainstay of the majority of the rural poor. As opposed to some of the smaller countries in Western Europe, such as the Netherlands and Belgium, which have high population densities as well but these countries practice mechanized farming and are involved in high-tech industries which support the dense populations. This is not the case in many sub-Saharan African countries including Zambia most of whom have relatively low population densities but lack the economic resources and technology to boost productivity.

2.2.1.2 Distribution of resources

It is widely documented that the world's poorest nations also have the most uneven distribution of resources. This observation is clearly evident in Zambia. It is not uncommon to see highly affluent communities living side-by-side with extremely poor communities who spend literally everything they earn on food, which in many instances cause social upheavals. The dichotomy of economic growth in Zambia and many developing countries is that as more wealth and resources have become available, only a small proportion of the population have access to these resources. Many analysts attribute this apparent dilemma to the cost associated with obtaining these resources which increases with the increase in wealth, resulting in unequal access to them. Those living at the middle, lower, and bottom of the income brackets find it more difficult to sustain a viable quality of life.

Such unevenness in the distribution of resources is clearly inefficient from the point of view of the world as a whole. Torsten Persson and Guido Tabellini's study of 56 countries finds a strong negative relationship between income inequality and growth in GDP per head[7]. Since the 1970s, the poorest 20 percent of all U.S. households have earned an increasingly smaller percentage of the total national income (generally less than 5 percent) while the wealthiest 5 percent of households have earned an increasingly greater percentage (about 45 percent of the total)[8].

2.2.1.3 Lack of education

Lack of a good education is often associated to poverty. At a micro level, an uneducated individual will find it difficult to find a well-paying job. In addition, people with an education have many survival skills and acumen which are not available to uneducated people. According to the sixth national development plan (2011 – 2015), the national average enrolment rate for the year 2006 was estimated at about 50.2% for pupils starting their first grade while the completion rate was estimated at 48.1%[9] for pupils completing their 12th grade. Clearly, this is a gloomy picture for a country that is fighting poverty especially that there is empirical evidence regarding the positive correlation between education and poverty reduction.

2.2.1.4 Environmental degradation

Environmental degradation is the deterioration of the natural environment, including the atmosphere, bodies of water, soil, and forests. While environmental degradation affects all sectors of the community, its effects are most pronounced on the poor. As forests, land, air, and water are degraded, people who live directly off these natural resources suffer most from the effects. For instance, in rural Zambia, people

7 http://futureobservatory.dyndns.org/5200.htm

8 http://www.fightpoverty.mmbrico.com/poverty/economic.html

9 Republic of Zambia, Sixth National Development Plan 2011 – 2015: "Sustained Economic Growth and Poverty Reduction", January 2011

depend on agriculture and forests as a source of food and other resources. Soil degradation and deforestation simply damages or eliminates the supplies and perpetuates/deepens poverty levels.

Environmental problems have led to shortages of food, clean water, materials for shelter, and other essential resources which disproportionately affect the poor more than anybody else as the poor spend most of their income on these essential facilities. Further, the poor may not afford conveniences such as air and water filters, refined fuels, and industrially produced and stored foods to buffer themselves from the effects of environmental degradation.

2.2.1.5 Demographic shifts

The concept of "demographic shifts" or "demographic change" describes a population's age structure adjusting to changes in living conditions. Consequently, changes in the composition of a society's age structure are the result of social shifts[10]. Demographic shifts have led to increases in poverty among children. In the United States, for instance, typical family structures have changed significantly, leading to an increase in single-parent families, which tend to be poorer[11].

2.2.2 Economic factors

2.2.2.1 High Rate of unemployment

Unemployment is a major cause of poverty especially in today's market based economies. Globally, poverty has been closely associated with high rates of unemployment. Countries with high rates of unemployment also record high levels of poverty. When people are not employed, they lack an income to sustain a decent livelihood. Further, high unemployment levels lead to Government not collecting enough tax resources to embark on poverty alleviating social programmes.

2.2.2.2 Economic trends

This cause of poverty is more relevant to developed countries than developing countries. Economic trends or economic cycles cause many people to fall in poverty. The point in case is the recent global financial and economic crisis which led to significant reductions in incomes and loss of jobs.

2.2.2.3 Unfair trade

Unfair trade results in sub-optimal economic outcomes and therefore contributes to poverty in both developed and developing nations. For instance, high agricultural subsidies and protective tariffs in the developed world not only drains public money but also increases prices for consumers in both the developed and developing world. It further decreases competition and efficiency by preventing exports by more competitive agricultural sectors in the developing world and the developed world due to retaliatory trade barriers. Maximising the gains from international trade can substantially reduce poverty as individuals, companies and nations take advantage of their comparative advantage to trade with each other thereby creating employment and incomes.

[10] Demographic change in Europe -An Overview. Working paper no. 4 of the Observatory for Sociopolitical Developments in Europe, August 2010

[11] http://povertyhci.weebly.com/causes-of-poverty.html

2.2.3 Political factors

2.2.3.1 Poor governance

Good governance is an essential pre-condition for pro-poor growth as it establishes the enabling regulatory and legal framework in which private economic activity can thrive. Governance is defined as the manner in which power is exercised in the management of a country's social and economic resources for development. It implies a capacity to turn public income into human development outcomes. Poor governance does not only result in inefficiency in the delivery of public services but can also erode business confidence which results in deteriorating economic growth with its disproportionate impact on the poor.

2.2.3.2 Prejudice and inequality

This refers to social inequality that stems from cultural ideas about the relative worth of different genders, races, ethnic groups, religious and social classes. This ascribed inequality places individuals in different social categories at birth which automatically determine the opportunities both social and economic available to disfavoured groups. The apartheid laws in South Africa clearly made people of colour worse-off by discriminating against them in both social and economic opportunities.

2.2.3.3 Corruption

Corruption can be both a consequence and a cause of poverty. It directly causes poverty by misappropriating resources meant for developmental activities. Corruption impacts the poor directly as they may not have the means to penetrate corrupt systems to access public services. By flouting formal processes, corruption increases the cost of business through the price of illicit payments, the management cost of negotiating with officials, and the risk of breached agreements or detection. This stifles economic growth which ultimately affects the poor more than well-off persons.

2.2.4 External factors

2.2.4.1 Civil war

War diverts scarce resources from fighting poverty to maintaining the military. Apart from inflicting direct damage to infrastructure and social services, it disrupts economic activity and leads to stunted economic growth. This has direct implications on poverty.

2.2.4.2 Historical

A lack of reliable basic infrastructure, such as roads and communication systems constrain the development process especially in developing countries. Further, the historical legacy of colonialism where colonies were largely viewed as merely cheap sources of natural resources and labour to support development in colonising countries has been attributed to the lack of development in countries which are former colonies.

2.2.4.3 Natural disasters

Droughts, floods, hurricanes, earthquakes cause significant damage to economic infrastructure and economic activity. They also divert resources from economic activity to reconstruction efforts. In some worst case scenarios, natural disasters such as droughts have led to famines often with disastrous consequences especially on the poor who are less able to cope with the disaster.

2.2.4.4 Other Factors

At a micro-level, other causes of poverty may include disability or ill-health, gender, being a member of minority ethnic groups, living in a remote or very disadvantaged community.

3. Competition law and poverty reduction

Competition law and policy is a set of rules and regulations that govern market operations in a free market economy. It sets out minimum standards and objectives that ensure that there is free and fair competition in the economy. Its principal aim is to ensure that corporates compete fairly by prohibiting market behaviours that may prevent, distort and restrict competition in the relevant market.

The direct link between competition law and poverty reduction lies in the power of competition law to regulate competition in a free market economy. This is achieved in controlling, monitoring and prohibiting anti-competitive trade practices that adversely affect competition in the economy leading to undesired competitive outcomes such as high prices for essential goods and services.

In addition, apart from the application of the enforcement mechanism to redress competition law infringements, a non-enforcement mechanism called advocacy can be used to reverse some policy and legal frameworks that are at variance with the principles of competition law which encourages and promote efficient allocation of resources to achieve desirable competitive outcomes that are beneficial to the consumers and the economy as a whole.

Competition law and policy is just one of the important Government instruments that could be used to reduce poverty. As mentioned above, poverty has many definitions and causes and as such competition law is a necessary but not sufficient tool to alleviate poverty as a stand-alone policy instrument. It is only efficient if used in conjunction with other supporting policies and legal frameworks as well as steady political support from Government and other relevant stakeholders.

3.1 Poor people as consumers

This section of the paper discusses competition law as an instrument that could be used to protect and enhance the economic life of poor people in our society. While inflationary pressure could be caused by other factors other than anti-competitive conducts by corporates, abuse of dominance and cartel behaviour could also contribute to high prices for essential goods and services. Poor consumers/people are the most vulnerable to price fluctuations especially price increases. As such, artificial price increases due to anti-competitive behaviour by competitors such as abuse of dominance, cartel behaviour and mergers need to be checked as these may lead to increased poverty.

3.1.1 Cartel behaviour and high prices

In a cartel situation, independent enterprises (not belonging to the same economic entity) coordinate their actions to pursue a common business/economic interest. The following are some of the activities of cartel behaviour;

a. Market allocation (division/partitioning); Market allocation prevents intra-brand competition which normally results in a higher price of the product which adversely affects consumers more so the poor people.

b. Price Fixing; Here, the competitors agree to fix the price of a commodity. The fixed price is normally higher than the competitive price hence harming the welfare of poor consumers.

c. Collusive tendering; Tenders are normally higher than normal due to collusion of the bidders.

As indicated above, cartel behaviour lead to high prices which are inimical to consumer welfare and lead to poor people deep into poverty. The Zambian competition legislation prohibits cartels per se.

3.1.2 Abuse of dominance

Abuse of dominance leads to a myriad of anti-competitive trade practices that may lead to either exclusionary or exploitative abuse of market power. The instances may include: - excessive pricing, predatory pricing, refusal to deal, discriminatory pricing etc. This paper is concerned with excessive pricing in which a dominant firm exercises its market power to increase and maintain high prices on the relevant market for a commodity which should be essential. This erodes consumer welfare especially the poor who remain weak.

3.1.2.1 Exploitative abuse

As an example of exploitative abuse of dominance, the aspect of excessive pricing will be given as an example. This is where a dominant firm exploits the consumers by charging unreasonably high prices. I.e. prices that cannot prevail if there was effective competition in the market. Excessive pricing adversely affect consumer welfare especially the poor consumers. It mainly occurs in the absence of local effective competition and import competition as well as ineffective competition law/authority to investigate the abuse.

3.1.2.2 Exclusionary abuse

This is where an incumbent dominant firm adopts a strategy to exclude its competitors from the market. This is evidenced in the case of predatory pricing where the dominant firm sells its products below the cost of production with intent to force its smaller competitors to exit the market. The effect of predatory pricing is that after the smaller competitors exit the market, the price for the commodity is increased to above competitive levels which is detrimental to the poor consumers to the benefit of the dominant firm.

Another example of exclusionary abuse of dominance is marginal squeeze. Here the Dominant firm confers undue competitive advantage to its subsidiary operating in a downstream market against its independent competitors. It would achieve this by say, selling the critical input required by all players in the downstream market at different prices with a lower price given to its subsidiary. This would ultimately squeeze the margins of the independent players in the downstream market for them to be able to compete effectively with the subsidiary.

The net result may be that the independent companies may exit the market especially if they do not have an alternative source of the critical input. This may result in high prices for the consumer in the long run.

3.1.3 Mergers

Failure by competition authorities to foresee (predict) that a merged entity post merger may lead to increase in prices in the relevant market lead to this problem. Anti-competitive mergers may be consummated leading to the formation of an entity that may have market power to increase prices and may also lead poor people into more poverty.

In the Zambian scenario, three examples will be given in which the competition authority intervened in abuse of dominance cases and cartel behaviour in the cement, sugar and fertiliser sectors. The three (3) cases are illustrated below.

A. Excessive pricing of sugar

Sugar is a source of energy for many people including the poor and in Zambia it has been selected as a vehicle for the transmission of vitamin A. The Commission's main objective to intervene in the sector was to stop the excessive pricing of this essential commodity and make it affordable to the consumers (poor people).

Excessive Pricing of Sugar

In the year 2006, the Commission made investigations into the allegations of high sugar prices on the Zambian domestic market meant for household consumption. This sugar is fortified with vitamin A (which the ministry of health say is lacking in the population especially the old, young and expecting mothers).

The findings of the commission were that indeed the domestic prices of sugar were excessive and concluded that the sugar firm abused its power (had a market share of about 93.0%). The commission made the following recommendations: - that import competition be allowed to discipline incumbent domestic player. Recommended to Government to reduce the import duty to allow more sugar to come into the country.

Note: The Commission's investigative report never went to the board for decision making. Towards the end of the investigations, the Commission was advised by Government that the matter would be resolved through policy measures. However, to date, the situation has not changed.

B. Abuse of dominance in the cement sector

Cement is one of the essential materials used in the construction of social economic infrastructural development projects such as roads, bridges, hospitals, schools, real estate, etc and a basis for industrial development. Given its importance to national development, the Commission instituted an investigation into the sector following allegations of cement shortages on the market causing price distortions.

At this time, the cement company had 98.0% market share with 2.0% held by another small entrant into the sector. There were no imports coming into the country.

Abuse of Dominance in the Cement Sector

From 2001 after Lafarge acquired Chilanga Cement Company owned by the common wealth development corporation, the Commission has been monitoring the market behaviour of the enterprise. In 2003, the Commission observed a shortage of cement on the market and increasing prices of the commodity. At that time, there was very high demand for cement following the many infrastructural rehabilitation and construction projects by the Government, real estate development, and also demand from the mining sector.

As a result of public outcries and continued shortages and high prices, the Commission intervened and found that all industrial sales of cement were curtailed as the cement company was receiving orders from the export markets.

The commission found that the cement company abused its market power by limiting supply on the domestic market which brought about cement shortages on the market and price increases. The commission ordered the cement company to change its strategy and restore supply on the local market and stabilise the prices of the commodity

C. Cartelistic behavior in the fertilizer sector

Fertilizer is an essential raw material in crop production in the agricultural sector. It's the most expensive raw material. The Zambian Government is currently running a pro-poor subsidy programmeby cushioning the poor small scale farmers from high prices of fertilizer. Three quarters of the cost is paid by the Government.

Government contracts private fertilizer companies to source appropriate fertilizer for resale to Government for its agriculture subsidy programme to small scale farmers. There are several fertilizer companies but only two (2) have been winning the tender for the last 8 – 10 years. The Commission was concerned and suspected a cartel:-

Cartelistic Behaviour in the Fertilizer Sector

In November 2012, the Commission carried out a dawn raid on the two firms suspected to have been involved in a cartel. A lot of documents containing implicating evidence were collected. In the middle of the investigation, Government intervened citing concerns that the investigations would disrupt the supply of fertiliser thereby causing food shortages and food insecurity in the country. Investigations have therefore been deferred.

The Commission's suspicions were that the two firms were involved in cartelistic behavior as a result of which the Government was paying a higher price for the commodity.

It is the Commission's considered view that proper appreciation and administration of competition law can bring about enhanced economic welfare for the poor. Apart from the enforcement of the law, advocacy can be useful especially in countries where there is poor political will. While the Commission was not successful in the sugar case to enforce the law, the message has reached the policy makers and the Commission plans to engage Government officials on the importance of competition law through advocacy. From the three cases given above, the role of a competition authority cannot be overemphasized in ensuring that there is free and fair competition in the economy which may lead to market conditions delivering competitive market outcomes which are beneficial to the consumer and poor people in particular.

3.2 Poor people as entrepreneurs and workers

Before 1991 when the economy was run on the socialist fundamental principles of economic management, the Zambian economy was closed with high tariff barriers, quotas, anti-dumping duties and burdensome bureaucratic processes. Government ran businesses and there were very few private individuals with private investment in the country. Everyone depended on Government provision of goods and services.

However, this trend changed following the Government pragmatic change of economic management from the command economy to the free market economy. This period brought about a different regime of policies governing the economy. Government adopted a policy of "private led growth". Thus, Government stopped running businesses which were thought to be suitable for private entrepreneurs. The Government's duty was only to create an environment suitable for private sector development which included the formulation of various policies.

Several sectors of the economy responded to these policy changes that created an opportunity for private sector investment. Currently, there are a number of micro and medium sized enterprises spread through-out the country which have created job opportunities for poor people. The enterprises cover all

sectors of the economy such as ICT, Agriculture, Tourism, Retailing, Mining, Construction, Manufacturing, etc. These ventures have helped people move out of poverty. They are at least earning an income which ensures food security, cover medical and school fees and build decent houses.

However, the incorporation of these enterprises is one thing and their growth and development is another. The competition Commission's duty is to ensure that incumbent dominant firms do not abuse their market power to prevent the growth of these small entities and/or foreclose the markets. Common among the strategies that incumbent dominant firms with market power use are exploitative and exclusionary strategies. However, what is relevant in this scenario is to prevent the growth of small enterprises, foreclose entry and force some micro, small and medium enterprises to exit the market is exclusionary abuse of market power.

In the Zambian scenario, we have not had any specific cases worth citing involving exclusionary abuse of market power by an incumbent dominant firm against smaller market players. However, it suffices to say that the competition authority is wary of these schemes by big firms to adopt anti-competitive strategies that may lead to the prevention, restriction and distortion of competition that may adversely affect the small enterprises and poor consumers through high pricing.

A proper combination of other policies and competition law can surely move a lot of people out of poverty especially small enterprises need to be involved as they are the seed bed for future corporations. As such, anti-competitive practices need to be stopped at all costs to allow the growth of these firms that have potential to promote further employment opportunities and drive people out of poverty.

4. Other important considerations

Much as the factors causing poverty are many, there cannot be a single measure/approach that can be employed to alleviate poverty. A multifaceted approach will have to be adopted to fight poverty and competition law is one of the instruments that could be employed in contributing to poverty alleviation. In terms of competition law application and enforcement to tackle poverty especially in a developing country like Zambia, several considerations need to be put in place as illustrated below:-

4.1 Importance of advocacy

The common practice to stop anti-competitive trade practices by firms by competition authorities is to adopt an enforcement mechanism. However, there is a general consensus among scholars and competition law practitioners that the understanding and appreciation of competition law principles and hence benefits to the economy by relevant stakeholders is important/cardinal. To create this understanding, different advocacy approaches need to be adopted by competition authorities to disseminate information regarding the role of competition law in a liberalized market economy. Most importantly, this information should be propagated to Government officials such as the politicians, policy makers and law enforcers and the private sector as well as the general public. In the Zambian scenario, during the early days of the introduction of competition law, the Commission spent its resources and directed its energies in creating awareness to the above stakeholders for them to understand and appreciate the benefits of competition law. For example, one success story in which advocacy was successfully used in Zambia was in the telecommunications sector.

The telecommunications sector in Zambia has three (3) mobile service providers. Two (2) of these firms are privately owned while the other one is owned by Government which also provides the telephone landline service. Before 2010, the Government owned company was the only one that owned an international gateway facility and the other two privately owned mobile phone providers did not have their own international gateways to allow their subscribers to make international calls.

The Zambian competition authority realized that the Government owned firm had an undue advantage over its competitors in terms of international calls due to the fact that it was able to offer the international call service cheaper than its competitors by virtue of owning the international gateway.

Against this backdrop, the competition Commission of Zambia felt that it needed to level the competition playing field in terms of international calls. As such the Commission used advocacy to Government to allow for the liberalization of the international gateway. It made several advocacy efforts to the Government's parliamentary committee on telecommunications and the ministry responsible for communications. It took a period of about 6-7 years for the Commission to convince Government that the liberalization of the international gateway was of benefit to the consumers and the economy as a whole.

In 2010, the international gateway was liberalized and the cost of international calls reduced by 70.0%. This cost reduction constituted a benefit to the poor consumers who could not afford to make international calls.

4.2 Pro-Poor government subsidy programme

The Government of the republic of Zambia has been running an agricultural subsidy programme for the last 8 years for the small scale farmers. The rationale for this programme is premised on the fact that fertilizer prices are too high for a small scale farmer. In the effort to ensure national and household food security, the Government saw it prudent to subsidize the farmers throughout the country. For these years that the programme has been in place, there have been harvests above average. The extra grain is sold to Government, a situation which has created an opportunity for earning income to meet the social and economic needs of the farming households. This programme has to some extent pushed down poverty levels in rural areas.

However, while the policy is good for the poor farmer, the competition authority has reservations as to the real benefit of this programme to the economy. This subsidy programme gobbles huge sums of tax payers' money in billions of kwacha. The Commission's contention with regards to this programme is the amount of resources spent to produce the maize grain viz a vis the benefits. Whilst the country has been registering increased production in terms of maize grain, there has not been a positive effect on the price of both maize grain and maize meal as these have continued increasing over time and these high prices of maize meal have adversely affected the welfare of poor urban households with low incomes. These resources could be used to meet other social and economic needs.

4.3 Focus of competition authority: production chain

A product will reach the final consumer/end-user through vertical distribution which constitutes a chain from production, wholesale, retail and finally the consumer. In a sector devoid of anti-competitive practices, where market players are thought to compete on the merit, the competition authority has no incentive to intervene in such a market. However, the chain may be marred by vertical restraints which may prevent, distort and restrict competition and bring about adverse effects on the consumer such as high prices.

In terms of where the competition authority should focus its attention along this chain in order to reduce poverty, the appropriate approach is to focus on the whole chain and see where the vertical restraint is. By focusing on the whole chain, the source of the prevailing anti-competitive practices will be traced and appropriate measures be instituted.

In Zambia, there was a case in 2007 in the cement sector where there was a public outcry about high prices of the commodity on the domestic market. The immediate reaction of the Commission was that the producer of the commodity had hiked the price and was abusing its market power. However, the

investigations revealed that the cement producer had not increased the price of the commodity but the problem was at retail level where the prices and the margins were very high.

During the meeting between the cement producer representatives and the Commission officials, the Commission had asked the respondents as to why there were high cement prices on the domestic market. One of the representatives of the cement company said:

> *"We sell cement at relatively low and affordable price but the problem is at retail level, we do not have power to control prices at this level as retailers are independent business firms."*

Against this background, the Commission learnt that when assessing a competition case involving a production chain, it was important to focus attention on the whole production chain from production all through to retail level.

5. Competition policy and other policies

Competition law and policy cannot work in isolation to achieve or produce desired outcomes. This is because it is part of the many complementary policies that have to be blended appropriately to achieve better results/economic conditions for the economy. Such policies as privatization policy, trade policy, commercial and industrial policies etc are important as they create an environment that lead to a competitive market environment that encourages and promotes the growth and development of the economy at large. In 2007, the competition Commission in Zambia was faced with a case in the sugar industry. This was a case of excessive pricing of the commodity on the domestic market and the Commission thought that import competition would be the solution. The Commission recommended to Government to reduce the import duty on sugar to facilitate its importation into the country.

The above example shows that the harmonization of policies and legal frameworks can deliver more desired competitive outcomes that are beneficial to the economy. Generally, the results will be good for the poor people.

6. Conclusions

Several conclusions were drawn from this paper and these include:-

- Competition law and policy cannot be used as a standalone instrument to alleviate poverty. It is just one part of the several Government Instruments that can be used to fight poverty. An appropriate blend between competition law and policy with other policy and legal frameworks can deliver better results beneficial to the economy and the poor people in general.

- Competition law and policy can be used as one of the complementary Government instruments to fight poverty as long as it has sufficient provisions and competent authority as well as political will.

- A better application of competition law leads to increased competition in the market which results in;

- Increased innovation leading to the production of a variety of products hence increasing consumer choice, including the poor.

- Increased competition forces firms to be efficient in their production and distribution processes leading to lower prices, good for poor people.

- The competition legislation should confer competition authorities with adequate power to be able to enforce the law. The law should provide punitive sanctions so that they act as a deterrent to would be offenders

- Effective competition law enforcement leads to the control of abuse of dominance which leads to exploitative and exclusionary abuse of market power and hence control such practices that may lead to price increases such as predatory pricing, marginal squeeze and excessive pricing. These conducts are detrimental to poor consumers.

- Competition law enforcement also leads to identification, investigation and successful prosecution of cartels. Cartel behaviour mainly leads to high prices of essential goods and services that affect the livelihoods of poor consumers.

- Effective merger review prevents the consummation of anti-competitive mergers that may lead to high market prices that adversely affect the economic lives of poor people.

- Collusive Tendering marred with corrupt practices in Government procurement may cost the Government dearly. This complicates and frustrates investigations by the competition authority especially when Government officials are involved in the vice.

- A non-enforcement mechanism of competition law, advocacy, remains a critical tool to create awareness to the relevant stakeholders regarding the importance of competition law in a free market economy.

- Competition delivers positive results on employment creation, increase wages and post reasonable growth results of the economy and hence, reducing poverty.

- Multinational corporations have lobbying power over Governments which may produce anti-competitive outcomes that may affect the welfare of poor consumers especially as a result of high prices for essential goods and services. Their lobbying power actually may perpetuate the existence of anti-competitive practices on the market as long as they are protected by Government from being investigated by a completion authority.

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Competition policy can play a significant role in alleviating poverty in developing countries. Normative competition policy principles can promote accountability and transparency in government-business relations and reduce corruption, thereby encouraging a sound investment climate that is conducive to economic growth. In particular, normative competition policy principles should lead to accelerated entry and expansion of firms in the market, thereby increasing efficiency, innovation and global competitiveness, and concurrently giving rise to lower prices for purchasers, including consumers, in that market. As a leader in the international fight against corruption, the OECD is well-positioned to promote and guide the adoption of appropriate competition policy. Any initiatives made on this front would be fully compatible with and would build upon the OECD's existing recommendations on competition law and policy,[1] as well as the fundamental principles underpinning the OECD's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* ("Anti-Bribery Convention").[2]

This paper examines the relationship between competition policy, anti-corruption, and the reduction of poverty in developing countries. Clearly, poverty is not a problem that is limited to developing economies; however, this paper focuses on the significant role competition policy can play in fighting poverty in developing economies, in particular. The paper begins with an overview of market conditions in developing economies and proceeds to consider the efficacy of competition policy as an instrument for reducing poverty within such economies. The paper concludes with some reflections on the OECD's role in encouraging the adoption of sound competition policy, noting particularly that the promotion of strong competition policies in developing countries would complement the OECD's efforts in connection with its Anti-Bribery Convention.

1. Market conditions in developing countries

Too often, market conditions in developing economies discourage competition. These conditions include weak infrastructure, inadequate resources, slow and imperfect market structures, networks of

1 For instance, the OECD's *Recommendation Concerning Effective Action against Hardcore Cartels* (March 25, 1998) advocates for international cooperation and comity in enforcing effective laws against hardcore cartels. Other competition policy work by the OECD includes its *Recommendation on Fighting Bid Rigging in Public Procurement* (July 17, 2012), which calls for governments to assess their procurement laws and practices on all levels with a view to reducing the risk of bid-rigging in public tenders, as well as its *Recommendation on Competition Assessment* (October 22, 2009), which calls for governments to identify and revise public policies that unduly restrict competition.

2 ***Convention on Combating Bribery*** *of Foreign Public Officials in International Business Transactions*, 17 December 1997, S.Treaty Doc. No. 105-43, 37 I.L.M. 1 (entered into force 15 February 1999). As explained in greater detail herein, the objectives behind the OECD's Anti-Bribery Convention include fighting corruption and creating a level playing field for all companies. More generally, the Anti-Bribery Convention recognizes that corruption distorts the allocation of resources and reduces competition in the marketplace, thereby undermining investment, growth and development.

informal markets, monopolies (private and state-owned) and a disproportionate number of dominant firms, and weak government support systems.[3]

More significantly, developing economies are often characterized by deficiencies in transparency of procedure and accountability of public authorities. Such deficiencies, when coupled with higher levels of corruption, can result in markets distorted by "privilege, preference, and cronyism", [4] as well as high barriers to entry.

The pervasive and disruptive influence of corruption emerges in numerous studies of market dynamics in developing countries. In some countries, for instance, enterprises fully or partially owned by the ruling party ("party-statals") receive preferential treatment with regard to market access, procurement, taxation, and credit access, allowing them to foreclose competition by private firms.[5] Similarly, other party-statals are alleged to have formed cartels for fertilizer and seed through market-sharing agreements, thereby raising the price of products and the costs to farmers.[6] Elsewhere, incumbent state-owned enterprises in various fields enjoy exemptions from the operation of domestic competition legislation.[7] In another developing country, several politicians have allegedly cartelized the sugar market.[8] More generally, a recent study of four product markets across five developing countries describes the tendency of the state to overlook or protect uncompetitive market conditions if the state stands to benefit in some way from those conditions.[9]

The foregoing examples highlight a need for transparency, accountability, and anti-corruption measures in developing economies, both in the realm of competition law and in the broader policy environment. The nature of the difficulties faced by many developing economies is aptly captured by Dr. Obiageli K. Ezekwesili's observations about challenges faced by Nigeria:

> *Our politics and those who run it have become our albatross. The political system has unfortunately frequently attracted those who do not seek to create any new value but simply desire to be given a share of wealth that is already available.*[10]

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3 Louise Plessis et al., "Competition law in the developing world: A fish out of water?" (Paper delivered at the Fifth Annual Competition Law, Economics and Policy Conference, Oct 4-5, 2011) at para 2.1.

4 Eleanor M. Fox, "Economic Development, Poverty, and Antitrust: The Other Path", 13 SW. J.L. & Trade Am. 211 (2007) at 119; "Advocacy and Competition Policy", (Report presented at the 2002 ICN Conference by the Advocacy Working Group) at 37.

5 *Nilgün* Gökgür, "Rwanda's ruling party-owned enterprises: Do they enhance or impede development?" (Discussion paper for the Universiteit Antwerpen, Institute of Development and Policy Management (IOB)) at 29-30.

6 R. S. Khemani, "Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries" (2007), *FIAS Occasional Papers* No. 19 at 31.

7 Plessis, *supra* note 3 at para 3.10.

8 Frederic Jenny, "Cartels and Collusion in Developing Countries: Lessons from Empirical Evidence" (2006) World Competition 29(1) at 115.

9 Karen Ellis & Rohit Singh, "Assessing the Economic Impact of Competition" (Report for the Overseas Development Institute, July 2010) at 88-89.

10 Obiageli K. Ezekwesili, "Nurturing an Entrepreneurial Mindset – the Pathway to a New Nigeria", (Paper delivered at the SADC Enterprise Awards Dinner, November 3, 2012), available at http://kobostart.com/business/nurturing-an-entrepreneural-mindset-the-pathway-to-a-new-nigeria-by-dr-mrs-oby-ezekwesili.

2. The role of competition policy in developing countries

2.1 Promoting accountability, transparency, and anti-corruption

Competition policy can play a vital role in reducing the close and opaque connections between state actors and incumbent businesses in developing economies. The enactment of competition legislation does not necessarily offer a panacea against corruption, and in certain instances, corruption can coexist alongside otherwise competitive processes (for example, businesses may be asked to pay bribes before being allowed to participate in competitive procurement processes).[11] Nonetheless, a robust competition policy signals to incumbent enterprises that certain behaviours and commercial practices are illegal, and provides for due process by which marginalized players can seek relief for anticompetitive acts.[12] In this way, competition policy helps combat market distortions created by corrupt business practices.

Some skeptics argue that developing countries' lack of supporting institutions – such as independent judiciaries and well-paid civil service – will lead to a misuse of competition policy that continues the cycle of corruption, instead of curbing it. [13] However, this argument applies equally to other important domains of government services and should not be an impediment to the adoption of competition policy or other policies aimed at reducing corruption.[14] Rather, appropriate care should be taken in the design and implementation of competition policy so as to minimize the risk of abuse by incumbent powers.[15]

In this regard, policy work by the International Competition Network ("ICN") constitutes a valuable source of guidance. In particular, the ICN's Unilateral Conduct Working Group ("UCWG") has issued recommended practices for competition authorities in developing and transition economies, recognizing that such authorities face unique enforcement issues involving unilateral conduct by state-owned or state-created monopolies, as well as recently privatized firms.[16] For instance, the UCWG recommends that competition authorities in developing and transitioning economies "treat state-created monopolies like private undertakings by using standard antitrust analysis to assess dominance/substantial market power regardless of state ownership or legal status of the firm", to the extent that such monopolies are not exempt from unilateral conduct rules for public interest reasons.[17] With regards to effective advocacy instruments for competition authorities in developing and transition economies, the UCWG recommends, among other

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11 "Collusion and Corruption in Public Procurement: Discussion Points" (Contribution by the Business and Industry Advisory Committee to the OECD Global Forum on Competition Discussion on Collusion and Corruption in Public Procurement, February 19, 2010) at para 11.

12 Khemani, *supra* note 6 at 15-16.

13 For example, see Plessis, *supra* note 3 at para 3.10 and Anthony Amunategui Abad, "Competition law and policy in the framework of ASEAN" in Josef Drexl et al, eds., *Competition Policy and Regional Integration in Developing Countries* (Massachusetts, Edward Elgar Publishing, 2012) at 47-48.

14 Khemani, *supra* note 6 at 2.

15 See for instance Dr. Fox's observations on the design of appropriate competition law for developing countries, which, *inter alia*, should be a "strong law that reaches restrictive and market-blocking acts and anticompetitive practices that the state sponsors or facilitates": *supra* note 4 at 119 – 121, and "The role of competition policy in promoting economic development: The appropriate design and effectiveness of competition law and policy" (UNCTAD Report, 2010).

16 "State-created Monopolies Analysis Pursuant to Unilateral Conduct Laws – Recommended Practices" (Report by the ICN Unilateral Conduct Working Group, 2007-2008).

17 *Ibid* at 1.

measures, that competition authorities publish their opinions in order to promote transparency, stimulate public debate, and facilitate the adoption of pro-competitive arguments by other interested parties.[18]

More generally, the ICN's report on Advocacy and Competition Policy provides commentary on the appropriate balance between the fields of advocacy and enforcement in developing and transitioning economies, as well as suggestions for the appropriate areas of focus within each field.[19] Other publications by the ICN – including its compilation of good practices on anti-cartel enforcement[20] and its handbook on agency effectiveness[21] – may provide further useful guidance for competition authorities in developing countries.

2.2 Encouraging wealth creation

In addition to minimizing costs associated with corrupt markets, an increase in government accountability and transparency boosts investor confidence and maximizes anticipated returns, thereby encouraging foreign investment.[22] Indeed, the value that international investors place on transparency when selecting where to invest is well-documented.[23] This preference for transparent governance is not surprising, given that investment decisions depend heavily on the predictability and fair application of rules. As a practical matter, businesses will be more willing to invest where there is increased transparency and government accountability, such that businesses are assured of a level playing field and a fair opportunity to generate anticipated returns on investment.

Indeed, business organizations and the companies they represent are actively participating in the fight against corruption.[24] BIAC, for instance, has been at the forefront of the fight against corruption through its Task Force on Anti-Bribery and Corruption. This Task Force consists of business experts nominated by BIAC member associations. Since its inception in 1997, it supported the development of the OECD's Anti-Bribery Convention and assisted in ensuring its implementation including through participation in consultations in the context of OECD country reviews. BIAC has also been engaged in alerting OECD governments to the on-going problem of bribe solicitation. Other international business organizations are also active on this front. For instance, the International Chamber of Commerce has long been involved in the fight against corruption through its Commission on Anti-Corruption. In 2005, it issued a revised version of its Rules and Recommendations to Combat Extortion and Bribery, first published in 1977. Similarly, the World Economic Forum's Partnering Against Corruption Initiative ("PACI") is a platform

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18 *Ibid* at 2-3.

19 "Advocacy and Competition Policy" (Report presented at the 2002 ICN Conference by the Advocacy Working Group) at 34-37.

20 "Compilation of 'Good Practices' from the Anti-Cartel Enforcement Manual of the ICN Cartel Working Group" (ICN report, April 2011).

21 See, e.g. "Chapter 1 – Strategic Planning and Prioritisation" (ICN Agency Effectiveness Handbook, March 2010).

22 Khemani, *supra* note 6 at 24-25; Plessis, *supra* note 3 at para 3.20.

23 OECD, "Public Sector Transparency and the International Investor" (2003) at 14, available at http://www.oecd.org/investment/investmentpolicy/18546790.pdf.

24 BIAC, *supra* note 11 at para 12, citing "Clean Business is Good Business" (Joint publication by the International Chamber of Commerce, Transparency International, United Nations Global Impact and the World Economic Forum, 2009).

for companies to commit themselves to develop, implement and monitor their anti-corruption programmes through peer-network meetings and provision of private sector-driven support tools.[25]

Certainly, developing a positive investment climate takes time, but positive changes can and do occur.[26] Often, investments in a given country by high-profile multinational enterprises send an encouraging message about the investment climate in that country, resulting in additional follow-on investments. As will be discussed more fully in the next section, such investments can give rise to numerous benefits, including lower prices, enhanced productivity, better job opportunities, and a reduction in poverty levels.

Moreover, competition policy facilitates foreign investment by allowing the effects of trade reform, deregulation and privatization to be fully realized. In the absence of robust competition policy, trade liberalization reforms may fail to maintain and encourage effective competition if they do not address restrictive business practices emanating from the private sector[27] – that is, if they simply result in a transfer of monopolies from the hands of public owners to those of politically connected private owners, together with the usual economic incentives to engage in anticompetitive acts. One illustrative example of such a problematic transition occurred in 2007, when concerns were expressed that a developing country's "public sector monopolies are being transferred into private sector monopolies, due to the lack of enforcement of the competition regime".[28] By contrast, transition market economies which have effectively implemented competition policy tend to experience broad-based markets and expansion of more efficient private-sector firms, among other benefits.[29] As noted by Dr. Frédéric Jenny, there exists a clear nexus between policies on industry, trade, competition, investments, and state-owned enterprises, and "it is their combination which determines the real level of competition in a country".[30]

In this regard, the ICN recommends that competition authorities should participate in the liberalization and privatization process to "help ensure post-privatization/liberalization competitive operation of the relevant market/sector".[31] Further, these authorities should "advocate for an expeditious liberalization of barriers to entry in markets with state-created dominant enterprises".[32]

2.3 Reducing poverty

The connection between corruption and poverty is well-established.[33] In the competition context, market-restricting practices by corrupt vested interests levy a substantial cost on the community, including

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25 BIAC, *supra* note 11 at paras 13-14.

26 See e.g. "Improving the Private Investment Climate for Recovery and Growth" (World Bank Global Monitoring Report 2009) at 55-56.

27 R. S. Khemani and Ana Carrasco-Martin, "The Investment Climate, Competition Policy, and Economic Development in Latin America" (2008), 83 Chi-Kent Law Rev 67 at 69.

28 Nick Godfrey, "Why is Competition Important for Growth and Poverty Reduction?" (Paper submitted at the OECD Global Forum on International Investment, 2008) at 7-8.

29 Khemani, *supra* note 6 at 16-17.

30 Arun S, "Competition laws bring economic democracy" – Interview with Frédéric Jenny, *The Hindu Business Line* (May 3 2011) available at http://www.thehindubusinessline.com/opinion/article1985879.ece.

31 ICN, *supra* note 16 at 2.

32 *Ibid*.

33 For instance, Nuhu Ridabu, the former head of Nigeria's anti-corruption commission, has remarked that attacking corruption is the best way to attack poverty: Stephanie Hanson, "Corruption in Sub-Saharan Africa" (Background note for the Council on Foreign Relations, 2009), available at

its most impoverished segments.[34] Moreover, studies have shown that an improvement in a country's Transparency International corruption score correlates strongly to a significant increase in productivity.[35] As such, sound competition policy serves to alleviate poverty insofar as it reduces opportunities and incentives for corrupt business practices in developing countries.

Further, by encouraging investment, competition policy drives economic growth: higher levels of investment can lead to accelerated entry of firms and enhanced competition, thereby not only leading to lower prices for purchasers, including consumers, but also increasing efficiency, innovation, and global competitiveness (e.g. resulting in higher levels of exports), and allowing for the production and sale of more affordable goods and services.[36] Additionally, foreign investment can create quality local employment opportunities. Such developments are expected to create sustained increases in human welfare, including a reduction in poverty levels.[37] Indeed, evidence suggests that direct investment by top-tier companies into open and undistorted marketplaces can confer immense productivity benefits on developing economies, even in the face of obstacles such as scarce local capital or low education levels.[38] More generally, economies with competitive domestic markets tend to exhibit higher levels and rates of growth in per capita income, higher rates of domestic and foreign investment, and lower rates of poverty.[39] Finally, lower prices stemming from increased competitive pressures may convey a specific benefit to the poor, given that the poor suffer disproportionately from higher costs of essential goods and services.[40]

As such, competition policy represents an important policy component to the reduction of poverty in developing countries. By restraining opportunities and incentives for corruption, appropriate competition policy, when implemented as part of a sound overall policy mix, attracts foreign investment and allows developing economies to fully reap the rewards of transparent and competitive markets.

3. The role of the OECD

The OECD is a leader in the international fight against corruption. To date, 40 countries have adopted the OECD's Anti-Bribery Convention. The Anti-Bribery Convention strives to coordinate a diverse array of legal systems to establish a minimum standard against bribery, a practice which "raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions".[41] By mandating and monitoring the imposition of criminal sanctions in signatory

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http://cfr.org/democracy-and-human-rights/corruption-sub-saharan-africa/p19984. See also Obiageli K. Ezekwesili, Mo Ibrahim and Jay Naidoo, "Corruption, Violence, Security and Development", *Afronline* (April 29, 2011), available at http://afronline.org/?p=15232.

34 For instance, see Gökgür, *supra* note 5 at 24, 34.

35 Hanson, *supra* note 33.

36 Khemani, *supra* note 6 at 14, 16-19, 36.

37 UNCTAD, "The role of competition policy in promoting economic development: The appropriate design and effectiveness of competition law and policy" (2010) at para 52; Plessis, *supra* note 3 at para 3.31.

38 Khemani, *supra* note 6 at 14.

39 *Ibid*. Khemani also notes that such trends are "consistent with the broad empirical finding that barriers to competition impede innovation, growth, and prosperity."

40 Zsofia Tari and Jeremy West, "Does Competition in Markets for Essential Goods and Services Reduce Poverty?" (Background Note at the OECD Latin America Competition Forum's Session on Competition and Poverty Reduction, Sep 18-19, 2012) at paras 3, 38; Khemani, *supra* note 6 at 14-15.

41 ***Supra* note 2** at Preamble; "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (IMF report prepared by the Policy Development and Review Department, September 18, 2011) at 2.

countries for the bribery of foreign public officials, the OECD pursues the dual objectives of fighting corruption and creating a level competitive playing field for all companies.[42] On a broader level, the Anti-Bribery Convention reflects a consensus by OECD members on the harms of corruption, including its devastating impact on investment, growth, and development.[43] The OECD has also issued recommendations, best practices, and roundtable discussion summaries on various aspects of competition law and policy, including effective action against cartels,[44] combatting bid-rigging in public procurement,[45] and ensuring procedural fairness and transparency in competition law enforcement.[46]

In light of the foregoing, the OECD is well-positioned to guide the adoption of competition policy in developing countries with an aim to reducing corruption and its attendant economic harms. Further normative policy recommendations provided by the OECD in this respect would be fully compatible with and would build upon the fundamental principles behind the OECD's existing work on competition law and policy, as well as its anti-bribery instruments. Specifically, such work would allow the OECD to further its anti-corruption and pro-growth goals, encourage more effective competition, stimulate greater investment, and enhance economic efficiencies, all of which would result in overall wealth creation with a consequent reduction in poverty.

42 OECD, *No Longer Business as Usual: Fighting Bribery and Corruption* (Paris: OECD Publications, 2000) at 3.

43 Enery Quiñones, "What is Corruption?" OECD Observer (2000), available at http://www.oecdobserver.org/news/archivestory.php/aid/233/What_is_corruption_.html.

44 *Supra* note 1.

45 *Ibid.*

46 OECD Competition Committee, "Procedural Fairness and Transparency: Key Points" (OECD Publications, April 30, 2012).

CUTS*

1. Introduction

Competition in markets ensure that scarce resources are allocated efficiently resulting in improvement in productivity, cost savings and innovations leading to lowered prices, better availability and improved choices of goods and services for consumers.

Analyses show that differences in the level of competition between the Euro area and United States accounts for more than 50 per cent of the current gap in GDP per capita between these two areas. (Bayoumi *et. al.* 2004). A report by the Australian Productivity Commission quantifies the expected benefits from competition reforms as an annual gain in real GDP of 5.5%, consumer gains by AU$ 9bn (2007). Furthermore, a 2007 UK Office of Fair Trading Report titled "Does Competition Reduce Inflation?" shows a robust and significant negative link between competition and inflation both at aggregate and sectoral levels.

However this is not just true for the developed countries. In the book, the Power of Productivity, author William Lewis emphasises on the need for lesser developed countries to have a robust competition regime. In doing so, he dispels the commonly held myth that competition policy and law are tools for the rich alone. He argues that if such countries could eliminate the policies that distort competition, they could grow rapidly.

A 2007 World Bank Study found that the world's poorest countries tend to have low levels of competition in domestic markets and a high degree of market dominance. Similarly, for e.g. when competition was introduced in generic drugs in South Africa, prices for antiretroviral drugs fell by up to 88% since 2003 and access increased from 20,000 to 155,000 units. The main objective of competition policy and law is to preserve and promote competition as a means to ensure the efficient allocation of resources in an economy. Nobel Laureate, Joseph Stiglitz asserted that "Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies."

Without an effective competition policy and law, international anti-competitive practices can restrict trade in small and developing countries as well. The available evidence suggests that international cartels and other restrictive practices by private firms operating in international markets – designed to limit competition in international trade do exist. These arrangements can be quite durable and detrimental to economic development of countries that do not have a strong domestic competition regime.[1]

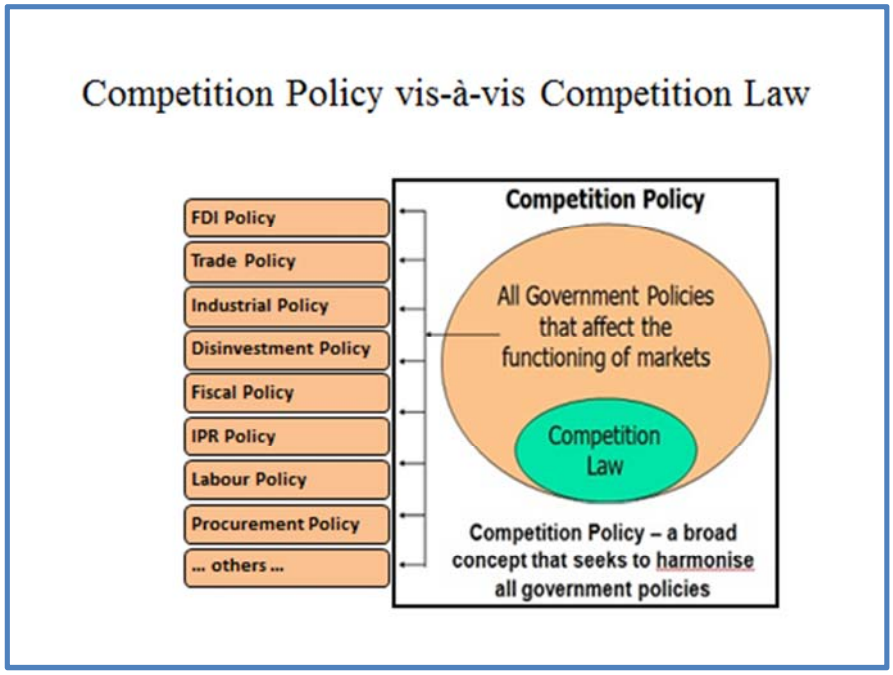
There are two components of a competition regime: (a) competition policy and (b) competition law. While competition law is the regulatory framework to check anti-competitive practices in the market,

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* Consumer Unity & Trust Society.

1 Levenstein, Margaret and Valerie Suslow, Private International Cartels and Their Effect on Developing Countries (Background Paper for the World Bank's World Development Report 2001, 9 January 2001)

competition policy is understood as the full set of measures necessary for ensuring competitive market structures/behaviours.[2] It includes several economic policies, as explained below in the graph[3].



There are complex inter-relationships between competition policy and other economic policies. This factor has a direct bearing on the extent to which competition policy objectives can be pursued without being constrained by or conflict with other public policy objectives, especially in key markets. Although a competition law may be quite narrow in its scope, competition policy is more broad and comprehensive. Its purpose is to bring harmony in all government policies that may encourage or adversely affect competition, consumer welfare and economic development.

2. Competition policy and poverty reduction

The biggest challenge in the developing world today is to get rid of abject poverty that deprives a large section of the population a dignified life. Policymakers in these countries need to design and implement policy measures to tackle this problem. Public policy responses designed and implemented in these countries without such considerations will not benefit them in the long run. Competition policy should be no exception to this maxim.

An important approach to poverty reduction is to empower the poor, provide them with productive employment and increase their access to land, capital and other productive resources. But this approach may not be successful unless these people are linked to the markets and markets are made to work for the benefit of the poor. This would open economic vistas for them, providing them with economic empowerment and freedom that is so crucial for their survival and well-being. As stated in the World

2 CUTS (2001), 'Competition Policy & Law – Made Easy, available at http://www.cuts-international.org/pdf/cplme.pdf

3 Mehta, Pradeep S (2007), 'Competition and Regulation in India, 2007', available at http://www.pradeepsmehta.com/pdf/Competition_and_Regulation_in_India_2007.pdf

Development Report 2000-01, "Markets work for the poor because poor people rely on formal and informal markets to sell their labour and products, to finance investment, and to insure against risks. Well-functioning markets are important in generating growth and expanding opportunities for poor people."

Competition is not an automatic outcome of market reform measures, and needs to be nurtured. Market processes can be distorted by players in the market, even when there are a large number of them. Governments enact national competition laws to regulate such distortions.

What gets very often ignored is the fact that prevalence of anti-competitive practices in certain 'key markets' hurt the poor more. Identifying these 'key markets' and curbing such malpractices should be a priority for developing country governments. A rich person would not mind paying a dollar more for a certain good or service, but for people living at less than 'a dollar a day' - getting value for money for every cent they spend is crucial. Individuals and families with lower incomes have to spend a greater proportion of their income on goods and services, and therefore, high prices arising from anti-competitive practices will have greater impacts on them than other segments of society.

The sectoral composition of growth can determine the impact that growth will have on poverty. For example, it is often argued that in countries where most of the poor live in rural areas, agricultural growth reduces poverty because it generates income for poor farmers and increases the demand for goods and services that can easily be produced by the poor. This is true, if, the agricultural markets are functioning competitively, which unfortunately is seldom the case. Market distortions are common both in the inputs markets (seeds, fertilisers, pesticides) and outputs markets (given low bargaining power of a producer vis-à-vis intermediaries/buyers in the outputs market). High cost of inputs and price manipulation at the outputs stage results in reduced margins for most developing country producers.

Inflation, especially when it is a result of excessive pricing or cartel pricing, is a regressive and arbitrary tax, the burden of which is typically borne disproportionately by the poor. The reason is two-fold.

- First, the poor tend to hold most of their financial assets in the form of cash rather than in interest-bearing assets.

- Second, they are generally less able than are the better off to protect the real value of their incomes and assets (Bruno and Easterly, 1998). In consequence, price jumps generally erode the real wages and assets of the poor more than those of the non-poor. This phenomenon typically operates through shocks to the human capital of the poor (Forbes, 2000; Li, Xie and Zou, 1999; Masson et al, 1997).

In addition, other anti-competitive practices such as cartels, abuse of dominance, anti-competitive mergers etc. result in higher prices, low quality and less variety, leaving the whole economy to suffer.

Imperfect agriculture markets and high food prices!

The market of agricultural producers is often considered to be an example of a perfectly competitive market. This might be the case for farmers as there is large number of them. However for consumers the experience is different. Farmers do not reach the consumers directly and there is a chain of intermediaries. Unfortunately, these sets of intermediaries do not always work in a competitive manner. Thus, the final consumers of agricultural products do not get the advantage of a competitive market. Hence a huge gap exists between the prices the consumers pay and the prices the primary producers receive. This kind of a situation is not restricted to some particular countries, but has become a global feature. These intermediaries abuse their monopolistic dominance in the market for final products while in the markets for primary products they abuse their monopsonistic dominance.

Apart from adversely impacting the final consumers, they also have a negative impact on the farmers who draw their livelihood directly from agriculture.

Tebas District, Sambas Municipality in West Kalimantan Province was one of the wealthiest districts in Indonesia. The agriculture sector, especially the 'Pontianak Orange', contributed about Rupiah1.5bn to the local government treasury, a big amount of money until the rupiah devaluated due to a monetary crisis. Due to its high quality 'Pontianak Orange' hardly had competitors, and thus dominated the market. In 1991, the Central Government decided to take over the trade of these oranges, and issued regulations that required all harvested oranges should be channelled through a company called Bina Citra Mandiri (BCM). This company, rather than being a state-owned company, belonged to a close family member of the President. Farmers or merchants who tried to sell directly in the open market could be charged for smuggling and put into jail. Besides, BCM also regulated the price and quotas in distribution. Farmers and merchants were allowed to sell 10 percent of the harvest in the market, while the remaining 90 percent was to be sold to BCM.

This monopsonistic system resulted in a great loss for farmers. Consequently, they decided to stop harvesting their orange crop, because it was un-remunerative. By not harvesting the oranges, the rotting crop led to virus infection. Within a very a short time, 7.6mn trees located in 19,000 hectares had to be cut down in order to curb the disease. Later, the Ministry of Agriculture and the National University of Tanjungpura Pontianak had to work hard to recover from the situation. It took some time before the team could even gain support from the farmers who had experienced such a trauma.

Source: Indonesia Country report in 'Competition Regimes in the the World – a Civil Society report', 2005, pg. 60

3. Benefits of competition for poor consumers and small producers

A series of projects using the 7Up model[4] were implemented by CUTS from 2001. These were a multi-country projects combining research, advocacy and capacity building on competition policy and law and implemented in developing and least developed countries of Africa and Asia. Below are findings from some of the 7Up project that substantiate the prime argument that this submission makes on the positive link between competition reforms and poverty reduction.

3.1 Namibia

The Namibian Consumer Association (NCA) led a campaign in 2006-07 pointing out how Namibian banks were charging high service charges/bank fees for the customers. This campaign of NCA (the only consumer organization in Namibia) was strengthened by research undertaken by NEPRU (Namibia Economic Policy Research Unit), a premier think-tank in the country which provided the evidence to

[4] CUTS 7Up Model: Application of a bottom-up, advocacy-based approach to build a culture of competition, and a wider understanding of the benefits of competition (http://cuts-ccier.org/7Up-model.htm)

substantiate NCA's claim[5]. A large number of Namibians (nearly 45%) remained un-banked owing to such high charges which made banking unaffordable for the ordinary Namibians. NEPRU had been implementing a project in cooperation with CUTS (known as 7Up3) in Namibia over this period and highlighted a low-level of competition in retail banking (as one of the factors) contributing to high bank charges in the country (especially among the four leading banks)[6]. It was also reported that often the banks were not very clear and/or transparent about these charges. So a large number of ordinary Namibians (using the facility of these banks) were being adversely afflicted due to such practices of the banks.

As a result of evidence provided by NEPRU and the constant lobbying by NCA, the matter reached the Parliamentary Standing Committee on Economics, Natural Resources and Public Administration of Namibia. The Committee recommended all banks to become more transparent while dealing with their customers and to state their charges upfront while servicing them[7].

3.2 India

In India, in 2005-6, CUTS undertook a study of competition in various Indian markets including cement, telecom, steel, pharma, transport, etc. under the project Towards a Functional Competition Policy for India (FunComp project)[8]. The study raised alarm about the existence of a cartel in the Indian cement industry and recommended the government (especially the incoming Competition Commission of India) to take immediate action[9]. CUTS initiated a press campaign subsequently to push the government into investigating the cartel in the cement sector. Eventually in 2008, MRTP undertook the investigation as a result of mounting pressure from CUTS and others (a complaint had also been brought by the Builders Association of India), and was able to unearth the existence of a cartel among 10 major players in the cement market operating on the platform provided by the Cement Manufacturing Association[10] and the MRTP Commission had ordered the companies to cease and desist only.

Recently, the Competition Commission of India(CCI) passed an order in June 2012, wherein it found 11 cement manufacturers guilty of cartelization and imposition of high prices as a result, and has imposed a penalty at the rate of 0.5 times of their profit for the year 2009-10 and 2010-11 for violation under Section 3 of the Competition Act, 2002. The penalty amounts to more than Rs. 6,306.59 crore (Nearly $1.14 billion). The CCI also imposed an additional penalty on the Cement Manufacturers Association. At present, the Competition Appellate Tribunal (COMPAT) is adjudicating the case.[11]

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5 Source: The Namibian, 17.07.2006

6 Refer www.nepru.org.na; and 7Up3 Country Research Report for Namibia (downloadable from http://www.cuts-ccier.org/7up3/pdf/CRR-Namibia.pdf)

7 Source: The Namibian, 28.11.2006

8 http://www.cuts-international.org/pdf/compol.pdf

9 Mehta, P.S. (Eds), "Towards a Functional Competition Policy for India", Academic Foundation, Delhi, 2001, pp 165-174

10 http://www.baionline.in/media/data/MRTP2.pdf

11 The demand of low-income and lower-middle income housing in urban India has increased exponentially in recent times. Thus it will help facilitate construction of homes for the large number of urban poor across the country - currently living in abject, unhealthy living conditions.

3.3 Mauritius

Mauritius had to rely on powdered milk to meet their and their children's nutritional demand as fresh milk was unavailable in the country prior to 2006. The powdered milk market was dominated by a handful of players. One of them enjoying 60% of the market share (clearly a dominant position) decided to raise the price of the product abruptly. The price rose to a peak of Mauritius Rupees (MUR) 190 per kilogram during the period 2004-06. The company was enjoying a profit margin of nearly 41% in the retail market, then.

At this point of time, as a result of CUTS project on competition policy and law issues (7Up3 project) the level of awareness and understanding on competition issues in the country had improved considerably. Impact of anti-competitive practices on consumers' daily lives was being discussed in public platforms/media, etc. This was largely due to the outreach made possible by the advocacy partner of CUTS for the 7Up3 project in Mauritius, Institute for Consumer Protection (ICP). Pursued by continuous lobbying by ICP, the government eventually intervened in the market and fixed the margin of profit for the sector at 14%[12]. This led to a decrease of price, which later stabilized between MUR 90-120 per kilogram across the country.

3.4 Zambia

A CUTS project earlier in 2000-02 (7Up1 - http://www.cuts-ccier.org/7up1/) noted with concern that the competition authority of Zambia was engaged mainly with big business and did not look at the problems of small businesses. The Zambia Competition Commission (ZCC) personnel felt that their law restricted it to act on business malpractices that had significant impact on the economy. This point was debated on during the meeting of the National Reference Group (NRG), held on 22nd of November, 2001. The purpose of the meeting was to come up with recommendations, which the project would seek to have addressed by influencing the relevant stakeholders. As a result of this concern, although it was noted that the less of focus was a result of the Act, the NRG members recommended that "ZCC should address the concerns of small-scale sector"[13]. ZCC was represented in the meeting and agreed to take the issue forward. Following the project, there was a noticeable change in approach of ZCC towards the small scale sector. Examples include ZCC directing a monopoly retailer (Shoprite of South Africa) to purchase farm produce from the small scale farmers rather than importing and ZCC holding discussions with the multinationals in the tobacco, cotton and poultry sectors to stop abusive practices against small scale farmers[14].

The cotton example can be elaborated on. In 2005, ZCC saw a report in a local newspaper, The Post, where women farmers in Katete were calling for a review of farming contracts as they were being abused by the dominant firms. Two multinationals (Dunavat and Cargill Cotton) were dominating the market with a CR2 of 83.49% and abused the outgrower scheme by charging high input prices and paying a low final price. Before ZCC's intervention, they paid a price of ZK850/kg for grade 'A' cotton while charging the input prices at ZK40,000 per pack. While investigations were still underway, Dunavat indicated that they were now reducing input prices to ZK36,000 while increasing the planting price to ZK1,000/kg. Cargill

12 http://www.cuts-international.org/7up3/7Up3-enewsIV.htm

13 CUTS, 2002, Enforcing Competition Law in Zambia page 42, a report published as a part of the 7-Up Project supported by DFID, UK.

14 George Lipimile, Former Executive Director of Zambia Competition Commission during a presentation at the Interim Review Workshop for the project 'Strengthening Constituencies for effective competition regimes in select West African Countries', (7Up4), funded by DFID and IDRC available at http://www.cuts-ccier.org/7up4/ppt/PPT-IRM-Contribution_Of_Competition_To_Growth_And_Poverty_Reduction.ppt

also decreased input price for the 2006 season by 28% and increased the buying price to ZK1,120/kg. According to Cargill's estimates, the changes gave an average farmer an additional net income increment of 75% compared to the previous year[15]. One can well imagine the huge multiplier effects of these systemic changes on poor people and particularly their livelihoods.

4. Garnering greater support for competition reforms in DCs

A healthy competition culture is the ideal outcome of an effective competition regime and effective competition advocacy. The need for strengthening the overall capacity of competition agencies cannot be underestimated as the foremost requirement for the benefits of competition reforms to trickle down to the poor is to ensure a strong institution to enforce the competition regime in the first place.

Experiences gathered from Africa and Asia has strengthened CUTS belief in the *ability of competition reforms for improving consumer welfare and producer benefits in DCs*. Greater thrust is needed for taking the competition reform processes forward in DCs, especially given that competition policy and law is still an evolving public policy area in many of them. Many of these countries have realised the difficulties in implementing their competition law, relying only on the ability of the national competition enforcement agency, especially in the wake of imposing policy impediments, stakeholder ignorance and considerable vested interests. It is essential to expand the frontiers of the competition policy implementation process in developing countries, in order to make it more effective.

With this background, CUTS has designed a project entitled Competition Reforms in Key Markets for Enhancing Social and Economic Welfare in Developing Countries (referred to as CREW Project) to be implemented over a period of three years in four countries with focus on two sectors. This project would help develop an approach (with a suggested combination of - indicators, metrics and tools), which would help (under specific conditions) in assessing benefits of competition reforms on consumers and producers in specific developing country markets.

One of the main goals of this project is to demonstrate the benefits of competition reforms to developing country policymakers and politicians, so that they can provide greater attention to this issue. The CREW project would also provide guidance on how to design and implement such a reforms programme to DC policymakers.

[15] The specific details on the prices were obtained from Kaira T (ZCC Executive Director), "The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia" in 'The effects of anti-competitive business practices on developing countries and their development prospects', UNCTAD, 2008.

TUAC

We welcome the opportunity to contribute to the OECD discussion on competition policies and poverty reduction. The discussion should seek to assess the poverty impact of past competition policy reforms advocated by the OECD and consequently draw lessons for future recommendations on competition policy. The relationship between competition and poverty is a complex one. The OECD should refrain from adopting simplified or simplistic messages such as "making-competition-work-for-the-poor".

Market competition aims first and foremost at developing the private sector. This has the potential to lift people out of poverty, but the caveats are many. There should be no assumption that private sector development alone would automatically achieve poverty reduction. A pre-requisite for this to happen is the empowerment of people in or at risk of poverty so that they have the capabilities to effectively exercise their rights and to make effective use of their entitlements *inter alia* to health and education. They need to acquire sufficient bargaining power as consumers, as workers, as producers and as citizens. It would be wrong to simplistically use the "poverty agenda" to promote competition and market liberalisation reforms.

There is a general presumption that greater competition in product markets would serve well poverty reduction goals. As shown by OECD work, there is need to curb the excessive market power of multinational enterprises and networks through oligopsonies and in some cases monopsonies. Low added value manufacturing and agricultural markets for example are typically dominated by few big buyers of intermediate or final goods with an excess of producers of same or similar products. Small producers are then forced to agree to harsh pricing and other trade-related conditions, which costs most often are passed on to workers by way of compressed wages, poor working conditions and greater informality.

Ensuring fair competition in markets for commercial goods and services can then redress the balance of power throughout the supply chain, by improving the bargaining power at both ends – final consumers and small producers – and hence ensuring fair sharing of the wealth creation. Consumers and small producers of goods and services hence have interest in greater competitive and transparent international trade and markets. They also require that both domestic and cross-border competition take place with a minimum level playing field regarding social and environmental standards and norms, including core labour standards and wage setting institutions.

Labour market institutions, including collective bargaining and legal minimum wages, set floors in markets and are fundamental to ensuring decent work and beyond that help ensure robust solvent domestic demand and therefore to poverty alleviation. The weakening of workers bargaining power and the rise of income inequality across OECD economies during the pre-crisis period has contributed to the emergence of the "working poor"– trapped in precarious jobs, with no or little security regarding health and pensions – and to growing disconnection between rise in productivity and real wage levels. In the developing world, absence of labour market institutions has disproportional consequences not only on workers' wages but also on their very rights to decent working conditions – violation of labour and other human rights appears to be acceptable "business model" for some exporting industries.

Labour market institutions also help workers adjust to labour market changes and reduce the risk for hysteresis. Many OECD countries that grant a greater role to wage setting institutions and greater

employment protection legislation have fared better than others in keep workers in employment and hence reducing poverty risks in the current post-2008 crisis period.

Greater commercial market competition is desirable as long as it builds on, not weakens the capability of workers to bargain for their fair share of productivity increases and the capability of consumers to make informed choices – that is the exact opposite situation of what we witness across the OECD with a "walmartization" of jobs and the economy.

For some specific services however, market competition may do more harm than good. Healthcare insurance, education and pension rights are in our view public goods which entail long term risks for which private sector options are inadequate as the main source of service delivery.

For example introducing or promoting competition in pension systems would supposedly offer workers and their families a greater choice in financing their rights to pensions. However the "pension risk" (i.e. the uncertainty about the level pension income at retirement arising from political, investment and longevity risks) is hard to assess from an individual worker perspective. There is ample academic literature that shows that workers under individual defined-contribution pension plans often fail to manage plan assets in a rational way. The economic model of private pension plans as the principal source of retirement finance also appears to be underperforming compared with public pay-as-you-go options on key poverty-related criteria such as population coverage and pension income security.

WTO*

Competition and Poverty Reduction: A Holistic Approach

1. Introduction: Markets, poverty reduction and the role of competition policy

Today, there is little doubt that well-functioning markets are a *sine qua non* for development, economic growth and the reduction of poverty. The efficient performance of markets is essential to generate improved standards of living for citizens and to provide the resources necessary for state action to provide public goods and address other relevant concerns. Moreover, the ability to participate in markets - free of artificial and unnecessary restrictions on such participation - is arguably an important dimension of human rights (Sen 1999; see also Anderson and Wager 2006).[1]

At the same time, there is increasing recognition that markets cannot be counted on to deliver results that enhance the welfare of all citizens, in the absence of appropriate *governance mechanisms*, including relevant laws, institutions and public and business environments. Indeed, it is arguable that the promotion of "market-oriented reforms" without such legal and institutional safeguards is a self-defeating strategy that risks undermining support for globalization and the market economy worldwide (Stiglitz 2012 and 2007). As such, the propagation and cultivation of appropriate laws, institutions and enabling environments figure importantly in cutting-edge thinking on development and are central to efforts to alleviate poverty in our time (see, e.g. Collier 2008; Rodrik 2012; and Sachs 2005).

Competition law and policy represent an essential component of the governance mechanisms that are required for development and poverty reduction. From the standpoint of consumers (including, significantly, business users), competition law enforcement provides an essential deterrent to cartels and other practices that restrict output, raise prices and thereby erode purchasing power and diminish the welfare of citizens. This is no less important in poor countries than in richer ones.

In fact, there are reasons for believing that less developed economies are more, rather than less, vulnerable to anticompetitive practices than developed economies. The reasons include the existence, in many such countries, of some or all of the following conditions: (i) high "natural" entry barriers due to poor business infrastructure, including distribution channels; (ii) regulatory and licensing regimes that unnecessarily impede the entry and success of new entrepreneurs; (iii) inadequate investment in the

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* This paper has been prepared by Robert Anderson (Counsellor and Team Leader for Government Procurement and Competition Policy) and Anna Caroline Müller (Legal Affairs Officer) of the WTO Secretariat, writing in their personal capacities. E-mail addresses for correspondence: robert.anderson@wto.org and anna.mueller@wto.org. Portions of the paper draw upon material in International Trade Centre (R. Anderson, F. Jenny and A. Müller, principal authors), Combating Anticompetitive Practices: A Guide for Developing Country Exporters (2012), and in other sources cited herein. Helpful suggestions from Antony Taubman, Director of the WTO's Intellectual Property Division, are gratefully acknowledged.

1 Sen (1999, p. 6) observes as follows: "The ability of the market mechanism to contribute to high economic growth and to overall economic progress has been widely—and rightly—acknowledged in the contemporary development literature. But it would be a mistake to understand the place of the market mechanism solely in derivative terms. As Adam Smith noted, freedom of exchange and transaction is itself part and parcel of the basic liberties that people have reason to value."

institutions of competition law and policy, and supporting learning and advocacy activities and fora; (iv) asymmetries of information in both product and credit markets; and (v) a greater proportion of local (non-tradable) markets (Stiglitz 2007; Anderson and Jenny 2005; Dutz 2002). For these reasons, the citizens of developing and least developed countries are, in many cases, more vulnerable to anti-competitive practices than those in developed countries, and have an acute need to be protected against cartels, abuses of dominant position and anti-competitive mergers.

Fortunately, over the past decade, major strides have been made in the adoption and implementation of effective national competition laws in developing, transition and even least developed economies. This trend has been reinforced by extensive capacity-building efforts on the part of relevant international organizations such as the OECD, the International Competition Network (ICN) and UNCTAD in addition to civil society organizations such as the Consumer Unity and Trust Society (CUTS). As a result, there is much to celebrate with respect to the building of competition law enforcement capacity in many such countries.

It would, however, be wrong to assert that competition law and policy have, as yet, fulfilled their potential as a tool of poverty reduction. Even in the area of competition law enforcement, much remains to be done to promulgate optimal approaches and build related institutional capacities. Competition policy can, moreover, contribute to poverty reduction and welfare gains in developing countries in ways that go beyond competition law enforcement *per se*. In some cases, these applications of competition policy can be influenced by but require the participation of other institutional actors. In other cases, new forms of international co-operation may be needed.

For example, the pro-competitive restructuring of national infrastructure sectors - often led by the advocacy activities of competition agencies, but also reflecting broader state initiatives and actions - can be a vital tool in enabling exporters based in poor countries to become commercially successful. Much evidence suggests that the failures of market liberalization can, in many cases, be traced to a lack of complementary internal reforms (Osakwe 2001; Anderson and Jenny 2005; Qaqaya and Lipimile 2008). Equally, the liberalization of government procurement markets through the elimination of unnecessary restrictions on the types of suppliers who can compete can substantially enhance possibilities for effective competition, and make bid rigging more difficult. By delivering greater value from the investment of public resources, this can augment governments' ability to address the underlying causes of poverty through investment in schools and universities; hospitals and public health facilities; and physical infrastructure that is essential for development such as roads and railways, port facilities and airports.

While competition agencies can play an important role in advocating such measures, typically, their implementation will require the involvement of other arms of government. Competition policy can also assist in identifying and addressing potential monopsonistic practices in global supply chains, which can make it more difficult for developing country producers to take maximum advantage of market access opportunities created though trade liberalization. These and other dimensions of competition policy as a tool of poverty reduction, which go beyond the routine enforcement of national competition laws, are the main focus of this paper.

To say that competition policy is essential for poverty reduction is *not* to endorse particular approaches to such policy, nor to suggest that solutions that have proven advantageous in some jurisdictions are universally applicable. Indeed, experience counsels against any attempt to impose uniform approaches. Rather than advocating any such course, it is argued here that the effective application of competition policy as a tool of poverty reduction requires careful attention to local market conditions and institutional constraints.

Expanding on the above, five possible principles for the effective application of competition policy as a tool of poverty reduction are put forward below. These principles build upon and seek to integrate the

path-breaking work on related issues that has been done by the OECD, the ICN, UNCTAD and CUTS in recent years, in addition to the earlier work done on these topics in the WTO Working Group on the Interaction between Trade and Competition Policy when that body was active from 1997 through 2003.[2] These principles by no means constitute a "harmonized" approach; rather, they stress the importance of local market conditions and institutional constraints in prioritizing initiatives and defining the limits of the possible. Together, these principles comprise the "holistic approach" which is referenced in the title of this paper:

- First, poorer societies do not have the same institutional endowments and should not necessarily be expected to adopt the full panoply of tools that are used by developed jurisdictions in the enforcement of competition law. Rather, the focus should be on approaches that are relatively easy to implement but have a track-record of being effective and are economically sound, in addition to a strong emphasis on progressive learning and institution-building to enable strengthened application of relevant policies, over time.
- Second, meaningful competition policy reforms and legislation - like other aspects of "good governance" - cannot be successfully imposed from above. Rather, if such reforms are to be successful, public acceptance and support is critical (Rodrik 2012). Educational and advocacy activities relating to such reforms - including but not necessarily limited to the activities of competition agencies - are of vital importance. Indeed, to enable competition institutions and policies to "take root", the relevant educational and advocacy efforts will need to extend beyond the enforcement agencies themselves, to encompass civil society, legislatures, universities and think-tanks, and government ministries other than those concerned with competition law enforcement per se. The creation of "learning institutions" that track and advocate appropriate action in particular national contexts over time can make a vital contribution. In addition, the related work carried out in international fora such as the Global Forum on Competition, the ICN and UNCTAD in addition to relevant civil society organizations can provide an important support for the necessary efforts at the national and local levels.
- Third, in our view, and possibly somewhat more controversially, competition policy needs to address the needs of the citizens of poorer societies in their capacities as producers (i.e., as purchasers of raw materials and intermediate goods for further processing and as the users of public and business infrastructure services) in addition to their capacities as final consumers/households. While the preservation and enhancement of the purchasing power enjoyed by final consumers is undoubtedly crucial to the goal of poverty reduction, efforts to enhance living standards particularly in developing countries will only be successful if citizens have sustainable means of earning their livelihoods and are provided with improved opportunities for participation in the local and global economies. There are, indeed, many indications that a large proportion of instances of anti-competitive practices affecting developing countries relate to markets for business input goods and services (WTO Working Group on the Interaction between Trade and Competition Policy 1998). Consequently, the vigorous enforcement of competition law in relation to practices and market structures that unnecessarily raise business input costs and/or impede access to markets is likely to be central to the role of competition policy as a tool of poverty reduction.
- Fourth, "competition policy" is broader than just "what competition agencies do", including both their enforcement and advocacy activities: rather, it includes the full spectrum of measures that governments employ to enhance competition and improve the performance of markets (see also Anderson and Khosla 1995). Access to the full range of such measures, including, where appropriate, structural reforms that are implemented through the passage of legislation and/or

[2] The WTO Working Group on the Interaction between Trade and Competition Policy was established at the First WTO Ministerial Conference, held in Singapore in December 1996. The Group remains in existence but has been formally "inactive" since 2004, pursuant to a decision taken by the WTO General Council.

executive actions by bodies other than national competition authorities is important to ensure meaningful poverty reduction. International rules may also have a role to play, in some cases (see discussion of the role of international rules in the telecommunications sector in Part 2 below).

- Fifth, in order to address the challenges posed by the changing landscape of competition policy worldwide, new forms of international co-operation may need to be considered. To date, the main focus of international efforts to foster co-operation in the field of competition law and policy has been on the promotion of voluntary co-operation between competition agencies in relation to enforcement policies and specific cases, in addition to extensive general capacity-building efforts involving organization such as the OECD, the ICN and UNCTAD in addition to bilateral efforts. There is no doubt that these efforts have been immensely beneficial and need to be continued and, where possible, intensified. A question for the future is whether other forms of cooperation may also be needed/warranted, for example to fill possible jurisdictional gaps relating to matters such as export cartels (see Jenny and Mehta 2012) and/or to achieve mutually welfare-enhancing outcomes in relation to the promotion of competition where transborder markets are involved and/or joint action by the relevant governments is required.

This paper outlines various dimensions of such an approach to competition policy as a tool of poverty reduction, taking account of the considerations noted above. The remainder of the paper is organized as follows: Part 2 examines the role of market-oriented reforms in public and business infrastructure sectors, particularly in the context of developing and transition economies. This includes a discussion of the potential related contribution of international rules and initiatives in some cases. Part 3 extends the analysis with a discussion of the complementary roles of competition law enforcement and market liberalization in public procurement markets, and the importance of each for poverty reduction. The suggestion is made that neither tool (competition law enforcement or market liberalization) is likely to generate optimal results in the absence of the other. Part 4 considers various related dimensions of competition policy in relation to public health objectives, and their relation to poverty reduction. Part 5 considers the issue of possible monopsonistic practices in international supply chains that may affect the ability of developing country producers to reap gains from participation in international markets, and the role that competition policy can play in this regard. Part 6 rounds out the discussion by reference to the enduring issue of international cartels. The paper concludes with some observations regarding the future of international co-operation in the competition policy sphere.

2. Pro-competitive reforms in infrastructure sectors as a tool of poverty reduction in developing and transition economies[3]

Infrastructure services, including transportation, energy and telecommunications, account for a large proportion of the costs of export-oriented and other developing and transition economy businesses. They are also vital for household consumers in their daily activities. For this reason, infrastructure investment is increasingly seen as a key vehicle for enhancing the development prospects of low - and middle-income countries, and the provision of infrastructure services has rightly emerged as a primary focus of development assistance. For example, infrastructure now accounts for about 40% of the World Bank Group's commitments. Overall, there is no doubt that sound infrastructure investments can make a big difference to countries' development prospects: for example, in recent years, enhanced public investment in infrastructure has been a key factor underpinning rapid growth and a decrease in trade costs in Asian emerging economies (Brooks and Hummels 2009).

The efficient provision of infrastructure services involves many challenges, including the adequacy of public finances and the efficiency of their allocation through e.g. public procurement processes and institutions (Anderson, Kovacic and Müller 2011; see also Part 3 below). Access to the best available

[3] See also International Trade Centre (R. Anderson, F. Jenny and A. Müller, principal authors) (2012).

technology, whether sourced from home or abroad and whether financed by public or private capital, is another crucial element. In many cases, however, success will also depend crucially on addressing anti-competitive behaviour of enterprises (firms) involved in the delivery of related services, and on the creation of competitive market structures, where possible.

Historically, key infrastructure services, whether in the fields of transportation, energy or telecommunications and in both developed and developing economies, were often provided by monopolies. While such monopolies occasionally emerged through monopolistic or predatory behaviour by the firms themselves, they were most often established through legislation or by government grant. Frequently, the combination of monopoly power and, where present, public ownership has resulted in less-than-satisfactory performance, with non-competitive rates, inadequate service offerings or a lack of innovation or readiness to adopt improvements in technology as they become available. This, in turn, has directly undermined the competitiveness of developing country business users.

Addressing sub-optimal performance in infrastructure sectors due to a lack of competition can require the application of a variety of remedial measures. In many cases, governments' first recourse -- particularly in the transition economies of Central and Eastern Europe but also in developing economies in Africa, Asia and Latin America -- has been to privatize the relevant entities, seeking thereby to invigorate and infuse them with the dynamism that is often associated with private ownership. Experience has shown, though, that this can be a trap: the mere privatization of state-owed monopolies typically will not yield improved performance, if measures are not also taken to expose such enterprises to effective competition (Beato and Laffont 2002; Kessides 2004; Anderson and Jenny 2005).

In fact, experts increasingly believe that exposing infrastructure service providers to competition is at least as important in improving performance as the injection of private capital financing, and should, where possible, precede rather than follow privatization (see, e.g. Kessides 2004; International Trade Centre 2012). Of course, where privatization has already occurred, measures to introduce competition remain important and should still be pursued. However, they may be more difficult to implement, as the private monopoly will have a clear interest in lobbying the government to delay/avoid measures that may jeopardize its market position.

2.1 Competitive restructuring: separating competitive and non-competitive industry segments

An essential basis for the creation of new possibilities for competition in many countries' infrastructure sectors has been the realization that the majority of such sectors, even if they have some monopoly elements, normally are not 'monolithic natural monopolies' (Kessides 2004; the core insights go back at least to Kahn 1988). Rather, such sectors typically comprise distinct activities some of which may have natural monopoly characteristics but others of which are perfectly capable of supporting competition.

Table 1 summarizes information on possibilities for competition that arise in five specific infrastructure sectors. These are, to be sure, just possibilities. The challenge for policy-makers is to decide, on the basis of the best available information, which of these possibilities for competition can be realized in the context of their respective geographic, institutional and practical constraints. This is a challenge that calls for substantial input from business users, with their practical experience and knowledge 'on the ground', in addition to public interest organizations and advisory bodies that have specialized knowledge of the sectors concerned.

Table 1 Non-competitive and competitive components of key infrastructure industries

Industry	Activities that cannot always be operated on a fully competitive basis	Activities that can be and increasingly are operated on a competitive basis
Electricity	High-voltage transmission and local distribution	Generation and supply to final customers
Gas	High-pressure transmission and local distribution	Production, supply to final customers, and storage
Telecommunications	Local residential telephony or local loop	Long-distance, mobile, and value added services
Railways	Short-haul track and signalling infrastructure	Train operations and maintenance facilities
Air transport services	Airport facilities	Aircraft operations, maintenance facilities and commercial activities

Source: Adapted from Kessides (2004), Table 1.2.; see also Gönenç, Maher and Nicoletti (2001).

2.2 Relevant OECD recommendations

The OECD Committee on Competition Law and Policy and its affiliated bodies have played an important role in developing related policy approaches. In 2001, the OECD Council adopted a "Recommendation concerning Structural Separation in Regulated Industries". The recommendation recognized the potential usefulness of structural reforms, i.e. separation of potentially competitive segments of a particular sector from other segments that may constitute genuine 'natural monopolies' and 'behavioural measures' (i.e. regulation). Both can play a role in stimulating competition for the purpose of controlling costs, promoting innovation and enhancing the quality of a service to the benefit of users.

At the same time, the OECD recognized that neither structural reforms nor regulation were without attendant costs. Therefore, rather than recommending a 'blanket' approach to the implementation of such reforms across countries, it urged a careful 'case-by-case' approach involving the weighing of potential benefits and costs. Indeed, different countries (both developed and developing) have employed a variety of approaches at different times and across different sectors (e.g. energy as opposed to transportation or telecommunications). This is an important factor highlighting the need for progressive learning and input from business and other advisory bodies to the implementation of particular solutions in particular cases.

In 2006, the above-noted Recommendation underwent an extensive review (OECD 2006A). A key finding of the review was that structural separation, where practical, has important general advantages over behavioural measures, which however needed to be balanced against possible disadvantages. At the same time, the OECD study noted that "costs and benefits differ from sector to sector and from country to country, so uniform recommendations are not possible." Further work of the OECD Competition Committee resulted in a report approved in 2011 (OECD 2011A) and led to a revision in December 2011 of the 2001 Council Recommendation Concerning Structural Separation in Regulated Industries. The report reviewed the experience of structural separation ten years after the adoption of the 2001 OECD Council Recommendation Concerning Structural Separation in Regulated Industries and found that structural separation remains a relevant remedy to advance the process of market liberalisation. However, it also noted that the impact of separation policies on investment incentives has been an issue throughout the sectors. Consequently, the report again emphasized the need to assess the benefits and costs of structural separation against the benefits and costs of behavioural measures.

As a result of these deliberations, in 2011 the 2001 Recommendation was amended by the OECD Council to address the role that corporate incentives to invest can play in assessing the desirability of structural separation in regulated industries (OECD 2011B). This finding bears out the "holistic approach"

referred to above in that it underlines the need to adopt policies in light of the circumstances of the particular market concerned, and to re-assess them regularly based on experience gained.

2.3 The importance of the continuing application of competition law, post-restructuring

While the foregoing describes measures arguably going beyond "what competition agencies do" (see the fourth principle above), to be sure, an important additional element of the policy response to a lack of competition in public infrastructure sectors is the adoption or maintenance and enforcement of a competition, or anti-trust, statute, on a continuing basis. Such a statute is important to deal with three main sets of business practices - cartels, anti-competitive mergers between firms and abuses of dominant position (sometimes referred to as monopolization). All of these practices have the potential to undermine or eliminate completely the potential gains from pro-competitive reforms, including structural separation. For example, suppose that train-operating companies are split off from the ownership of railroad tracks in the hope of enabling effective competition to take place, but then the train operators meet secretly to establish a rate-setting cartel. All of the potential gains for consumers generally, and export-oriented businesses in particular, may be lost.

However, in line with the first of the principles listed above, it is important to keep in mind that developing countries, depending on their enforcement capacity, cannot be expected to adopt the full range of potentially complex enforcement measures at the disposal of competition authorities in developed economies. Especially where general competition laws interplay with regulatory policies, careful analysis of measures to be taken and policy coordination is warranted.

2.4 The international trade dimension

While measures to inject competition into moribund infrastructure monopolies have most often been implemented at the national level, in many cases an interaction with international trade agreements and cooperation can also arise. For example, it has been suggested that, in Africa, the creation of common regional markets may be a necessary step to establish effective competition in some parts of the transportation sector, where there is insufficient demand to support multiple service providers in some countries (see, for related discussion, Teravantinthorn and Raballand 2009). Similarly, regional cooperation can be an important factor in facilitating competition in energy markets.

More generally, Article VIII of the General Agreement on Trade in Services (GATS) obliges Member governments of the World Trade Organization (WTO) to ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments under GATS. It also obliges Members to ensure that any such supplier does not act in a manner inconsistent with the Member's commitments in the supply of a service outside the scope of its monopoly rights. Article IX of the GATS further enlarges the application of competition principles to GATS disciplines, recognizing that certain business practices of service suppliers, other than those falling under Article VIII GATS, may restrain competition and thereby restrict trade in services. It, consequently, obliges Members to enter into consultations with a view to eliminating such practices, upon request by another Member (see World Trade Organization 1997).

Another important example of the synergistic incorporation of competition policy approaches into international trade initiatives consists in the so-called "Reference Paper" on regulatory principles which forms part of the commitments made by 90 WTO Members in the context of the WTO Negotiations on Basic Telecommunications Services. The Reference Paper is intended to address, inter alia, situations where public telecommunications operators that are no longer monopolies, but rather are dominant operators (or "major suppliers") either by virtue of controlling essential facilities or having the ability to

influence the market. The disciplines are intended to ensure that governments apply appropriate mechanisms to avoid dominant operators posing impediments to competition and, hence, market access for service suppliers. To respond to this concern, the Reference Paper sets out detailed rules relating to interconnection of directly competing service providers with major suppliers on non-discriminatory terms; the prevention of anti-competitive acts, including anti-competitive cross-subsidization; and the making available of information needed for efficient inter-connection. These rules draw importantly on concepts of antitrust and regulatory policy such as exclusionary practices and the essential facilities doctrine (Anderson and Holmes 2002).

Key elements of the Reference Paper and related provisions of Mexico's GATS commitments were considered in the 2004 decision of the WTO Panel in the Mexico – Telecoms ("Telmex") case. In this case, which was brought against Mexico by the United States, the panel found that several features of Mexico's framework for regulation of international telecommunications services were in violation of Mexico's commitments under the Reference Paper (see Box 1 for a summary of points relating to the competition dimension of this matter).[4] Rather than appealing the case to the WTO Appellate Body, Mexico chose to accept the panel's ruling. In the view of some observers, it did so precisely because this was in the best interest of Mexico's consumers and the long-run development of Mexico's telecommunications sector (see, e.g., Hufbauer and Stephenson 2007; and, for useful related commentary, Fox 2006).

Box 1. Competition-related elements of the WTO Panel Report in MEXICO – TELECOMS (DS204)

Procedural aspects of the Dispute

Complainant: United States
Respondent: Mexico
Establishment of Panel 17 April 2002
Adoption of Panel Report 1 June 2004

Background

Telmex, the former monopoly operator, remained the dominant supplier of telecommunications services in Mexico after privatisation and the opening of the sector to competition. According to the WTO panel report, the applicable regulations in Mexico conferred on Telmex (as the long-distance service licensee having the greatest percentage of outgoing long-distance market share for the relevant country in the previous six months) the power to negotiate the rate to be paid by foreign carriers (including U.S. carriers such as AT&T and MCI) for the interconnection of calls terminating in Mexico. In addition, Mexican laws required all other licensed Mexican concessionaires to charge no less than the fee negotiated by Telmex for similar services.

Summary of Competition-related Findings of the Panel

The Panel ruled that Mexico violated its commitments under the Reference paper and the GATS in that:

- Mexico failed to ensure interconnection at cost-oriented rates for the cross-border supply of facilities-based basic telecom services, contrary to Article 2.2(b) of its Reference Paper;
- Mexico failed to maintain appropriate measures to prevent anti-competitive practices by firms that are a major telecom supplier, contrary to Article 1.1 of its Reference Paper; and
- Mexico failed to ensure reasonable and non-discriminatory access to and use of telecommunications networks, contrary to Article 5(a) and (b) of the GATS Annex on Telecommunications.

Source: World Trade Organization (2006); see, for related commentary, Fox (2006) and Hufbauer and Stephenson (2007).

As to the systemic importance of the case, Fox (2006) concludes that

[4] For a more complete summary also covering other aspects of the case, see http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds204_e.htm.

"The Mexican telecom case illuminates why competition rules must extend cross-border and why hybrid trade-and-competition (public/private) restraints must be treated as a unified whole, if we are to realize the good potential of globalization. […] The GATS Annex with its Reference Paper is the first instrument providing a unified vision for disciplining linked public and private restraints. The Panel Report's interpretation of the antitrust obligation gives life to the discipline. A positive reading of the antitrust clause is a step forward on intertwined issues of trade and competition."

To conclude, this review of competition issues in public infrastructure sectors illustrates and bears out the principles posited earlier in this paper. Regulatory reform and competition law enforcement are two important tools available to developing countries in furthering the welfare of businesses and households, and ultimately in promoting economic development. Both regulatory reform measures and competition law enforcement need to be adapted to the specific situation prevailing in the market and the country in question in order to find effective solutions that can be implemented successfully. Moreover, the reforms to be adopted will, at least in some cases, need to be coordinated with international trade policies and/or across a range of government ministries.

3. The complementarity of market-opening measures and competition law enforcement in public procurement markets, and their importance for poverty reduction

The deterrence and, where appropriate, investigation and prosecution of bid rigging (inter-supplier collusion) in public procurement markets is rightly a major priority for competition agencies in both developed and developing jurisdictions. Moreover, much useful work has been done by international organizations such as the OECD, the ICN and UNCTAD to sensitize competition and procurement officials to the harm caused by bid rigging and to promulgate effective investigative and related tools (see, especially, OECD 2012 and 2005A). Such efforts bear a direct relationship to poverty reduction, in that efficiency and effectiveness in public procurement activities are vital to governments' efforts to promote development and address the underlying causes of poverty through investments in schools and universities; hospitals and public health facilities; and physical infrastructure. Much evidence indicates that, where present, bid rigging can raise the price paid by governments for goods and services on the order of 20-30%, eroding by a factor of about one quarter the results that can be achieved through a given outlay of public funds. In concrete terms, this means that a failure to take effective measures to counter bid rigging might limit a country to building three new hospitals to meet the burgeoning needs of its citizens rather than four, or impede efforts to modernize its airports by a similar factor.

Typically, in addition to vigorous enforcement efforts targeting bid rigging, the advice offered to competition agencies by international organizations and the agencies' own strategies with respect to public procurement markets also stress the usefulness of policy advocacy in this area. Three main areas can be identified for competition advocacy activities aimed at promoting competition in public procurement markets: *first*, general public education efforts aimed at building support for the institutions of a healthy market economy, including sound public contracting rules and procedures; *second*, efforts aimed at modifying or eliminating specific aspects of procurement policy and regulations that may (intentionally or inadvertently) suppress competition; and *third*, broader efforts to modify or reduce sectoral and/or cross-sectoral policies that are not specifically concerned with procurement but which affect the scope for competition in public procurement markets. The latter might include licensing or other restrictions on entry or participation in markets and cross-sectoral or 'framework' laws and policies that unnecessarily make it more difficult for firms to compete (Anderson and Kovacic 2009; Anderson, Kovacic and Müller 2011).

While the foregoing dual emphasis on enforcement and advocacy efforts in regard to public procurement markets is appropriate and commendable, there are reasons for considering that competition agencies might go significantly further in promoting competition through market liberalization than is

typically done. Currently, a significant international effort is under way to expand possibilities for international competition in public procurement markets, through expansion of the coverage of the main international trade agreement governing this sector (the WTO plurilateral Agreement on Government Procurement, or "GPA"), and accession to the Agreement by additional countries, including important developing and transition economies (Anderson 2012). Market opening measures of this scale directly and substantially expand the scope for beneficial competition in public procurement markets.[5] They also make bid rigging more difficult, by increasing both the number and *diversity* of potential competitors in relation to specific procurements.[6] In the annals of competition agencies, there are multiple examples of cases in which unnecessary restrictions on the set of suppliers eligible to compete have facilitated collusion (Anderson and Kovacic 2009; see also Coate 1985). Yet, to date, competition agencies and advocates have had little involvement in framing/carrying forward efforts to expand the application of the WTO GPA or other market liberalization arrangements in this sector.

Beyond this, the efficient conduct of public procurement activities - to ensure their maximal contribution to poverty reduction - requires a careful balancing of concerns and efforts aimed at promoting competition, ensuring integrity, and specifying the attributes of the goods and services to be procured to a degree sufficient to ensure user satisfaction. While each of these is an important and valid public policy consideration, trade-offs can arise between measures aimed at pursuing each of them. For example, as is well known to competition authorities but not necessarily accepted in all relevant quarters, ill-conceived transparency measures can facilitate collusive tendering (Kovacic et al 2006; Anderson and Kovacic 2009; Anderson, Kovacic and Müller 2011). Consequently, the appropriate evolution of policies in this area requires not just general policy advocacy but mutual engagement at a deeper level by competition agencies, procurement specialists and the advocates of integrity in government, to understand each side's respective concerns and develop appropriately tailored approaches.

One area in which public procurement activities have particular relevance for poverty reduction and development is that of public health (WTO/WIPO/WHO 2013, and Müller and Pelletier 2013 forthcoming). Obviously, health is a major aspect of the well-being of citizens, in their capacities as both consumers and as workers. Furthermore, public spending on health represents a very substantial proportion of government spending in OECD countries (OECD 2010A and B). In this context, the possibility of achieving significant savings through competition and improvements in government procurement processes will have direct implications for both the welfare of citizens and the state of government finances - thereby also impacting on the ability to promote development and reduce poverty through other initiations involving the outlay of public funds (Transparency International 2006).

Scope for improvement in this area certainly exists since, according to the World Bank, the procurement of medicines has been particularly prone to weak governance, which, in turn contributes to stock-outs, wastage, poor quality, and cost inflation (World Bank 2011). In a similar vein, a medicine pricing study which is cited in the 2010 World Health Report found that, in Africa, European and Western Pacific Regions, governments paid an unnecessary surcharge of, in average, 34-44% for medicines (see

5 For example, the WTO Secretariat has estimated that the conclusion of the renegotiation of the GPA in 2012-13 has created additional possibilities for competition (as a result of being covered by the Agreement) in markets valued at $80-100 billion worldwide, annually. See Anderson (2012) and references cited therein.

6 To be sure, the opening of markets to foreign competition certainly does not render collusion impossible or negate the need for vigorous competition law enforcement in this area, in that relevant inter-firm agreements can and often do extend to foreign suppliers. Nevertheless, market-opening/the elimination of measures that unnecessarily restrict the pool of potential suppliers can powerfully reinforce the application of competition law in this area, by making collusive agreements more difficult to reach and enforce (OECD 2012; Anderson and Kovacic 2009; and Anderson, Kovacic and Müller 2011).

Cameron et al.2009, cited in WHO 2010). Moreover, in many cases, the failures of procurement systems to deliver good results relate specifically to a lack of effective competition, whether due to unnecessarily restrictive approaches to bidder selection and screening or to explicit collusion among suppliers (see Box 2). Such deficiencies in public procurement practices should be acknowledged as a significant failure of public health systems, and of governments' efforts to improve the welfare of citizens.

Box 2. Examples of bid rigging in health care procurement markets in South Africa, Turkey and Romania

"In the **South African** case of The Competition Commission vs Adcock Ingram Critical Care (AICC) and four others, it was established that five pharmaceutical companies had, over a period of at least fourteen years, colluded in rigging bids for the supply of intravenous solutions to public hospitals, a tender initially issued annually and later every two years. Prices were fixed, markets worth many hundreds of millions of [South African] Rands were allocated and winners and losers were determined, as was the compensation, often in the form of a post-award sub-contract, for the losers. In a statement submitted to the hearing at which the Tribunal approved the consent decree, a representative of the national Department of Health succinctly summed up the character of bid rigging and the nature of the problems that it posed:

> 'The Department of Health purchases large volume parenterals and administration sets through the public tender system in order to secure affordable prices, which ultimately benefit the many people who use the public health system, and as has been stated, the majority of whom are poor. The advantages for the suppliers are a guaranteed market, economies of scale and a binding contract....
>
> We are committed to giving preference to local manufacturers to promote job creation, poverty eradication and skills development. However, it is difficult to pursue these objectives of promoting local manufacture when such manufacturers act in such a manner. We find it very disturbing that SMMEs that get preferential points in the tender system to enable them to gain market share, resort to this kind of behaviour...
>
> These findings beg the question of whether this is the only case of collusion in the industry and there is a high possibility that this is not the only case of collusion in the industry. The challenge that we face is: how does one prevent such collusive practices in the future? Tender systems, by their very nature, are at risk of collusion, especially in the pharmaceutical sector where there are usually only a handful of competitors that are known to one another.'"

A submission by **Turkey** to the OECD roundtable on collusion and corruption in public procurement "reveals that in 2009 most of the bid rigging investigations carried out by the [Turkish Competition Authority] TCA were in the health sector, including medicines, laboratory supplies and medical equipment. This appears to have included the prosecution of several cases of collusive boycotts of tenders issued by procurement authorities in the health sector. As with the South African public health official cited here, the Turkish submission ascribes the frequency of bid rigging in health markets to the oligopolistic structure of the suppliers' markets. In 237 out of 310 tenders issued in Turkey for laboratory equipment, fewer than 3 suppliers responded to the tenders."

A submission by **Romania** to the same roundtable also "identifies the health sector as the sector most vulnerable to bid-rigging practices. Thus, in 2008, the [Romanian Competition Council] RCC imposed fines totalling approximately Euro 22.6 million on four pharmaceutical companies for sharing the publicly funded section of the insulin market in the context of a national tender organised in 2003 by the Ministry of Health. The collusive practice in this case aimed at sharing the diabetes product portfolio of a drug manufacturer between 3 distributors.

In another important case, 3 distributors who rigged a bid in response to a national tender issued by the Ministry of Health for the supply of dialysis products and equipment were fined Euro1.5 million.

The Romanian submission raises many other examples of dubious tendering and bidding practices in various markets for health products. Many of these appear to relate to the preparation of exclusionary tender specifications."

Source: OECD 2010C

At the same time, for most countries, international trade is part and parcel of their health procurement. As a recent publication by WTO Director-General Pascal Lamy (2012) states "for most countries, self-sufficiency is not an option when it comes to medical supplies and equipment".

Expanding on this point, the liberalization of public health procurement markets through unilateral action or via negotiations under the GPA or other international instruments can significantly strengthen competition and improve the delivery of medicines and related services. By way of example, with an import penetration approximating 47% in the European Union, the sector of medical instruments is one of the most traded in government procurement in the EU. As a result, the internal EU trade of medical instruments, apparatus, implants and supplies was estimated at around 40 billion euros in 2010. Imports from outside the EU approximated 28 billion euros for the same type of supplies (Source: Eurostat 2011, see also Kommerskollegium 2011). The elimination of barriers to competition, including to international competition, in the health sector clearly has the potential to improve the competitive nature and efficiency of the public health procurement market, as well as the access to a broader range of medical technology by allowing more suppliers to bid on public health procurement contracts.

The foregoing is corroborated by a recent study by the Swedish National Board of Trade, which provides an example of how important transnational economic activity can be to public health care services. The study finds that open borders appear as important for quality and efficiency of the health care sector as for any other field in the economy. Borders that are open to competition in government procurement spur competition in markets where few firms are active, improve the quality of health care, and help authorities ensure that taxpayers' money is spent in the most efficient way (Kommerskollegium 2011). The need for international competition in respect of procurement in the public health sector is likely to be even more acute in a developing country context, where the availability of medicines internally is limited.

Overall, reducing corruption and achieving enhanced efficiency through competition in public health procurement markets holds the potential to contribute very importantly to the maximization of value for money in the health sector. This, in turn, can contribute to poverty reduction both by reducing the costs of health care to individual citizens and improving their productivity as workers. Addressing the concerns enumerated in this section relating to competition and market governance will be essential to this result. While, to a large extent, success in this area is a matter of reforming procurement policies in addition to the straightforward application of competition law and policy, competition agencies can contribute to both aspects through their enforcement and advocacy functions - a prominent example of the "holistic approach" to competition policy and poverty reduction outlined in this paper.

4. Further dimensions of the role of competition policy in achieving public health objectives, as an element of poverty reduction

Enlarging the discussion further, competition policy has important related roles to play both in fostering innovation in the pharmaceutical sector and in ensuring access to medical technology (WTO/WIPO/WHO 2013, and Müller and Pelletier (forthcoming)). As is discussed below, one facet of this discussion concerns the role of competition policy in providing checks and balances to intellectual property (IP) rights and preventing abuses of such rights. However, this is only one aspect of the discussion, and not necessarily the most important in the context of developing economies. Rather, competition policy has a broader role to play in two distinct but interconnected ways: first, competition law and its enforcement addresses and helps correct anti-competitive behaviour that may occur; and second, competition policy can enlighten policy choices in sectors relevant to public health. Both functions of competition policy complement each other in that they are aimed at ensuring that markets work to the benefit of the consumer - or, in the health context, the patient.

4.1 Competition law enforcement as a core function

The role of competition law enforcement in ensuring innovation and access to medical technology lies in preventing anti-competitive practices that can, e.g., restrict research and development, limit the availability of resources needed for the production of medical technology, create unnecessary barriers to entry of generic or inter-brand competition, and restrict available distribution channels and consumer choices generally.

Practices that have been identified as potentially detrimental to public health include (but are not necessarily limited to):

- Preventing generic competition though anti-competitive patent settlement agreements, and/or the creation of "patent thickets";
- Mergers between pharmaceutical companies that lead to undesirable concentration of research and development and/or IP rights;
- Cartel agreements between pharmaceutical companies, including between manufacturers of generics;
- Anti-competitive behaviour in the medical retail and other related sectors; and
- Bid rigging in public procurement (see section 0above).[7]

A further specific practice which is of considerable interest to health policy advocates with reference to the application of competition law is that of refusals to licence (see WTO/WIPO/WHO 2013). It is recognized, however, that the treatment of this practice is not without controversy and that, in some jurisdictions, the right to refuse access is considered to be implicit in the grant of the relevant intellectual property rights. In any case, no particular approach to this practice is advocated here: rather, our point is that the role of competition policy in public health markets is much broader than this.

4.2 Competition advocacy in the health care sector

Over and above the role of competition law enforcement in this sector, competition *policy* can inform regulatory and other policy choices in regard to public health markets in diverse ways. Examples of policies relevant to innovation and access to medical technology that ideally take competition policy aspects into account include, e.g., regulatory choices made and policies pursued in designing IP protection, drug approval mechanisms, the framework for public procurement of medical technology, and regulations regarding health sector related businesses and professions.

In that vein, competition bodies can and, in some jurisdictions, have been given the mandate to undertake broad policy reviews of competition and regulation, pharmaceutical price regulation regimes, pharmacy regulation, and wholesale/distribution arrangements. They can make policy recommendations for a range of policies affecting competition – not only the operation of the competition and consumer protection laws, but also in areas directly affecting public health. Institutions such as the OECD and the World Bank have published studies on the interplay between competition policy and health regulation, thereby promoting and encouraging coordination between competition authorities and those agencies that regulate prices of medical products and the health sector more generally.[8]

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7 For a more in-depth discussion, see Müller and Pelletier (forthcoming).

8 See OECD (2009A); OECD (2009B); OECD (2006B); OECD (2005B); OECD (2004); OECD (2000); and more generally OECD (1998B). See also World Bank (2009) and World Bank (2005).

The role of competition policy in this context is to promote market structures and regulations that provide for a competitive environment. As pointed out above, competitive market structures can be expected to result in price reductions and efficiency gains and thereby enhance public welfare. Nonetheless, it is important to recognize that competition, while an important factor, may not, by itself, be fully conducive to achieving all relevant policy goals, such as ensuring the safety of medical technology and quality of health care services and providing incentives for innovation, which are equally at the heart of achieving innovation and access to medical technology. Therefore, different policy goals and the different instruments available to achieve those goals need to be taken into account and carefully balanced. Such issues can only be successfully resolved through dialogue emphasizing the achievement of appropriately balanced health policy choices (see Box 3).

Box 3. The relationship between competition law and regulation regarding public health

"In some countries, competition bodies have a mandate to undertake broad policy reviews of competition and regulation and a number have carried out reviews of pharmaceutical markets, pharmaceutical price regulation regimes, pharmacy regulation, and wholesale/distribution arrangements. UK, Australian and Irish competition bodies and the OECD have carried out research and market studies that compare prices internationally, analyze the extent of competition in pharmaceuticals markets at all levels, identify barriers to entry, identify abuse of dominance, and study the effects of regulation on competition. They make policy recommendations for a range of policies affecting competition – not only the operation of the competition and consumer protection laws.

Many countries have separate economic regulation agencies that regulate prices and other aspects of market behaviour for industries with natural monopoly characteristics or other special features. This is one of the rationales for creating specialist pharmaceutical price regulatory agencies - to ensure that the market power created by patent protection for pharmaceuticals is not abused. Alternatively, specific sectoral ministries carry out this function. There is an obvious interface between the objectives and scope of the competition law and the role of competition authorities on the one hand, and sector-specific price and market regulation on the other. There is a range of legal and institutional practice for how countries coordinate and harmonize competition law and other price and market regulation. It is generally regarded as good practice (by institutions such as the World Bank and the OECD) to have formal provisions for coordination, if not joint jurisdiction, between the competition authority and the agencies responsible for sector-specific price regulation."

Source: Hawkins (2011).

These two distinct functions of competition law and policy, the creation of competitive market structures through informed regulation on the one hand, and competition law enforcement on the other, complement each other. Indeed, a competitive environment created by sound policy choices will make it difficult to engage in anti-competitive behaviour while anti-competitive behaviour will be facilitated by policies resulting in closed market structures. The goal of fostering innovation and ensuring access to medical technology will be best achieved when both aspects are taken into account: Regulations relevant to the health sector should take competition policy objectives into account where possible. However, where other policy objectives require the adoption of regulations that may have the effect of limiting competition to some extent due to overriding concerns, competition law enforcement can be used to counter-act anti-competitive practices that may be facilitated by such regulations.

In that regard, it is important to note that, in order to best ensure access to medical technology, competition policy and law need to be applied to businesses and actors throughout the entire supply chain delivering medical technology to patients. This is because efficiency gains through competition at one level can be annulled by restrictions to competition elsewhere in that chain. A recent study conducted by the World Health Organization (WHO) found that in most countries, high medicine prices are a consequence not only of high prices charged by manufacturers, but also of high add-ons in the supply chain, such as

wholesale and retail margins and government-imposed duties and taxes (Cameron et al. 2011). Both of these factors, acting either singly or in combination can substantially increase the final price of medical technology to patients. Furthermore, where patients are supplied with medical technology by publicly funded organizations and bodies, it is, e.g., of crucial importance to ensure competitive bidding processes in public procurement of such technology. Taking competition policy into account in the entire supply chain can therefore be expected to have a substantial effect in making medicines more affordable to citizens.

5. Addressing monopsonistic practices in international supply chains that (potentially) impact adversely on developing country exporters

Participation in international trade holds the promise of significant revenue enhancement for developing country businesses since often, the prices for goods and services that can be obtained in developed country markets are higher than those in developing country's domestic markets. Moreover, for most products and services to be exported, international marketing, retail and distribution channels are increasingly complex. Very often, small and medium sized businesses in developing countries must therefore market their products through international distribution and retailing conglomerates. This can have major advantages in terms of brand recognition, economies of scale and scope. However, the gains from participation in international trade that are actually reaped by developing country business owners, and the effects on further development of successful businesses in developing countries, depend at least partly on whether or not rents are distributed equitably between international conglomerates and developing country businesses.

Further to the above, the reliance of developing country suppliers on large retail and distribution conglomerates can expose these (often smaller) businesses to very significant bargaining power and the potential for anti-competitive practices on the part of the conglomerates, resulting in an inequitable distribution of rents. In competition law terms, monopsony power needs to be addressed.

This section of the paper considers both aspects of the issue -- the advantages that are often derived from marketing through international distribution channels and the potential related concerns regarding anti-competitive practices that can arise. As the agro-food sector is a prime example of an internationally interlinked market in which the above considerations are of relevance, that sector will be used to elaborate related issues.

5.1 Global Value Chains and Competition: the Agro-food sector

Agricultural commodities represent a critical share of many developing countries' exports.[9] Furthermore, recent price increases in international commodity markets would suggest that participation in international agricultural commodity trade by developing countries is becoming increasingly attractive to producers in such countries. However, there is evidence that a price increase in international markets and/or developed countries does not necessarily translate into higher "farmgate" prices for producers. A recent study by the FAO therefore asks the question: "Why were high food prices not an opportunity for poor farmers?"[10]

Raw commodities are inputs into a vertical commodity chain that extends from the production of the raw commodity, via processing to retail and distribution. Often, raw commodities only provide for small

[9] The FAO reports that agricultural exports represent up to 90.57% of total exports of some economies, e.g. 90.57 % for Djibouti, 89.21 % for Burundi, 89.09 % for Liberia, 85.72 % for Malawi and 83.34 % for Timor-Leste. See http://faostat.fao.org/site/342/default.aspx.

[10] FAO (2009), Part 2.

shares of the total value or price of the finished product, even where the commodity involved does not require much processing. McCorriston and Sheldon (2007) observe that exporters of coffee, for example, have faced a significant decline in real prices over the years, while global buyers, roasters and retailers have seen their profits increase. Furthermore, in the banana sector, plantations only receive 10% of the final price of the product, whereas international trading companies and retailers each add 30-40% to the final price (McCorriston and Sheldon 2007). This can be seen as an indication that high profit margins are reaped by "downstream" firms, i.e. firms at more advanced stages of the commodity chain, while both developing country producers and consumers are "worse off". These authors therefore suggest that even though trade liberalization in agricultural commodities may have been seen as having the potential to act as a powerful catalyst for poverty reduction, it will not bring about the desired results if the market structures are such that the downstream distribution and retail capture the largest share of total value added.

Of particular relevance to small producers of agricultural commodities in developing countries are private contracting strategies resulting in enhanced vertical co-operation between small producers and big buyers of their agricultural products. Such programmes often "tie" producers to one of the few processing, retail and/or distribution conglomerates, thereby increasing the conglomerates' bargaining power. However, they often offer supplier support measures as "part of the package" in return: credit, inputs (such as seeds, fertilizer, etc.), prompt payments, transportation and quality control are the most commonly offered forms of support (Swinnen and Maertens 2007). Other forms of supplier support, depending on the relevant sectors, include transfer of new technologies, veterinary services, etc. An example of such a supplier support programme is set out in Box 4 below.

Box 4. "French" beans from Madagascar

In Madagascar, vertical co-operation between a local food processing business consortium Lecofruit and rural farmers has helped in establishing Madagascar as exporter of high quality "French" beans to Europe.

Lecofruit buys vegetables from more than 9000 small farmers based on contracts. It distributes seeds fertilizer and pesticides as part of the contract. The value of those inputs is later paid back in kind by farmers upon harvest and therefore pre-financed by Lecofruit. Furthermore Lecofruit teaches farmers how to make compost with a beneficial spill-over effects to other crops. In order to ensure compliance with contracts by farmers the company has put in place a hierarchical system of monitoring with lower levels of monitoring carried out by people living in rural villages themselves.

The co-operation contracts are perceived as useful by farmers as they help reducing periods without income caused by seasonality of crops. Further reasons for farmers to sign contracts were the receipt of inputs on credit and the learning of new technologies. However a higher income was mentioned by a relatively low number of contractors and almost half the farmers were willing to stick to the contract even if prices offered were half of the price observed on the local market. A consequence is that there is little potential for farmers to negotiate prices with Lecofruit.

Source: Minten, Randrianarison and Swinnen (2006)

It should be acknowledged that such programmes can have positive effects for developing country farmers and businesses where they raise efficiency, lower production and marketing costs, or otherwise increase profitability of participating farms. Furthermore, they shift risk away from farmers by providing for guaranteed sales at guaranteed prices and secured access to capital. From a long-term development perspective, technology transfer and learning effect can create long-lasting spill-over effects, including with respect to other crops. Therefore, the potential for efficiency gains from such vertical co-operation should not be overlooked, and simplistic solutions that limit the scope for vertical cooperation in an "across the board" manner are likely to bear significant costs.

Does this mean, however, that concerns regarding monopsony power and competition can be disregarded entirely? A key question, in this regard, is who benefits from the efficiency increase described above, and to what extent. In that regard, evidence shows that small developing country producers benefit most from supplier support if competition between different larger firms targeting the same suppliers occurs, i.e. if their dependence on a particular buyer is decreased. Competition between such firms leads to both more extensive support, i.e. better services provided by the buyer, and a more equal rent sharing, i.e. a higher price for the agricultural commodities produced.

A further trend that has been observed in the agro-food sector is (horizontal) concentration or consolidation at all stages of the value chain. This means that different companies at the same stage of the value chain, e.g. processing, retail, or distribution companies have merged and/or formed consolidated economic entities. Depending on the market structure, and in particular on the number of competitors remaining in the market, mergers therefore have the potential to significantly lessen competition. At the same time, if consolidation occurs in a downstream sector, it enhances the potential for monopsony power being exerted *vis-à-vis* upstream sellers. If this is the case at the national level, competition agencies generally exert their merger control functions and powers and either prevent mergers or limit the impact of mergers on competition by making it subject to conditions. Reflecting, in part, concerns of this nature, mergers in the agro-food sector have recently attracted the attention of competition authorities in major developed economies (see, e.g. UK Competition Commission 2011A and US Department of Justice 2009).

Further to the above, a pertinent development is that competition agencies in some developing/emerging countries have actively monitored consolidation and resulting anti-competitive practices between national companies in the sector. The example of the South African Competition Commission is described in Box 5.

Box 5. Market power and merger review in the agri-food sector: the case of South Africa

The South African Competition Commission describes its merger review in regard to the agriculture and agro-processing sector as follows:

"[D]eregulation, with the closing of the marketing boards (the former control boards) coupled with the conversion of most of the cooperatives into private and listed companies, has underpinned high levels of merger activity. Many of the firms that held dominant positions in the regulated market have, over the past decade, extended their control over the vertical and horizontal channels through which they produce and market.

For example, the former Ost-Transvaal Ko-operasie (OTK) has become Afgri Operations. Afgri Operations has extended horizontally through acquiring other former cooperatives together with their fixed infrastructure such as grain silos. Afgri Operations has also extended its range of services offered to farmers on the input side as well as on the output side as a buyer, trader and processor of agricultural products.

In the poultry industry, Astral's acquisition of National Chicks in 2001 (approved with conditions) and Earlybird Farms 2004 increased Astral's total broiler production to just below that of Rainbow Chickens. Rainbow Chickens expanded its operations through the acquisition of Vector Logistics in 2004, which resulted in the firm becoming even more vertically integrated in the poultry supply chain.

The merger between Afgri Operations and Daybreak Farms, approved in 2006, resulted in the creation of another vertically integrated player in the poultry industry, by merging a feed manufacturer with a producer of broilers.

An example of a prohibited merger in the food sector is the proposed Tongaat-Hulett Group/Transvaal Suiker Beperk merger in 2000. This was a large horizontal proposed merger that was prohibited by the Tribunal in a food market that is highly concentrated. The merger would have resulted in the acquisition of the third largest sugar producer (Transvaal Suiker Beperk, controlled by Rembrandt) by the Tongaat-Hulett Group, a subsidiary of the Anglo American Corporation."

Source: Competition Commission of South Africa 2009.

Wilcox and Abott (2004), in a study regarding cocoa markets in West Africa, found that the econometric results strongly suggest that there is exercise of market power along the cocoa supply chain in Ivory Coast, with rents in the range of 35% being extracted by the government and multinational exporters taken together. Box 6 below sets out anti-competitive behaviour in agro-food chains that has been dealt with by the South African Competition Commission.

Box 6. Cases of anti-competitive practices in agro-food chains in South Africa

The South African Competition Commission prioritizes its work, with a focus, among others, on food and agro-processing.

One of the Commission's first cases contained complex issues of alleged vertical and exclusionary restraints by South African Dried Fruit Holdings Ltd (SAD). Exclusive supply arrangements effectively foreclosed the market to new entrants, such as South African Raisins, the complainant in this case.

Similarly, in 2000, an Eastern Cape citrus farmer brought an interim relief application against citrus packing and distribution company, Patensie Sitrus, claiming that certain provisions of the company's articles of association contravened the Competition Act. They locked farmers, who were shareholders in the company, into an exclusive supply arrangement with Patensie Sitrus, thus excluding potential competitors from the market for packing and distributing citrus fruit in the Gamtoos River Valley.

In 2005, the Commission investigated a complaint against a major tea supplier that had entered into exclusive supply arrangements with the major local packers of rooibos tea. According to the finding of the Commission, these supply agreements foreclosed rivals and new entrants from supplying processed rooibos to domestic packers, amounting to the foreclosure of 91 percent of the processing of raw and bulk-supplied rooibos to the domestic market.

Source: Competition Commission of South Africa 2009.

5.2 Policy and other responses to trends in the agro-food sector in developed jurisdictions

In developed countries, competition authorities have recently undertaken important initiatives to deepen their understanding of the effects of concentration in the agro-food sector on both consumer welfare and producers' businesses, thereby also helping to ensure a sound basis for competition law enforcement. An example for such an initiative is set out below in Box 7.

Box 7. UK Enquiry into groceries retailing.

In the UK, the Competition Commission carried out an enquiry into UK groceries retailing which finished in 2008 and concluded that measures were needed to address its concerns about relationships between retailers and their suppliers. As a result the Groceries Supply Code of Practice (GSCOP) came into force on February 2010 and replaced the former Supermarkets Code of Practice (SCOP). The aim is to ensure that suppliers do not have costs imposed on them unexpectedly or unfairly by retailers. The GSCOP ensures that:

- the provisions of the GSCOP are included in every contract between grocery retailers and their suppliers;
- all retailers with groceries turnover in excess of £1 billion per year are included within its scope;
- an overarching fair dealing provision is included;
- retailers are prohibited from making retrospective adjustments to terms and conditions of supply;
- retailers are prohibited from entering into arrangements with suppliers that result in suppliers being held liable for losses due to shrinkage;
- retailers are required to enter into binding arbitration to resolve any dispute with a supplier; and
- retailers are required to keep written records of all agreements with suppliers on terms and conditions of supply.

It also establishes an Ombudsman to arbitrate on disputes between grocery retailers and suppliers and investigate complaints under the new Groceries Supply Code of Practice (GSCOP)

Source : United Kingdom Competition Commission, Press Release (2011B) and sources referenced therein.

Additionally, the EU Commission has published a Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector providing a comprehensive overview of the most significant enforcement, advocacy and monitoring actions undertaken by the national competition authorities and the Commission from 2004 to 2011 (EU Commission 2012). The report finds that in total, European competition authorities have undertaken more than 180 antitrust investigations, close to 1300 merger control proceedings and more than 100 market monitoring actions since 2004 concerning that sector.

In the US, the Department of Justice and the Department of Agriculture held a series of joint workshops on competition issues in the agro-food sector in 2010.[11] This led to the publication by the Department of Justice, in 2012, of a report summarizing the outcomes of the workshops. The report states that "antitrust enforcement has a crucial role to play in fostering a healthy and competitive agriculture sector", but also points out that some "issues may require public or private solutions beyond the antitrust laws". In that regard, the Department of Justice could "assist other public/private entities in finding solutions that maintain or enhance competition and do not, indirectly, retard such" through competition advocacy (United States Department of Justice 2012A).

To summarize this aspect of the discussion, no suggestion is made regarding specific enforcement actions to be taken. Rather, the point being made is simply that issues in this sector, with particular reference to international distribution chains, need to be looked into from the standpoint of developing country producers and exporters in addition to the world's consumers. Any solutions that are, eventually, adopted should take all due account of the benefits that integrated distribution systems often provide in addition to concerns related to their possible anti-competitive effects.

6. International cartels: a continuing impediment to development and poverty reduction

The pernicious effects of international cartels on the welfare of citizens - including, very much, in poorer countries - have been extensively documented and discussed in the Global Forum and other international bodies, and there is no need to detail this work here (see, for relevant contributions, Levenstein and Suslow 2008; OECD 2005A; Qaqaya and Lipimile 2008; and extensive material developed by the ICN). As a result, there is now wide recognition that measures to address international cartels have an important role to play in protecting developing country consumers and promoting the ability of developing country exporters to take part in and benefit from international trade. Nonetheless, despite a very impressive record of successful prosecutions of international cartels in large developed jurisdictions over the past decade and even earlier, the impact of such arrangements on developing economies, their consumers, and on export-oriented businesses located in such economies, arguably still is not being adequately addressed and deterred. It should, consequently, be an important continuing focus of future work on competition policy and poverty reduction.

The issue of international cartels has an important interface with international trade liberalization. Over the past several decades, most countries, including developing countries, have extensively liberalized their trade regimes and have, thereby, opened up their markets to foreign trade. This market liberalization has occurred with the expectation of increasing welfare in multiple ways. Two among these are surely the following: firstly, consumers and users of imported products expect to benefit from lower prices and enhanced quality and product diversity resulting from increased international competition. Secondly, export-oriented businesses expect to take advantage of increased sales in new export markets.

International cartels directly undermine both these positive effects of trade liberalization in countries that import products exported/sold by cartel members. First of all, participants in international cartels seek

[11] See http://www.justice.gov/atr/public/workshops/ag2010/index.html.

to extract rents through fixing higher-than-competitive market prices. Very often, this substantially raises the prices that developing country businesses pay for the inputs they need to produce and market their goods and services. Secondly, in order to achieve this, cartels often seek to prevent competition from new entrants to the relevant market(s), including entrants from developing countries. Indeed, trade liberalization makes it necessary for cartels to shield their prices against erosion by imports from international competitors.

These adverse effects of international cartels have been confirmed in research taking into consideration a broad range of sectors, over extended periods (see, e.g. Levenstein and Suslow 2011, Connor and Helmers 2006). From Levenstein and Suslow's analysis of 81 international cartels convicted of price-fixing or other forms of collusion in the United States or the European Union since 1990, it emerges that most international cartels involve intermediate manufactured goods and services, with a strong presence of cartels in the chemical sector, especially food additives. Other cartels focus on sectors relevant to industrial manufacturing inputs, such as steel, carbon and graphite products, plastics and paper. Remarkably, final consumer goods are seldom the focus of these collusive arrangements, despite the fact that in many countries competition policy has been driven by a perceived need to protect consumers, rather than businesses. Rather, the majority of the sectors identified in the analysis constitute inputs to production by developing country businesses. It is apparent, therefore, that the operation of such cartels has the effect of raising directly the costs of developing country exporters, undermining their competitiveness and ability to participate effectively in both export and home markets.

As to the resulting overcharges paid by developing country importers, Connor and Helmers (2006) found that median overcharge rates for globally operating cartels were 29% of sales between 1990 and 2005. In other words, these cartels raised the prices paid by developing country businesses for the relevant products by 29% on average. Again, they found that the vast majority of cartels (30 out of the 34 analysed) dealt with industrial intermediate goods. Most alarmingly, there is evidence that international cartels are more harmful than domestic cartels, as they achieve higher overcharges. Connor and Bolotova (2005) found that international cartels, on average, overcharge by 14.35 percentage points more than domestic cartels. Furthermore, cartels are more likely to engage in cross-border anti-competitive behaviour and reap higher profits when targeting jurisdictions with weak anti-cartel enforcement (Anderson and Jenny 2005; Connor 2004). Therefore, businesses in developing countries with no domestic competition law, or weak enforcement, are "prime targets" for trans-national anti-competitive practices.

Once a cartel is formed, outside competition needs to be excluded from markets in order to avoid competitors selling below the cartel price. On the one hand this means that existing producers need to be prevented from expanding their production; on the other, new entry into the industry needs to be prevented. Cartels can use a variety of measures to achieve these harmful results. These may include buying up competitor firms (reducing competition through consolidation), driving competitors out of the market, or weakening the economic viability of their businesses, by temporarily engaging in 'price wars', i.e. lowering prices to a level that does not let non-cartel members compete, raising the price of inputs or refusing to supply them, or the misuse of legal frameworks or government intervention mechanisms. Often these measures impact directly on the ability of developing country businesses to enter new markets, or compete effectively once they have entered.

To be sure, major efforts have been made to detect the presence of, investigate and prosecute international cartels in leading competition law jurisdictions. Moreover, these efforts have achieved impressive results in terms of successful prosecutions and penalties levied. However, even though many developing countries also prohibit international cartels, participating firms have been found to sell their products there extensively. Prosecutions and civil litigation in such countries have been relatively rare, and the penalties imposed very limited (Levenstein and Suslow 2008 and 2004).

As with other types of anti-competitive practices, enforcement measures by developed country competition authorities against international cartels can also have beneficial spill-over effects in developing countries (see, for detailed analysis, Schmidt 2006), and no doubt this has been the case at least to an extent. There are, however, a number of reasons why this is insufficient to protect the interests of developing country producers in regard to the operations of international cartels. First and foremost, national competition laws today generally cover international cartels if and only to the extent that they have anti-competitive effects within the country exercising jurisdiction (see, for a discussion of United States law and jurisprudence, Haas 2003 and Schmidt 2006). This means that developing countries cannot rely on developed country anti-cartel enforcement efforts if the cartel does not also harm consumers in the developed country economy.

Second, even where the risk exists of being prosecuted in developed jurisdictions, it may not create a deterrent strong enough to discourage international cartels from engaging in anti-competitive behaviour in developing country markets. This is because fines and other sanctions imposed on cartel participants on the basis of national enforcement action are often lower than necessary. Connor (2007) finds, in this regard, that, since international cartels can extract overcharges worldwide, even the theoretical maximum United States legal sanctions of eight times the United States overcharges is insufficient to deter global cartels, though they are quite capable of deterring purely domestic cartels. As a consequence, clearly, developed country measures against international cartels by themselves do not suffice to protect developing country consumers (including business users). In order to complement fines imposed by developed country governments, it is important that developing countries take an active role in the prosecution of international cartels that harm them.

The second and third reports on the implementation of the above-mentioned OECD recommendations observed that since 1998, international cooperation in discovering, investigating, and prosecuting cartels has reached unprecedented levels. New investigative strategies have been used successfully, such as coordinated, simultaneous surprise inspections in several jurisdictions. Confidentiality waivers in cases of simultaneous leniency applications have created more opportunities for multi-jurisdictional cooperation. More countries than ever cooperate by exchanging know-how and expertise in cartel enforcement, in particular in the field of investigative techniques. The number of bilateral cooperation agreements has substantially increased (OECD 2005A).

However, despite the impressive progress made, significant limitations persist. For example, a lack of coordination of national leniency programmes, i.e. programmes designed to encourage individual cartel members to "defect" and report the cartel to the authorities in exchange for impunity or reduced fines, limits the ability of competition authorities to pass on confidential information to their counterparts in other jurisdictions, particularly in the absence of formal cooperation mechanisms (OECD 2002 and OECD 2005A). More generally, while strong cooperation mechanisms may exist between countries already having strong enforcement structures[12], this is much less true in the case of developing country competition authorities, which may need assistance but are unable to offer information or investigative capacity in return (Jenny 2002, Lee 2005).

Yet another problem that may need to be addressed concerns the jurisdictional gaps which, according to Jenny and Mehta (2012), facilitate the operation of export-only cartels. While not all authorities have agreed, it is arguable that such arrangements constitute a "beggar-thy-neighbor" trade policy. A question to ponder is whether further international discussions at a multilateral level could open a path to enhanced common understanding and consensus on the substantive issues involved.

[12] See e.g. the report on co-operation between the United States and the European Union and other international co-operation efforts by the United States Department of Justice contained in United States Department of Justice 2012B.

7. Concluding remarks

Current thinking on development stresses the centrality of market governance mechanisms (laws and institutions) to the promotion of economic development and poverty reduction. This paper has argued that competition law and policy occupy a central position within the matrix of required mechanisms. From the standpoint of consumers (including, significantly, business users), competition law enforcement provides an essential deterrent to cartels and other practices that restrict output, raise prices and thereby erode purchasing power and diminish the welfare of citizens. This is no less important in poor countries than in richer ones. In fact, as elaborated in Part I, there are reasons for believing that less developed economies are more, rather than less, vulnerable to anticompetitive practices than developed economies.

Fortunately, in the past decade, important progress has been made in the building of enforcement capacities to address these practices, even in poorer countries. For this progress, much credit is due first and foremost to the relevant national authorities but also, very much, to civil society, international organizations and other policy advocates active in this area. These efforts to strengthen competition law enforcement capacities merit continued and intensified support from the international community, as a tool of poverty reduction.

The paper has also argued that - as important as the above-emphasized gains have been - further poverty reduction and welfare gains can be achieved through competition policy applications that go beyond the routine application of national competition laws. Examples considered in the paper include: (i) the pro-competitive restructuring of national infrastructure sectors to reduce costs for export-oriented producers; (ii) coordinated enforcement and advocacy efforts in relation to government procurement markets, which can both expand possibilities for competition and make bid rigging more difficult; (iii) other applications of competition policy in the health care sector; (iv) expanded efforts to identify and, where relevant, to address possible monopsonistic and other anti-competitive practices in global supply chains; and (v) possible additional measures by the global community to address the enduring problem of international cartels and their deleterious effects (all the while applauding the important progress that has already been made by national authorities and the international community in addressing this issue).

The suggestions have also been made that the pursuit of these efforts may eventually require both: (i) expanded engagement and even joint action by competition authorities with other arms of government whose mandates impact on competition (including not only regulatory authorities but also trade ministries); and (ii) new forms of international co-operation. Other possible attributes of such a "holistic approach" to competition policy would encompass: (a) expanded educational and advocacy activities relating to competition policy reforms, in particular, the nurturing of "learning institutions" that track and advocate appropriate action in specific national contexts; (b) explicit addressing of the needs of the citizens of poorer societies in their capacities as producers in addition to final consumers; and (c) use of the full spectrum of measures that governments can employ to enhance competition and improve the performance of markets. This could include, where appropriate, structural reforms that are implemented through the passage of legislation and/or appropriate international rules and initiatives, for example to facilitate collective action and address jurisdictional gaps that are perceived by some observers.

The authors recognize that elements of these ideas are already being taken up by the national and international competition communities in particular respects, and that further embracing of them would require careful consideration by the relevant authorities. No precipitous action is urged in this respect. Arguably, though, such a broader agenda is necessary to fulfil the promise of competition policy as a tool of poverty reduction. As a first step, consideration could be given to the potential contribution of renewed dialogue in international fora that bring together both competition agency representatives and the representatives of other relevant government ministries. Certainly, such fora are not a substitute for direct co-operation and communication between the competition agencies of different jurisdictions; they may, however, be an important complement.

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IMAGINE: PRO-POOR(ER) COMPETITION LAW

By Ms. Eleanor M. Fox[*]

1. Introduction

What would the antitrust world look like through the eyes of lower and lowest income people; those without connections and power? What, then, would we choose as the key initiatives? That is the question I attempt to answer.

This essay proceeds in three parts. First, it introduces a perspective that is focused on helping low income people and outsiders. It observes that competition law and policy is one among several links in the chain, all necessary links, to empower the less and least well off.

Second, it examines the question: From the perspective of the poorer population and outsiders, what should a good competition law provide? In this second category it examines the reach of the law, including coverage of state acts. The perspective is equally sympathetic to all –richer and poorer; but it is especially critical to outsiders, who otherwise might be frozen entirely out of the market. The second category also includes access to courts and applications of competition law principles.

Third, the essay examines competition *policy*, as opposed to law, and considers priorities and initiatives from the point of view of empowering and helping the poorer population.

The essay treats pro-poor competition from the point of view of lower and middle/lower income countries, rather than the low-income population everywhere.

2. Pro-poorer competition law and policy

2.1 The concept

Why pro-poor*er*? My remarks are not about how to focus competition law and enforcement priorities on consumer products and services most critical to low income people. They are about a more dynamic challenge: creating an environment; creating a competition system that is more sympathetic to people without power than to people with power and connections; more sympathetic to outsiders than to incumbents, especially incumbents upon whom privileges have long been showered. The approach is pro-poor*er* because the policy solutions are not addressed to a category – "the poor." There is no such thing as competition law for the rich (well off; enabled) and competition law for the poor.

The larger enterprise is not only about the potentials of competition. If our object is to address poverty, we would see the market system as one of a handful of sister systems and efforts, the success of each being a necessary condition for enabling the disempowered. This includes education, health care, infrastructure, job opportunities, and availability of capital for good ideas, all in a context of good governance, and that must include absence of pervasive corruption. The house of opportunity, participation, and ultimately growth is built one small brick at a time. The entire system, if it pulls together,

can improve the lot of the half of the world living in poverty.[1] All of the efforts together can help to close the gap.[2]

The OECD has done valuable work to research and publicize the problem of the disempowered poor and the need for multidimensional interrelated solutions. Thus, we are told by the OECD's monograph, *Promoting Pro-Poor Growth*:[3]

> **Rapid and sustained poverty reduction requires pro-poor growth, i.e. a pace and pattern of growth that enhances the ability of poor women and men to participate in, contribute to and benefit from growth. * * ***
>
> iv) **The vulnerability of the poor to risk and the lack of social protection reduce the pace of growth and the extent to which it is pro-poor.** The poor often avoid higher risk opportunities with potentially higher payoffs because of their vulnerability. In addition, the journey out of poverty is not one way and many return to it because man-made and natural shocks erode the very assets that the poor need to escape poverty. Policies that tackle risk and vulnerability, through prevention, mitigation and coping strategies, improve both the pattern and pace of growth and can be a cost effective investment in pro-poor growth.
>
> v) **Policies need to tackle the causes of market failure and improve market access. Well functioning markets are important for pro-poor growth.** Market failure hurts the poor disproportionately and the poor may be disadvantaged by the terms on which they participate in markets. Programmes are needed to ensure that markets that matter for their livelihoods work better for the poor. . . . Policies to tackle market failure should be accompanied by measures aimed at increasing economic capabilities of the poor.[4]

Through its Development Assistance Committee (DAC) and its Network on Poverty Reduction (POVNET), the OECD has researched and recommended best practices in the panoply of interrelated sectors, including agriculture (which in many poorer countries employs 50-80% of workers and is a major source of GDP); infrastructure – housing and getting to market; information and communications technology; electricity, water, other energy; transportation including cross-border; employment and social protection; education and skills development; jobs and social protection; food security and nutrition;

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1 Almost 50% of the people of the world live on less than US $2.50 per day. Global Issues, The Human Development Report (2012). See www.globalissues.org/article/26/poverty-facts-and-stats.

2 See Michal Gal, The Ecology of Antitrust: Preconditions for Competition Law Enforcement in Developing Countries in COMPETITION, COMPETITIVENESS AND DEVELOPMENT (Brusick et al., eds. 2004), p. 20.

3 Promoting Pro-Poor Growth, Key Policy Messages (OECD 2006).

4 The monograph continues: *In tackling poverty, perceptions of policy dichotomies have been misplaced…*

> i) **Policies to tackle the multiple dimensions of poverty should go hand-in-hand.** Poverty is multidimensional. Pro-poor growth will be strengthened by progress on the non-economic dimensions of poverty. More effective policies require a better understanding of these interdependencies. Perceptions of dichotomies (e.g. economic *versus* social policies) can be misplaced. The pace and pattern of growth have multiple determinants and consequences and each dimension nourishes (or holds back) the other. Progress on the income poverty Millennium Development Goal (MDG) facilitates progress on other MDGs and *vice versa*.

economic empowerment; and private sector development including competition policy to attack both private and public restraints.[5]

The documents generated by the OECD and its DAC stress the interfaces, the need for policy coherence, and the importance of working on all fronts at once to address not only the problem of the poor but the problem of all society when it ignores the poor and tolerates an increasing income gap without mobility.[6] Others, also, demonstrate that poverty alleviation and sustained economic development require a set of coherent policies that promote inclusive growth.[7]

All of this is an argument for constructing a blueprint for a pro-poorer, pro-outsider system of competition law and policy and at least examining such a blueprint against alternatives. The question we turn to is: What would that blueprint be?

2.2 What does pro-poorer, pro-outsider competition law and policy demand?

One answer to pro-poorer antitrust is antitrust as usual but with a distinct priority for those restraints that harm the poor most – necessities of life; infrastructure cartels; thus, bread, milk, sugar, corn (or tortillas), cement, home and highway construction, and healthcare. Setting priorities and assuring that the gains get passed on to those in need is vitally important. This was a subject of the Santo Domingo meeting of the Latin American Competition Forum in September 2012. Excellent examples of pro-poor priorities are also richly documented in a number of the submissions for this forum. In this essay I concentrate elsewhere, casting the net in a different way.

I take a dynamic overview: What does pro-poorer competition law/policy entail by way of perspective or design? We could address two categories; one: low and lowest income developing countries, and two: the poorer populations of all nations. I consider here only the first. Many lessons from the first apply to the second.

My observations fall into three categories: 1) The reach and contours of the competition law, with particular regard to coverage of certain state anticompetitive acts, exemptions, and procedural vehicles to assure that the poorer/outsiders who suffer antitrust injury are beneficiaries not only in law but also in fact. 2) Formulation of substantive rules and principles. Is there a pro-outsider formulation? 3) Advocacy.

Before tackling these challenges, it is useful to note that we have a body of learning from which we can draw. Namely, what the authorities in poorer developing countries do. In my experience the competition authorities in poorer developing countries are intensely focused on alleviating poverty in their countries and lifting up the poorest people, both in terms of tearing down specific, observable barriers to economic opportunity in their countries and in terms of providing essential goods and services at lower

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5 Anticompetitive restraints, both public and private, tend to hurt the poor disproportionately. Facilitating open market competition can substantially benefit pro-poor growth. See Promoting Pro-Poor Growth: Private Sector Development (OECD 2006), pp. 38-41.

6 See P. Collier, THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT (2008), explaining how society puts itself at risk by ignoring "the bottom billion" and allowing the festering of extreme poverty and alienation.

7 See Daron Acemoglu and James Robinson, WHY NATIONS FAIL (2012), mustering evidence across nations and centuries that sustained growth can be produced only in regimes that value and practice inclusiveness; it can be produced only in societies whose institutions instill a sense of autonomy and legitimacy, as opposed to societies that nourish small groups of elites who extract wealth and trade in privilege. See also Collier, supra note 6; THE WORLD BANK GROWTH REPORT (Michael Spence, Chair of The Growth and Development Commission, 2006).

prices. They seek out the projects that are likely to have highest impact in this regard. Often, they find that the most harmful acts involve acts of the state or combinations of the state and private elites. The offenses they tackle are not always "traditional" antitrust; they might be on the margins because, for example, a principal culprit might be the state. The authorities take what action they can.

Thus, in Kenya, with 43% of the people below the poverty line, the competition commission identified as harmful to the millions of small poor farmers a law granting a monopoly to a state owned enterprise for the production of a major pesticide ingredient, and it mustered the forces to repeal the law.[8] In Tanzania, the competition commission faced a press campaign by the leading cement producers to put duties of 35% on imports of cement in the name of saving jobs and the Tanzanian economy. This would have frustrated purchases of cheaper and better quality cement from Pakistan and India. The commission successfully countered the campaign by publicizing how much this duty would have cost the people in the road construction and housing sectors, in prices, in jobs, and in economic opportunity.[9] In West Africa, the competition authority of the West African Economic and Monetary Union discovered that the monopolist of cooking oil in Senegal had procured state measures to bar imports of palm oil from Côte d'Ivoire. The competition authority required Senegal to repeal its restrictions. Meanwhile in Togo, the government had signed an agreement with a private transport company that gave it advantages that effectively prevented competitors from doing business in the country. The WAEMU competition authority directed the Togo government to recall the agreement, which it did.[10]

3. What pro-poorer, pro-outsider means for competition law

With this background I return to the challenges. I do this by way of suggested propositions, for consideration.

3.1 Setting the stage

A pro-poorer, pro-outsider antitrust values a free and open marketplace without privilege or favor. So, too, you will say, does all competition law/policy; but this value is especially critical for those without power. Clogging the channels with privileged access especially hurts the outsider.

3.2 The scope of the law: Does it reach the state?

It has often been observed that undue[11] anticompetitive state acts are more damaging to competition and economic opportunity than anticompetitive private acts, because of the power of the state that will not be eroded by a better challenger. Poorer jurisdictions in which the state's presence in the market is pervasive and cronyism is rampant are especially likely to feel the freezing-out effect; their good ideas for the marketplace never realized.

I am in the process of completing a research project with Deborah Healey of the University of New South Wales Faculty of Law under the auspices of the UNCTAD Research Partnership Platform on the extent to which national laws reach certain state and hybrid anticompetitive acts. We found a surprising number of jurisdictions whose laws extend their reach beyond private offenders. To the extent that there

8 As told by Francis W. Kariuki, Director General of the Competition Authority of Kenya.

9 As told by Godfrey Mkocha, when Director General of the Fair Competition Commission of Tanzania.

10 As told by Amadou Dieng, Director of the WAEMU Competition Authority.

11 States must of course be free to act in the interest of their citizens. Many of their acts will have anticompetitive by-products. "Undue" is a marker to signify a class of acts that are excessively and unjustifiably anticompetitive. See note 12 infra.

are sensible provisions of competition law that can push back anticompetitive intrusions of the state, this is especially significant to opportunity and to legitimacy of competition law in nations with large poor populations. The state acts can smother economic opportunity. Therefore, this problem deserves a place of privilege on the agenda.

There are several fronts on which competition laws can be drafted to reach unduly anticompetitive state acts and measures. Following is a list of principles that can be derived from our study. They are listed below as normative principles. The easiest and most obvious comes first. Those that follow are more difficult to procure and implement.

1. The law should cover state-owned enterprises.

2. The law should cover state officials who facilitate an illegal cartel or bidding ring by inappropriate conduct outside of the course of their duties (conduct especially notorious in procurement).

3. If the law allows a state and local action defense to anticompetitive private acts, the defense should be narrowly drawn. It should not be available if the state action allows the private actor a choice to obey the competition law, and it should not be allowed if the state action is void (for example, preempted).

4. If the law allows a lobbying defense to private acts designed to procure government action, the defense should be narrowly drawn. Individuals must be allowed to petition government, but the defense should be lost if the petitioners use fraud or deception. Consideration should be given to disallowing the defense if it shields an otherwise illegal conspiracy with competitors, on the theory [if it is the case] that the right to petition would be sufficiently safeguarded by fully preserving the individual right.

5. The law should empower the competition authority to identify and challenge unduly anticompetitive state measures, or to trigger their challenge.

6. If the jurisdiction is a common market, or if it is a nation wherein acts of its states or provinces are subject to a rule of federal supremacy, the competition law combined with the federalism principle should embody the gist of the principle of European Union law requiring states to "disapply" measures that frontally undercut the competition rules. Here is a statement by the European Court of Justice of the principle that required Italy to disapply a statute creating a match-manufacturing cartel and assigning cartel duties to the Italian producers:[12]

   45 **. . .** [A]lthough Articles [101 and 102 TFEU (prohibiting anticompetitive agreements and abuse of dominance)] are, in themselves, concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, those articles, read in conjunction with Article [4 TEU], which lays down a duty [of Member States] to cooperate, none the less require the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings.

   46 The Court has held in particular that Articles [4 TEU and 101 TFEU] are infringed where a Member State requires or favours the adoption of agreements, decisions or concerted practices

12 Further definition of what is an unduly anticompetitive state measure is necessary. One could start, for example, with disapplication of law that is a frontal assault on competition itself and not credibly required by public interest concerns such as crisis, as was the case with the Italian law that organized the match cartel that is the subject of the case from which the quotation is drawn.

> contrary to Article [101 TFEU] or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere.
>
> [47] Moreover, since the Treaty of Maastricht entered into force, the . . . Treaty has expressly provided that in the context of their economic policy the activities of the Member States must observe the principle of an open market economy with free competition . . . . ***
>
> [49] The duty to disapply national legislation which contravenes Community law applies not only to national courts but also to all organs of the State, including administrative authorities, which entails, if the circumstances so require, the obligation to take all appropriate measures to enable Community law to be fully applied.[13]

If the six principles above could be adopted and enforced, the bite of the competition law, for pro-poor and pro-all, would be significantly sharpened.

3.3 Exemptions and other non-coverage

Pro-poorer law would minimize exemptions. Exemptions sometimes include agriculture, banking and other regulated industries, intellectual property, and (dealt with above) acts by the state.

In many poorer and developing nations, more than half the people work in agriculture. They need a competitive market in agriculture, both as producers and consumers. The farmers need to get inputs at a competitive price. The farmers may be constantly exploited by big agribusiness or multinational buyers. Although all exploitation is not and should not be illegal, a broad exemption for agriculture would be disabling and disempowering.[14]

Banking exemptions likewise can be seriously harmful. Notoriously, in developing countries with large masses of poorer people and a small percentage of elite, un-connected individuals with talent and good ideas cannot get business loans. State property laws, which affect the value of collateral, combine to make poorer entrepreneurs a risk that banks avoid. A combination of competition and property law reform is needed to enable access to capital. Moreover, a banking exemption that leaves regulation to an often-captured regulator can add to monopolization and disempowerment.

Regulated industries in general present a challenge. All jurisdictions have to make decisions about the relationship between sector regulation and antitrust. The decision is not always easy because, on the one hand, overlap of authorities costs resources, but on the other hand, relinquishing antitrust authority might mean playing into the hands of a captured regulator. If Mexico, for example, gave all authority over the

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13 The European Court continued:

> [50] Since a national competition authority such as the Authority is responsible for ensuring, inter alia, that Article [101 TFEU] is observed and that provision, in conjunction with Article [4 TEU], imposes a duty on Member States to refrain from introducing measures contrary to the Community competition rules, those rules would be rendered less effective if . . . the [competition] authority were not able to declare a national measure contrary to the combined provisions of Articles [4 TEU] and [101 TFEU] and if, consequently, it failed to disapply it.
>
> Consorzio Industrie Fiammiferi v. Autorità Garante della Concorrenza e del Mercato, Case C-198/01, [2003] E.C.R. I-8055.

14 However a provision authorizing certain co-operatives of small farmers can be important.

Telmex/Telcel giant to the telecom regulator COFETEL, the public would never have seen the halving of cell phone prices following the settlement of a monopolistic abuse case.[15]

Some, but not most, competition laws exempt intellectual property. Exemptions often do not extend to *abuse* of IP rights. A full exemption can be particularly harmful in poorer countries whose people are plagued by diseases whose treatment requires extraordinarily high-priced drugs. The ability of competition authorities to prevent abuses that entail price-raising is a vital tool for the poor.

Much of modern technology including that used in computers and smart phones likewise incorporates intellectual property. The poorer segment of the population desperately needs access. Access to information and communication technologies means access to business opportunity at home and in the world. Keeping modern technology within the reach of competition law is a critical pro-poor policy.

Extraterritoriality – Does the law reach off-shore acts that harm a nation's citizens? It is especially important that developing countries' competition laws reach off-shore conduct. The many examples that underscore the importance of extraterritorial jurisdiction include the world vitamins cartel, the world cargo and fuel oil cartels, and the Canadian/Russian potash export cartels. All of these cartels have seriously injured individuals in poor developing countries.

The potash cartel also injures the economy of developing countries and poorer nations' prospects for engaging in the world economy. The potash cartel is a notorious example of serious harm that would be beyond reach of the most vulnerable victims if their law did not cover offshore acts. Potash is a major ingredient in fertilizer. Fertilizer comprises a large portion of the cost of crops. When farmers in sub-Saharan Africa pay monopoly prices for this input, tens of thousands of farmers can no longer profitably produce their crops; their families can starve; businesses, which would succeed on the merits, are crippled.[16]

3.4 Procedure

When poorer individuals suffer anticompetitive injury, can they get justice? Often, no. Systems tend to disfavor the poorer population. Especially in poorer countries that are run more by connections than merit, the poor do not have access to the system of justice.

This means that, for antitrust harms, it is especially important to open the channels for recourse. The two channels are public actions on behalf of the victims, and private actions by or on their behalf. In some jurisdictions the competition authority is tasked with obtaining monetary recovery to be distributed to the victims; but this is not usual. In many jurisdictions, private actions are allowed, but in some they are available only after the competition authority successfully proceeds; and in many jurisdictions that are under the political thumb of autocratic governments or simply lack the resources or stature to stand up to powerful offenders, the competition authority does not bring cases that should be brought. In many jurisdictions, there is no provision for class or representative actions or contingent lawyer fees. In some jurisdictions there are especially high burdens of proof not only of the violation but also of causation and injury.

To help poorer victims and others whose losses are a fraction of court costs, jurisdictions can incentivize those who might bring proceedings on their behalf. This implies class or representative actors.

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15 See http://cfc.gob.mx/images/stories/Publicaciones/CFC%2010-2012.pdf.

16 See, for effect of the potash cartel in India, Frederic Jenny, Global potash trade and competition, The Economic Times, November 25, 2010.

It is true that the class action mechanism can be abused; the European debate has illuminated many options to avoid abuses.

3.5 Formulating and applying the law

Is there a pro-poorer, pro-outsider view of best principles of antitrust law?

There are principles and perspectives that are more rather than less friendly to the poor. I assume here that we all want robust, efficient, dynamic markets, with players that are inventive. Such market prospects are good for the poor and outsiders. Indeed, competition on the merits often benefits the outsiders more than the insiders; there is no insider track. My discussion of pro-poor/outsider principles is within this framework.

Below are eight areas or issues in which there can be a pro-poorer/outsider perspective, consistent with the objective of making markets work more efficiently:

1. *Discounting.* Poorer people need goods and services at lower prices. The freedom of sellers to discount is important. It has obvious efficiency properties. Private firms are often tempted to suppress discounting even absent hardcore cartels, sometimes in the name of preserving professionalism (minimum fees for engineers, doctors or dentists); sometimes in the name of protection against free riding. A pro-poor perspective would give weight to the importance of the freedom of discounting.

2. *Market definition choices*. Market definition is a construct. It may help us understand whether a putative violator of the law has market power. Often there are two or more good candidates for "the market." In two cases among others, the South African Tribunal faced the problem when interests of the poor were at stake. In one case, a narrower market would protect the poor from a loss of competition that they depended upon; namely, low-priced credit-giving furniture department stores. In another case a narrower market would preserve a promising niche to reduce the cost of low-end health care insurance and bring masses of the poor into health care coverage for the first time (capitated managed care). In each case, the Tribunal opted for the choice that would most help the poor population. (In the health care case, it was reversed.)[17]

3. *Leveraging, foreclosure and access violations*. In numerous cases, especially abuse of dominance cases, the decision-maker is faced with the choice of more market access for those without power versus more freedom for firms with power. The US and EU *Microsoft* and *Intel* cases involved this choice. Freedom of access, or freedom to contest markets on the merits and not to be foreclosed from important segments by a dominant firm's use of leverage, is a value that tends to favor those without power.[18]

4. *"Efficient" foreclosures.* An emerging rule of law for conduct such as loyalty rebates would require proof that foreclosed competitors were equally efficient. Otherwise, it is said, the law would protect inefficient competitors. The "equally efficient" requirement might be inappropriate in poorer jurisdictions dominated by entrenched monopolies. Loyalty rebate programs are often if

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17 See David Lewis, *Thieves at the Dinner Table: Enforcing the Competition Act* (2012), pp. 100-112, describing the *J.D. Group/Ellerine department store* and the *Prime Cure/Medicross* cases.

18 Every case has its context, and there is a basic background question regarding the state of a nation's competition law. In the 1980s, the US law was rightly recalibrated in favor of freedom of firms to act because the law had gone too far to proscribe transactions that could not have harmed competition and might have been efficient.

not usually devised by dominant firms threated with unique competition by an inventive challenger and are designed to stave off the challenge. The inventive challenger typically has higher costs. In poorer developing countries, there is virtually never an equally efficient challenger.[19] Moreover, entry or re-entry is often difficult. Competitive capital markets seldom exist, and a next new entrant is unlikely to be lurking on the sidelines. An older approach in the US may provide a more sympathetic and efficient standard in this context: defendants may defend that the plaintiff's own ineptitudes caused the plaintiff's injury.

5. *Excessive pricing* by jurisdictions that proscribe it. Poorer jurisdictions with very limited enforcement resources may need relatively simple rules to allow effective enforcement. In some cases and contexts, a simple rule that is also a good proxy is available, while in the absence of a simple rule, the violation may be practically impossible to prove. Thus, realistically, the choice is between a simple rule and toleration of violations. In the South African *Mittal* steel case,[20] Mittal, the successor to the state-owned and historically privileged firm ISCOR, was the only significant steel company in South Africa. It was "super-dominant." It sold steel at the import parity price to manufacturers in South Africa, handicapping their competitiveness in world markets, while pricing its exports at the much lower world price. Mittal pegged large volumes of its steel for export and prevented the "export steel" from being sold on the South African market. The Competition Tribunal held that the above facts constituted illegal excessive pricing in South Africa. It so held in a context where there was an available non-intrusive remedy against Mittal: Don't bar the export-designated steel from sale in South Africa. The Appeal Court reversed, given the particular language of the Act, and held that the plaintiff must prove that the home price was substantially above cost; but nonetheless it declared that the above facts were sufficient to shift the burden of going forward to the defendant. The Tribunal formulation was a progressive formulation that would have made potentially unmanageable cases manageable.

6. *Buyer power*. Suppliers in poorer developing countries are more likely to be victims of exploitative and disabling uses of buyer power than are suppliers in developed countries. Developed countries may adopt consumer welfare as their goal; but poorer developing countries may prefer to take account of all market harms, not just consumer harms. Small farmers are particularly vulnerable to harm from monopsonistic purchase and distribution practices and mergers creating buyer power, as documented in Zambia and Côte d'Ivoire, [21] and to buying cartels, as in tea, sugar and tobacco in Malawi.[22]

7. *Intellectual property*. The world is in the midst of ongoing battles of competition law versus intellectual property protection. At least on the margins of the current litigations, the poorer population may be better served by more competition law and less protection of intellectual

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19 "Potentially equally efficient" may be the standard in the EU, but "potentially" also may be difficult to prove.

20 Harmony Gold Mining Co. Ltd. v. Mittal Steel Corp., Case 13/CR/Feb04 (South African Competition Tribunal 2007), *rev'd*, 70/CAC/Apr07 (Court of Appeal 2009).

21 See Thula Kaira, The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia, at 133 (exploitation of out-grower farmers by ginners in Zambia, at 150-57); Bruno Dorin, From Ivorian Cocoa Beans to French Dark Chocolate Tablet: Price Transmission, Value Sharing and North/South Competition Policy, at 237 (exploitation of cocoa farmers by chocolate makers in *Côte d'Ivoire*, passim and 306-10), both in THE EFFECTS OF ANTI-COMPETITIVE BUSINESS PRACTICES ON DEVELOPING COUNTRIES AND THEIR DEVELOPMENT PROSPECTS (H. Qaqaya and G. Lipimile, eds., UN 2008). See also Promoting Pro-Poor Growth: Agriculture, Annex 3.A1, Spotlight on Global Value Chains – Does it Mean Shutting out Small Producers? (OECD 2006).

22 See CUTS (Consumer Unity and Trust Society, India) (2003), *Spine Chilling Experiences of Anti-Competitive Practices in Malawi*.

property. This is especially so regarding questionably valid intellectual property as in "pay for-delay"; that is, infringement settlements under which producers of generic medicines accept large sums of money to stay off the market for a period of years. The poorer population is in great need of cheaper medicines, which are usually provided by the generic segment.

Communication and knowledge technologies are also caught in the storm of controversy between more IP protection or more competition law protection. Here too, the poorer and the outsiders are in great need of competitive markets.

This is not to ignore the argument that less IP protection may induce less investment in research and development. We can continue to learn from this on-going debate.

8. *Simpler rules*. We know that, for poorer developing countries, human and capital resources are very scarce. The competition authorities do not have teams of lawyers and economists ready to identify and analyze reams of documents and construct scores of models and studies. If there are simple rules that are good proxies, they need them. Some simple rules are available. For example resale price maintenance by firms with market power could be presumed illegal unless justified, as in the EU and much of the world. The *Mittal* rule of the South African Tribunal noted above, commends itself. And of course a per se rule or near per se rule against hard core cartel agreements is widely accepted. Some per se or near per se rules can be constructed in the other direction; for example, per se legality for certain low pricing behavior. In any event, the rules and regulations of the mature antitrust jurisdictions are too technical and too complex for poorer, resource-starved jurisdictions and we do a disservice by suggesting that they must be adopted and implemented by all nations in order to meet "international standards."

All of the above suggested choices have efficiency properties. They are at least within the range of indeterminacy as to what is efficient or, more accurately for competition law, of what set of incentives is most likely to generate a more efficient or robust economy.

The subject of efficiency from the vantage of the poorer populations requires one further observation. In antitrust we claim to pursue maximization of aggregate total or consumer wealth. Is this the measure most in the interests of the poorer population and outsiders? It is not so clear. We might compare the argument of Professor Ronald Dworkin (embracing utilitarianism, or the greatest good for the greatest number – which is effectively one person one vote) with the argument of Judge/Professor Richard Posner (embracing wealth maximization – which is effectively one dollar, or peso, or ruble, or rand, or renminbi, one vote).[23] As wealth maximization implies, the wealthier you are, the more weighted consumer sovereignty you have. Wealth maximization serves a function in terms of the GDP and competiveness of nations; but utilitarianism may entail greater legitimacy for the non-powerful and the un-endowed. This is not an argument for undoing our system, but it may be relevant on the margin; for example, in considering whether to prefer firms' freedom to discount to firms' freedom to protect against free riders.

[23] See Ronald Dworkin, Why Efficiency?, 8 Hofstra L. Rev. 653 (1980); Richard Posner, The Ethnical and Political Base of The Efficiency Norm in Common Law Adjudication, 8 Hofstra L. Rev. 487 (1980). See also John Rawls, A THEORY OF JUSTICE (1971): justice requires maximizing the utility of those who are worst off. Id. at 150-61.

4. What pro-poorer, pro-outsider means for competition policy

We have looked above at competition *law*. We turn now to competition policy, carried out through advocacy.[24]

Competition advocacy is extremely important for developing countries. It is particularly important for the reasons expressed by Angel Lopez Hoher, quoted below, and for these reasons it probably deserves a greater portion of the competition authority's budget in developing than in developed countries. Lopez Hoher says, regarding Mexico:

> *[A]dvocacy is an essential part of a competition agency's toolkit, especially in jurisdictions where markets still have shallow roots and competition is a newfangled concept struggling to hold its own against state intervention and rent seeking. The Mexican case is a good example, for several reasons:*
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> *First, in spite of the past two decades' far-reaching economic liberalization, the Mexican economy still suffers under the legacy of the state-led, corporatist economic policy that held sway for at least sixty years before that, and which lingers in vast pockets of anticompetitive regulation and all too frequent distrust of market mechanisms in Government, Congress, the Judiciary, and the general public.*
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> *Second, these conditions tend to be concentrated in services that have a horizontal impact on the rest of the economy, such as telecommunications, transport, energy, and financial services. Trade liberalization in the 80s and 90s brought market discipline to those sectors of the Mexican economy where competition from abroad was a factor; but in non-tradable sectors--for example the services mentioned above--this impulse to modernize regulation and adapt to market conditions was absent, thus yielding a dual economy that holds back competitiveness and harms consumers in downstream markets (i.e., most of the economy).*
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> *Third, advocacy, when it is successful (for example through the removal of artificial barriers to entry or market distortions), allows structural changes to competitive dynamics, shifting incentives permanently and across the board, instead of relying on the case-by-case threat of competition enforcement. ...*[25]

We might consider advocacy in two categories: first, advocacy against restraints by and within one's own government; second, advocacy to improve the international environment so as to protect against or seek to correct international and foreign restraints that harm the nation.

4.1 Advocating against restraints by and within one's own state

We spoke above about harmful and excessively restrictive state restraints, and the extent to which competition law might reach such restraints. A far larger number of restraints are likely to be unwise but not facially excessive. A challenge to them must lie in persuasion. The restraints might be of any dimension; they might be wholly domestic, or they might be cross-border. Examples include the Kenyan, Tanzanian, and West African incidents above. All of the incidents testify to the zeal of developing country

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24 Also important is the authorization of developing countries to undertake market studies. Studies of markets that appear not to be working well may produce valuable information that may lead to prosecution or legislative remedies.

25 Angel Lopez Hoher, Competition Advocacy in Mexico: Lessons from the Past Decade, Competition Policy International, Aug. 27, 2012.

competition authorities who seek out those restraints that cause the most harm to their people, especially their poorest people.

One of the most important avenues for competition advocacy is against one's own country's trade laws; especially antidumping laws. These measures are typically heavily supported by vested interests; but as the example from Tanzania shows, "the market" can sometimes win. Ironically, the competition authorities of many small developing countries have much more authority within their systems to advocate against protectionist trade laws than do competition authorities in many mature developed nations.

A more modest but also vitally important avenue concerns the country's regulatory laws. Regulation is often excessive and perverse, albeit also often supported by vested interests. The ICN has taken an important step in organizing a project under the aegis of the Advocacy Working Group to identify methodologies for assessing the pro- and anti-competitive effects of specific regulations.[26] This may be a first step towards developing a template for unwise anticompetitive regulation, and then advocating against it.

4.2 Advocating for a modest international obligation

The poorer developing countries are the most vulnerable targets of international restraints that hold back the economic growth of their countries. Despite frequent exhortations from the West that it wants the peoples of developing countries to be able to help themselves, the countries pick and choose their targets of liberalization, often clinging to protection and subsidy where it hurts developing countries the most.[27] The West hands out more money in aid to developing countries than the developing countries lose from disempowerment by reason of the West's tariffs, anti-dumping laws, and subsidies,[28] let alone export cartels. The West proclaims that export cartels are not their problem; the harmed nations can sue the offshore cartelists. But the poorest nations do not have the resources to do so. Moreover, as in pollution, stemming the offense at its source is most efficient.

Developing countries might pursue a positive agenda of advocacy. In more propitious times the European Union proposed a helpful framework,[29] which could have been implemented in the context of the WTO but could also be implemented as a stand-alone project. In the spirit of the EU proposal, countries can and should have regard for the harms they cause, especially to developing countries, and especially when developed country's nationals are the violators of clear and shared principles of antitrust law (i.e., cartels). The developed countries can and should revise their laws, extending jurisdiction so as to make hardcore export cartels illegal.[30]

We can draw inspiration from an environmental convention; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.[31] Under the Basel Convention, if a

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26 See also OECD (Competition Assessment Toolkit, www.oecd.org/daft/competition/competitionassesmenttoolkit.htm, providing a method for identifying unnecessary regulatory restraints on the market.

27 Martin Wolf, Why Globalization Works (2004). See passage, Hypocrisy of the rich, pp. 218-18.

28 Wolf, supra.

29 Working Group on the Interaction between Trade and Competition Policy, World Trade Organization, *Communication from the European Community and Its Member States*, WT/WGTCP/W/184 (Apr. 22, 2002). The Working Group has been disbanded.

30 See Eleanor Fox, Testimony Before the Antitrust Modernization Commission, Hearing on International Issues in Washington, D.C. (Feb. 15, 2006), *available at* www.AMC.gov*; see also* Special Committee on International Antitrust, ABA Antitrust Section, The Special Committee's Report 83-90 (Sept. 1, 1991).

31 Mar. 22, 1989, 1673 U.N.T.S. 125.

signatory country prohibits import of hazardous wastes, all other signatories must make the shipment of hazardous wastes to that country illegal. The trading nations could adopt this model for hardcore export cartels, which are the hazardous wastes of antitrust.

Also, regarding cartels aimed at outsiders, the developed countries could amend their antitrust laws to provide jurisdiction for the discovery of documents and testimony from suspects and others privy to the facts of the outbound cartels. This could include subpoena power when the developed country's citizens are the alleged victimizers of developing countries.

The antitrust family of nations have gone a long way to cooperate with one another on enforcement. The OECD, ICN, and UNCTAD are important forces and fora for cooperation. Regional fora in Africa, Latin America, and Asia likewise facilitate cooperation, as do multitudinous bi-lateral agreements. Cooperation is particularly needed by poorer and developing countries, which face extraordinarily scarce resources and whose poor populations are often the targeted victims. Extra steps in this direction will help the poor.

5. Conclusion

This essay has explored the core and bounds of competition law and policy in terms of pro-poorer law and policy. It has observed:

1. Competition is a vital pro-poor, pro-poorer policy. Access to markets free from artificial restraints empowers outsiders and tends to enhance mobility, fostering inclusive development. Lower prices of necessities obviously help the poor. But competition law and policy cannot do all of the work. There are other necessary conditions: food, health, housing, infrastructure and access to capital – which in turn are unlikely to be provided without good governance and rule of law. The multidimensional synergies create a virtuous circle.

2. What do poorer populations and outsiders need the most in terms of good competition law? First, access to markets means not being frozen out by the pervasive restraints that attend statism and cronyism and those that are bound to result from wide exemptions. This problem is not unique to the outsider population but it is so critical to empowerment and inclusive development that it may rise to first place on the agenda. Second, there *is* a pro-poorer perspective on competition laws, procedurally and substantively. Three guides, among others, emerge from the discussion above. (i) Thought should be given to procedural vehicles that make the justice system accessible to the poor. (ii) It is important to seek out simpler rules that make economic sense and that avoid the need for armies of lawyers and economists. When the opportunities for simple rules arise, authorities and courts should take them, lest we create a paradox that recovery for antitrust offenses is a luxury of those who are better off. (iii) How to get efficient, innovative and dynamic markets is indeterminate with a range, and, within this range, there is a perspective that is more pro-poor and less pro-insider. That perspective values open markets, rivalry, and freedom of firms to charge sustainably low prices.

3. What do the lower-income nations need the most in terms of good competition policy? First, domestic: Advocacy against unwise anticompetitive state restraints, especially in areas likely to attract popular support and where success is within reach. Second, international: Advocacy for rules or norms to oblige nations to help stem or rectify the harms they cause.

Pro-poorer competitive law and policy is not a magic bullet to alleviate poverty. It is one of panoply of policies that promise to open more channels and deliver better outcomes, little by little. As with all proposals there are difficulties of implementation and there are trade-offs. It is timely to debate them.

IMAGINER UN DROIT DE LA CONCURRENCE FAVORABLE AUX (PLUS) PAUVRES

Par M^me^ Eleanor M. Fox[*]

1. Introduction

Quel regard porterions-nous sur le droit de la concurrence si nous nous placions du point de vue des personnes à faible revenu, de ceux qui n'ont ni relations, ni pouvoir ? Quelles priorités nous fixerions-nous alors ? C'est à cette question que je vais tenter de répondre.

Cette note s'articule en trois parties. La première pose le contexte en nous plaçant sous l'angle de l'aide à apporter aux populations à faible revenu et aux exclus. Elle observe que le droit et la politique de la concurrence forment l'un des maillons d'une chaîne dont tous les composants sont nécessaires pour aider les plus démunis à devenir autonomes.

La deuxième partie tente de déterminer ce que le droit de la concurrence doit apporter pour être favorable aux plus pauvres et aux exclus. À cet égard, elle étudie le champ d'application qu'il couvre, actions de l'État comprises. Cette réflexion est utile à toutes les populations – riches ou pauvres, mais elle est particulièrement cruciale pour les exclus car, en l'absence d'un dispositif approprié, les portes du marché risqueraient de leur rester hermétiquement fermées. Cette deuxième partie aborde également les questions de l'accès à la justice et de l'application des principes du droit de la concurrence.

La troisième partie s'intéresse à la *politique* de la concurrence, par opposition au droit de la concurrence, et examine les priorités à fixer et les mesures à prendre afin d'aider les plus pauvres et de leur donner les moyens de s'émanciper.

Pour étudier la manière dont la concurrence peut aider les pauvres, la présente note se place du point de vue des populations pauvres des pays à faible revenu et à revenu intermédiaire de la tranche inférieure – autrement dit les plus pauvres –, et non du point de vue des populations à faible revenu tous pays confondus.

2. Un droit et une politique de la concurrence en faveur des plus pauvres

2.1 Le concept

Pourquoi les « plus » pauvres ? Je ne cherche pas ici à savoir comment faire pour placer les biens et services de consommation qui sont les plus essentiels pour les pauvres au cœur du droit de la concurrence et des priorités d'action des autorités qui le mettent en œuvre. Je m'intéresse à un défi d'une autre ampleur, celui de créer un nouvel environnement, un régime de concurrence qui soit plus favorable aux populations dépourvues de pouvoir qu'à celles dotées à la fois de pouvoir et de relations, plus favorable aux exclus qu'à ceux qui ne le sont pas, notamment lorsque ces derniers bénéficient depuis longtemps de nombreux privilèges. Si j'appréhende ce sujet sous l'angle des mesures à prendre en faveur des « plus » pauvres, c'est parce que les solutions proposées ne s'adressent pas à une catégorie de population qui serait constituée « des pauvres » dans l'absolu. Il n'y a pas un droit de la concurrence pour les riches (les populations nanties, autonomes) et un droit de la concurrence pour les pauvres.

L'exercice ne consiste pas seulement à exploiter toutes les possibilités offertes par la concurrence. Si nous souhaitons véritablement réduire la pauvreté, nous devons considérer le marché comme l'un des quelques dispositifs et domaines d'action dont l'efficacité est indispensable pour donner aux populations démunies les moyens de se prendre en charge. En font aussi notamment partie l'éducation, la santé, les infrastructures, les perspectives d'emploi et l'accès aux capitaux, indispensable pour financer les bonnes idées, le tout dans un contexte de bonne gouvernance qui ne soit pas gangrené par la corruption. L'édifice sur lequel repose l'égalité des chances, la participation à l'économie et, au bout du compte, la croissance se construit pierre à pierre. Si toutes ces composantes sont réunies, le système dans son ensemble peut améliorer le sort de ceux qui vivent dans la pauvreté, autrement dit la moitié de la population mondiale.[1] L'effet conjugué des efforts déployés peut aider à combler l'écart.[2]

L'OCDE a consacré des travaux de recherche et de sensibilisation très utiles au problème de la marginalisation des pauvres et à la nécessité d'élaborer des solutions dans une variété de domaines interdépendants. Ainsi peut-on lire dans la monographie de l'OCDE intitulée « Vers une croissance pro-pauvres »[3] :

> **« Pour être rapide et soutenue, la réduction de la pauvreté doit s'appuyer sur une croissance pro-pauvres, c'est-à-dire une croissance dont le rythme et les modalités améliorent l'aptitude des pauvres, hommes et femmes, à participer à l'activité économique et à en tirer avantage. » […]**
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> « iv) **La vulnérabilité des pauvres face au risque et l'absence de protection sociale réduisent le rythme de la croissance et sa contribution au recul de la pauvreté**. Les pauvres évitent souvent les options risquées, même si elles peuvent être plus payantes, en raison de leur vulnérabilité. En outre, la victoire sur la pauvreté ne doit jamais être regardée comme acquise : beaucoup de ceux qui réussissent à s'en sortir retombent dans la pauvreté parce que des chocs dus à la main de l'homme ou à des catastrophes naturelles provoquent une dégradation des actifs mêmes dont ils ont besoin pour échapper à la pauvreté. Des mesures de prévention, d'atténuation et de correction des facteurs de risque et de vulnérabilité […] sont de nature à améliorer à la fois la structure et le rythme de la croissance et constituent un investissement efficace par rapport à son coût pour l'instauration d'une croissance pro-pauvres.
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> v) **Il faut traiter les causes des défaillances des marchés et en améliorer l'accès. Le bon fonctionnement des marchés est important pour instaurer une croissance pro-pauvres**. Les défaillances des marchés nuisent de façon disproportionnée aux pauvres qui se trouvent souvent dans un rapport de forces défavorable sur les marchés. Les pouvoirs publics doivent s'appliquer à améliorer le fonctionnement des marchés dont dépend la survie des pauvres. […] Les politiques destinées à remédier aux défaillances des marchés doivent être accompagnées de dispositions visant à améliorer la capacité des pauvres d'exercer une activité économique. »[4]

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1 Près de 50 % de la population mondiale vit avec moins de 2.50 USD par jour. Global Issues, *The Human Development Report (2012)*. Voir www.globalissues.org/article/26/poverty-facts-and-stats.

2 Voir Michal Gal, « The Ecology of Antitrust: Preconditions for Competition Law Enforcement in Developing Countries » *in COMPETITION, COMPETITIVENESS AND DEVELOPMENT* (Brusick *et al.*, dir. pub. 2004), p. 20.

3 « Vers une croissance pro-pauvres », Messages clés (OCDE 2006).

4 La monographie poursuit en ces termes : « *En matière de lutte contre la pauvreté, la notion de dichotomie entre les divers domaines d'intervention des pouvoirs publics ne s'applique pas… »*

« i) **Les mesures destinées à agir sur chacun des multiples aspects de la pauvreté doivent aller de pair**. La pauvreté a de multiples facettes. La croissance sera d'autant plus pro-pauvres que des avancées seront obtenues sur des fronts autres que la dimension monétaire de la pauvreté. Des politiques plus

Par l'intermédiaire des travaux de son Comité d'aide au développement (CAD) et de son Réseau sur la réduction de la pauvreté (POVNET), l'OCDE a analysé et recommandé des pratiques exemplaires pour divers domaines d'action interdépendants, comme l'agriculture (qui emploie 50 à 80 % des actifs et représente une part importante du PIB de bon nombre des pays les plus pauvres) ; les infrastructures – le logement et les infrastructures d'accès au marché – ; les technologies de l'information et de la communication ; l'électricité, l'eau et les autres formes d'énergie ; les transports (y compris internationaux) ; la protection sociale et l'emploi ; l'éducation et la formation professionnelle ; la sécurité alimentaire et la nutrition ; l'émancipation économique et, enfin, le développement du secteur privé, y compris en matière de politique de la concurrence afin de lutter contre les restrictions de concurrence dues aux agissements d'acteurs publics ou privés.[5]

Les documents publiés par l'OCDE et le CAD mettent en relief les points d'interaction de ces différents domaines, la nécessité de mener une politique cohérente et l'importance d'œuvrer simultanément sur tous les fronts, non seulement pour remédier à la pauvreté, mais aussi pour réformer la société entière lorsque cette dernière ferme les yeux sur cette pauvreté et tolère que l'écart de revenus se creuse, sans qu'il y ait de mobilité possible.[6] D'autres auteurs démontrent par ailleurs qu'il est impératif de mener des actions cohérentes qui favorisent une croissance solidaire pour réduire la pauvreté et générer un développement économique durable.[7]

Tous ces éléments nous invitent à esquisser les grandes lignes d'un droit et d'une politique de la concurrence favorables aux plus pauvres et aux exclus et, à tout le moins, à confronter ce projet aux autres solutions à notre disposition. La question à laquelle nous allons tenter de répondre est la suivante : quelles seraient donc ces grandes lignes ?

2.2 À quels impératifs le droit et la politique de la concurrence doivent-ils répondre pour être favorables aux plus pauvres et aux exclus ?

Pour répondre aux besoins des plus pauvres, le droit et la politique de la concurrence doivent, au-delà de leurs missions classiques, viser comme objectif prioritaire la lutte contre les restrictions qui sont avant tout préjudiciables aux pauvres, à savoir les ententes portant sur les biens et services de première nécessité

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efficaces nécessitent une meilleure compréhension de ces interactions. Croire qu'il y a dichotomie (entre politiques économiques et politiques sociales, par exemple) risque de conduire à l'erreur. Le rythme et la structure de la croissance sont influencés par des facteurs très divers et ont des conséquences dans tout un éventail de domaines, et tous ces éléments se nourrissent (ou s'affaiblissent) les uns les autres. Les progrès accomplis sur le front de l'objectif du millénaire pour le développement (OMD) relatif à la pauvreté monétaire facilitent les progrès concernant d'autres OMD et *vice versa*. »

5 Qu'ils soient le fait d'acteurs publics ou privés, les agissements qui restreignent la concurrence portent généralement un préjudice disproportionné aux pauvres. Faciliter le jeu de la concurrence sur un marché ouvert peut être très favorable à la croissance pro-pauvres. Voir « Vers une croissance pro-pauvres – Le développement du secteur privé » (OCDE, 2006), pp. 38-41.

6 Voir P. Collier, *THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT* (2008), qui explique comment la société se met en danger en négligeant le milliard d'individus les plus pauvres, le « *bottom billion* », et en laissant couver une pauvreté et une exclusion extrêmes.

7 Voir *WHY NATIONS FAIL* (2012), dans lequel Daron Acemoglu et James Robinson démontrent à l'aide d'éléments probants recueillis à travers les pays et les époques que seuls les régimes favorables à la solidarité et qui agissent contre l'exclusion engendrent une croissance durable. Celle-ci ne peut en effet être engendrée que dans les sociétés dotées d'institutions porteuses d'autonomie et de légitimité et non dans les sociétés ne servant les intérêts que d'une petite élite qui s'arroge le monopole de la richesse et s'échange des privilèges. Voir aussi Collier, note 6 *supra* et le *RAPPORT SUR LA CROISSANCE* de la Banque mondiale (Michael Spence, Président de la Commission pour la croissance et le développement, 2006).

et les infrastructures, à savoir les ententes sur le pain, le lait, le sucre, le maïs (ou les tortillas), le ciment, la construction de logements et de voies rapides et la santé. Il est crucial de fixer des priorités et de veiller à ce que les progrès réalisés bénéficient aux populations dans le besoin. Ce sujet a été abordé lors de la réunion du Forum latino-américain sur la concurrence qui s'est tenue à Saint-Domingue en septembre 2012. Plusieurs contributions au présent forum mentionnent elles aussi en détail des exemples très convaincants illustrant plusieurs priorités d'action favorables aux pauvres. Dans la présente note, je m'attache à un autre aspect de la question en explorant une tout autre perspective.

Je m'inscris dans une vision dynamique du problème : comment et sous quel angle concevoir le droit et la politique de la concurrence pour qu'ils soient favorables aux plus pauvres ? Il existe deux catégories de pauvres que l'on pourrait cibler : les populations des pays en développement à (plus) faible revenu d'une part et les populations les plus démunies de tous les pays d'autre part. Je ne m'intéresse ici qu'à la première catégorie. Nombre des enseignements qui s'y appliquent sont également valables pour la seconde.

Mes observations s'articulent autour de trois axes : 1) Le champ d'application et les contours du droit de la concurrence. À cet égard, je m'intéresse particulièrement à la couverture par ce droit de certaines pratiques anticoncurrentielles de l'État, aux exemptions et aux mécanismes de procédure assurant que les plus pauvres/les exclus lésés par des comportements anticoncurrentiels soient protégés non seulement par la loi, mais aussi dans les faits. 2) La formulation des principes et règles de fond. Existe-t-il une formulation favorable aux exclus ? 3) La promotion de la concurrence.

Avant d'aborder ces questions, il est utile de rappeler que les mesures prises par les autorités de la concurrence des pays en développement sont une source d'enseignements. D'après mon expérience, l'une de leurs principales priorités est de lutter contre la pauvreté dans leur pays respectif et d'y améliorer la situation des plus pauvres, à la fois en y supprimant certains obstacles évidents qui bloquent l'accès à des opportunités économiques et en y faisant baisser le prix des biens et services essentiels. Les autorités de la concurrence cherchent à réaliser les projets les plus susceptibles d'œuvrer en ce sens. Elles constatent souvent que les comportements liés à des pratiques de l'État ou à des pratiques des élites du secteur public comme de celles du secteur privé sont les plus préjudiciables. Les infractions auxquelles elles sont confrontées ne sont pas toujours des infractions « classiques » au droit de la concurrence. Elles peuvent en effet s'en écarter légèrement, par exemple lorsque l'État est l'un des principaux coupables. Les autorités de la concurrence font alors ce qui est en leur pouvoir pour remédier à la situation.

Ainsi, au Kenya, où 43 % de la population vit sous le seuil de pauvreté, une loi octroyait à une entreprise publique le monopole de la production d'un composant majeur de pesticides. La commission de la concurrence a suscité la mobilisation nécessaire pour la faire abroger après avoir jugé qu'elle portait atteinte aux millions de paysans pauvres du pays.[8] En Tanzanie, la commission de la concurrence a dû affronter une campagne de presse des principaux producteurs de ciment, qui réclamaient l'imposition de droits de 35 % sur les importations de ce matériau de construction, sous couvert de préserver des emplois tanzaniens. Cette mesure aurait empêché les achats de ciment moins cher et de meilleure qualité en provenance du Pakistan et d'Inde. La commission a réussi à faire échec à cette campagne en faisant savoir combien ces droits d'importation auraient coûté – en termes de prix, d'emploi, et d'opportunités économiques – aux personnes travaillant dans les secteurs de la construction routière et du bâtiment,.[9] En Afrique de l'Ouest, l'autorité de la concurrence de l'Union économique et monétaire ouest-africaine (UEMOA) a découvert que le producteur d'huile de friture en situation de monopole au Sénégal avait œuvré pour que les pouvoirs publics prennent des mesures interdisant l'importation d'huile de palme en provenance de Côte d'Ivoire. Cette autorité de la concurrence a imposé au Sénégal d'annuler ses mesures

8 Comme l'a expliqué M. Francis W. Kariuki, Directeur général de l'Autorité de la concurrence du Kenya.

9 Comme l'a relaté M. Godfrey Mkocha lorsqu'il était Directeur général de la Commission de la concurrence de Tanzanie.

restrictives. Au Togo cette fois, les autorités publiques avaient conclu un accord avec une société de transport privée accordant des avantages tels à cette dernière qu'ils empêchaient en pratique les concurrents d'exercer une activité dans le pays. L'autorité de la concurrence de l'UEMOA a demandé au gouvernement togolais d'annuler l'accord, ce qu'il a fait.[10]

3. Quelles sont les implications, du point de vue du droit de la concurrence, d'une façon de voir favorable aux plus pauvres et aux exclus ?

Après avoir rappelé le contexte, je reviens aux questions que j'ai évoquées plus haut en proposant quelques pistes à étudier.

3.1 Postulat de départ

Un droit de la concurrence favorable aux plus pauvres et aux exclus attache de l'importance à la liberté et à l'ouverture du marché sans accorder ni privilèges ni faveurs. C'est le cas de toute forme de droit et de politique de la concurrence, me direz-vous, mais cet aspect est particulièrement essentiel pour ceux dépourvus de pouvoir. Fermer les voies d'accès au marché en privilégiant certains acteurs porte avant tout atteinte aux exclus.

3.2 Champ d'application du droit de la concurrence : s'applique-t-il à l'État ?

On a bien souvent constaté que des actions de l'État indûment anticoncurrentielles[11] portent davantage atteinte à la concurrence et sapent davantage les opportunités économiques que les comportements anticoncurrentiels d'acteurs privés, car aucun rival plus performant n'est en mesure d'affaiblir la puissance publique. C'est dans les pays les plus pauvres minés par le clientélisme et l'omniprésence de l'État sur le marché que des franges entières de la population sont les plus susceptibles d'être exclues du système ; les bonnes idées que ces pays ont pu avoir pour améliorer le marché sont restées lettre morte.

Je termine actuellement un projet de recherche avec Mme Deborah Healey, de la Faculté de droit de l'Université de Nouvelle-Galles du Sud, sous les auspices de la Plateforme de la CNUCED pour des partenariats dans la recherche. Notre objectif est de savoir dans quelle mesure les législations nationales couvrent certaines actions anticoncurrentielles de l'État et certains agissements anticoncurrentiels impliquant des acteurs publics et privés. Nous avons recensé un nombre surprenant de pays dont le droit de la concurrence ne s'applique pas seulement aux contrevenants du secteur privé. Lorsqu'elles existent, les dispositions adéquates du droit de la concurrence permettant de repousser toute intrusion anticoncurrentielle de l'État sont particulièrement importantes pour garantir le bien-fondé et la légitimité du droit de la concurrence dans les pays comptant d'importantes populations pauvres. Les actions de l'État peuvent étouffer dans l'œuf certaines opportunités économiques et c'est donc un problème qui mérite de figurer parmi les priorités.

Le législateur peut travailler sur plusieurs aspects du droit de la concurrence pour qu'il s'applique aux mesures et actions de l'État indûment anticoncurrentielles. Notre étude nous a permis de dresser une liste de principes normatifs énumérés ci-dessous. Les plus simples à appliquer et les plus évidents sont énoncés en premier. Les suivants sont plus difficiles à faire adopter et à mettre en œuvre.

1. Le droit de la concurrence doit couvrir les entreprises publiques.

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10 Comme l'a expliqué M. Amadou Dieng, Directeur de l'autorité de la concurrence de l'UEMOA.

11 Les États doivent bien entendu avoir la liberté d'agir dans l'intérêt de leurs citoyens et bon nombre de leurs actions auront des effets secondaires néfastes sur la concurrence. Le terme « indûment » qualifie une catégorie d'actions dont les effets anticoncurrentiels sont excessifs et injustifiés. Voir note 12 *infra*.

2. Le droit de la concurrence doit couvrir les agents publics qui facilitent la formation d'une entente illicite ou les pratiques de soumission concertée en outrepassant de manière inappropriée le périmètre de leurs attributions (ce type de comportement étant particulièrement fréquent s'agissant des marchés publics).

3. Si la législation permet d'invoquer comme moyen de défense une action de l'État ou d'une collectivité locale pour justifier un comportement anticoncurrentiel privé, le recours à ce moyen de défense doit être rigoureusement encadré. Il ne doit s'appliquer ni lorsque l'action de l'État laisse à la personne privée la possibilité d'observer le droit de la concurrence, ni lorsqu'elle est frappée de nullité (par exemple, quand une autre norme prime).

4. Si la législation permet d'invoquer comme moyen de défense la représentation d'intérêts pour justifier des agissements privés visant à obtenir l'adoption d'une mesure donnée par les pouvoirs publics, le recours à ce moyen de défense doit être rigoureusement encadré. Les personnes physiques doivent disposer d'un droit de pétition, mais ce moyen de défense ne s'applique plus si les requérants ont recours à la fraude ou à la tromperie. Il faudrait en outre envisager de l'invalider s'il protège une entente entre concurrents qui serait par ailleurs illicite, étant entendu qu'en théorie [le cas échéant], il suffit de protéger intégralement le droit des individus pour préserver le droit de pétition.

5. La loi doit habiliter l'autorité de la concurrence à repérer les actions indûment anticoncurrentielles de l'État et à les contester ou à déclencher une procédure visant à les remettre en question.

6. Si le territoire concerné est un marché commun, ou s'il s'agit d'une nation au sein de laquelle les actions des États ou provinces sont soumises à un principe de primauté du droit fédéral, le droit de la concurrence, conjugué au principe de fédéralisme, doit respecter le principe de fond du droit de l'Union européenne en vertu duquel les États doivent « ne pas appliquer » les mesures allant clairement à l'encontre des règles de la concurrence. Les extraits suivants d'un arrêt de la Cour européenne de justice présentent le principe en vertu duquel l'Italie a été contrainte de ne pas appliquer une loi qui créait une entente dans la fabrication d'allumettes et attribuait aux producteurs italiens des responsabilités à cet égard :[12]

> [45] […][S]'il est vrai que, par eux-mêmes, les articles [101 et 102 TFUE (qui proscrivent les accords portant atteinte à la concurrence et l'abus de position dominante)] concernent uniquement le comportement des entreprises et ne visent pas des mesures législatives ou réglementaires émanant des États membres, il n'en reste pas moins que ces articles, lus en combinaison avec l'article [4 TUE], qui instaure un devoir de coopération [pour les États membres], imposent aux États membres de ne pas prendre ou maintenir en vigueur des mesures, même de nature législative ou réglementaire, susceptibles d'éliminer l'effet utile des règles de concurrence applicables aux entreprises.
>
> [46] La Cour a notamment jugé qu'il y a violation des articles [4 TUE et 101 TFUE] lorsqu'un État membre soit impose ou favorise la conclusion d'ententes contraires à l'article [101 TFUE] ou renforce les effets de telles ententes, soit retire à sa propre réglementation son caractère

12 Il est nécessaire de définir plus précisément ce qu'est une action indûment anticoncurrentielle de l'État. On pourrait par exemple commencer par une loi – à ne plus appliquer – qui va à l'encontre de la concurrence elle-même, sans être justifiée par des préoccupations d'intérêt général (en cas de crise par exemple). C'est le cas notamment de la loi italienne ayant instauré l'entente au sein du secteur des allumettes dans l'affaire sur laquelle portent les extraits ci-dessus.

étatique en déléguant à des opérateurs privés la responsabilité de prendre des décisions d'intervention d'intérêt économique.

[47] Au demeurant, depuis l'entrée en vigueur du traité de Maastricht, le traité […] prévoit expressément que, dans le cadre de leur politique économique, l'action des États membres doit respecter le principe d'une économie de marché ouverte où la concurrence est libre […]

[49] Ce devoir de laisser inappliquée une législation nationale contraire au droit communautaire incombe non seulement aux juridictions nationales, mais également à tous les organes de l'État, en ce compris les autorités administratives, ce qui implique, le cas échéant, l'obligation de prendre toutes dispositions pour faciliter la réalisation du plein effet du droit communautaire. [13]

Si les six principes énoncés ci-dessus pouvaient être adoptés et mis en œuvre, le droit de la concurrence serait bien plus favorable aux plus pauvres et, partant, à tous.

3.3 Exemptions et autres mesures dérogatoires

Un droit de la concurrence favorable aux plus pauvres limiterait au maximum les dérogations dont peuvent bénéficier l'agriculture, la banque et d'autres secteurs réglementés, la propriété intellectuelle et (comme on l'a vu plus haut) les agissements de l'État.

Dans nombre de pays pauvres en développement, plus de la moitié de la population travaille dans le secteur de l'agriculture. Ces populations ont besoin, comme producteurs et comme consommateurs, d'un marché concurrentiel des produits agricoles. Les agriculteurs ont besoin de se procurer des biens de production à des prix concurrentiels alors qu'ils sont parfois continuellement exploités par de grandes entreprises de l'agro-industrie ou des acheteurs multinationaux. Même si toute forme d'exploitation n'est pas en soi illégale – et qu'il n'y a pas lieu de la considérer comme telle –, l'application d'une exemption à caractère général à l'agriculture pénaliserait les agriculteurs de ces pays en les marginalisant.[14]

Les dérogations applicables aux banques peuvent être, elles aussi, gravement préjudiciables. Il est notoire que dans les pays en développement dont les habitants sont très massivement pauvres et dont les élites représentent un faible pourcentage de la population, les personnes dénuées de relations mais avec du talent et de bonnes idées n'ont pas accès à des prêts d'entreprise. À cela s'ajoute les lois des États sur la propriété, qui ont une incidence sur la valeur des garanties et qui exposent donc les entrepreneurs pauvres à un risque ; or, par nature, les banques évitent le risque. Pour ménager des possibilités d'accès au capitaux, il est indispensable de réformer le droit de la concurrence et les dispositions législatives en faveur d'une réduction de la pauvreté. En outre, exempter le secteur bancaire de l'application du droit de la concurrence

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13 La Cour européenne poursuit :

[50] Dès lors qu'une autorité nationale de la concurrence telle que l'Autorité est investie de la mission de veiller, notamment, au respect de l'article [101 TFUE] et que cette disposition, combinée avec l'article [4 TUE], impose un devoir d'abstention à la charge des États membres, l'effet utile des règles communautaires de la concurrence serait amoindri si […] ladite autorité ne pouvait pas constater qu'une mesure nationale est contraire aux dispositions combinées des articles [4 TUE] et [101 TFUE] et si, en conséquence, elle ne la laissait pas inappliquée.

Consorzio Industrie Fiammiferi contre Autorità Garante della Concorrenza e del Mercato, Affaire C-198/01, [2003] Recueil p. I-8055.

14 Cela étant l'instauration d'une disposition autorisant certaines formes de coopératives de petits exploitants agricoles peut avoir un impact important.

revient à laisser à un régulateur généralement captif le champ de la réglementation, ce qui peut encore accentuer la monopolisation et la marginalisation.

La difficulté posée par les secteurs réglementés en général est une gageure. Tous les pays doivent arbitrer entre réglementation sectorielle et droit de la concurrence. Les décisions en la matière ne sont pas toujours faciles car la superposition de pouvoirs exige des ressources et a un prix. Il n'en demeure pas moins que se dispenser d'une autorité de la concurrence peut faire le jeu d'un régulateur captif. Si, au Mexique, par exemple, COFETEL, le régulateur du secteur des télécommunications, avait détenu à lui seul toute la compétence à l'égard du géant Telmex/Telcel, la population n'aurait jamais bénéficié de la diminution par deux du prix des téléphones portables qui a fait suite au règlement d'une affaire d'abus de position monopolistique.[15]

Dans certains pays, la propriété intellectuelle n'est pas couverte par le droit de la concurrence. Cette exemption, loin d'être généralisée, ne s'applique toutefois généralement pas à l'utilisation abusive des DPI. Une exemption intégrale peut être particulièrement préjudiciable pour les pays pauvres dont les populations souffrent de maladies dont le traitement nécessite des médicaments extrêmement coûteux. L'aptitude des autorités de la concurrence à prévenir les pratiques abusives à l'origine d'une envolée des prix de ces produits est donc essentielle pour les pauvres.

De la même manière, les technologies modernes, notamment celles utilisées dans les ordinateurs et les *smart phones*, intègrent une part importante de propriété intellectuelle. Or les franges les plus pauvres de la population ont désespérément besoin d'être connectées, d'avoir accès aux technologies de l'information et de la communication pour avoir accès à des possibilités d'entreprendre dans leur pays et dans le monde. Maintenir les technologies modernes dans le champ d'application du droit de la concurrence est donc essentiel pour agir en faveur des pauvres.

Le concept d'extraterritorialité – Le droit interne des différents pays couvre-t-il les agissements extraterritoriaux qui portent préjudice à leur population ? Il importe tout particulièrement que le droit de la concurrence des pays en développement couvre ces comportements. On peut citer, parmi les nombreux exemples mettant en relief l'importance de la compétence extraterritoriale, l'entente mondiale sur les vitamines, l'entente entre entreprises de fret et l'entente sur le fioul, ainsi que les ententes sur les exportations de potasse conclues entre producteurs canadiens et russes. Toutes ces ententes ont gravement lésé les habitants des pays en développement.

L'entente de la potasse porte en outre atteinte à l'économie des pays en développement et sape, pour les pays pauvres, les perspectives de jouer un rôle dans l'économie mondiale. Cette entente constitue un exemple tristement célère de préjudice face auquel les victimes les plus vulnérables sont sans recours si le droit de leur pays ne couvre pas les actes extraterritoriaux. La potasse est un ingrédient majeur des engrais qui représentent une part importante du coût des récoltes. Lorsque les agriculteurs d'Afrique sub-saharienne paient un prix monopolitistique pour cet intrant, des dizaines de milliers d'entre eux ne peuvent produire de récoltes de manière rentable ; leurs familles peuvent mourir de faim et des entreprises qui devraient théoriquement prospérer s'en trouvent paralysées.[16]

3.4 Procédure

Les populations les plus pauvres lésées par des pratiques anticoncurrentielles peuvent-elles obtenir justice ? Généralement non. Le système joue en général en leur défaveur. Dans les pays pauvres dirigés par

15 Voir http://cfc.gob.mx/images/stories/Publicaciones/CFC%2010-2012.pdf.

16 Concernant l'impact de l'entente de la potasse en Inde, voir Frédéric Jenny, Global potash trade and competition, The Economic Times, 25 novembre 2010.

des personnes davantage dotées des bonnes connexions que de mérites personnels en particulier, les pauvres n'ont pas accès à la justice.

S'agissant des atteintes à la concurrence, cela signifie qu'il importe particulièrement de donner aux pauvres accès à des voies de recours. Les deux voies de recours existantes sont celles de l'action publique engagée au nom des victimes et celles des actions privées que les parties lésées intentent elles-mêmes ou qui sont engagées en leur nom. Dans certain pays, l'autorité de la concurrence est chargée de d'obtenir des réparations monétaires pour les redistribuer aux victimes, mais cela n'a rien d'habituel. De nombreux pays autorisent les actions privées, mais certains uniquement si la procédure lancée par l'autorité de la concurrence aboutit. Dans de nombreux pays qui sont sous la coupe d'un gouvernement autocratique ou qui manquent simplement de ressources ou encore qui ne sont pas de taille à affronter des contrevenants puissants, l'autorité de la concurrence s'abstient de porter devant les tribunaux des affaires sur lesquelles la justice devrait se prononcer. Dans de nombreux pays, aucune disposition ne prévoit la possibilité d'intenter des actions de groupe ou des actions collectives ou pour les avocats de toucher des honoraires conditionnels. Dans certains pays, la charge de la preuve de l'infraction, mais aussi de la causalité et du préjudice est particulièrement lourde pour ceux à qui elle incombe.

Pour aider les victimes pauvres et les autres parties lésées pour lesquelles les frais de justice sont supérieurs au préjudice subi, les pays peuvent mettre en place des mécanismes pour pousser à l'action ceux qui pourraient engager des procédures en leur nom. Cela suppose de donner la possibilité d'intenter des actions de groupe ou des actions collectives, même si l'on sait assurément que le recours à ce type d'actions est parfois abusif. Le débat européen à ce sujet a mis en évidence de nombreuses solutions pour éviter cet écueil.

3.5 Formulation et application de la loi

Existe-t-il une manière favorable aux plus pauvres et aux exclus d'appréhender le droit de la concurrence ?

Il existe des principes et des façons de voir qui servent plus qu'elles ne desservent les intérêts des pauvres. Je pars ici du principe que nous souhaitons tous que les marchés soient solides, efficients et dynamiques et que leurs acteurs soient innovants. Une telle orientation du marché est bonne pour les pauvres et les exclus du système. Théoriquement, la concurrence bénéficie en effet souvent davantage aux exclus qu'à ceux qui ne le sont pas, ceux-ci ne bénéficiant pas d'un régime de faveur particulier. C'est dans ce contexte que j'ai inscrit ma réflexion sur l'application de principes du droit de la concurrence favorables aux pauvres/aux exclus.

J'ai recensé ci-dessous huit domaines ou thématiques pour lesquels il est possible d'adopter une manière de voir favorable aux pauvres/aux exclus qui soit en outre compatible avec l'objectif visé d'un meilleur fonctionnement des marchés :

1. *Les remises*. Les plus pauvres ont besoin de biens et de services à moindre prix. La liberté dont les vendeurs disposent de pratiquer des remises est donc importante et elle est, à l'évidence, efficiente. Les entreprises privées sont souvent tentées de mettre un terme à cette pratique, même en l'absence d'ententes injustifiables, parfois au prétexte de préserver un certain niveau de professionnalisme (honoraires minimum pour les ingénieurs, les médecins ou les dentistes) ou de se prémunir contre le parasitisme. L'adoption d'une façon de voir favorable aux pauvres donnerait du poids à cette liberté.

2. *Les choix de définition du marché*. La définition du marché est une construction mentale. Ce concept peut nous aider à comprendre si un contrevenant putatif détient un pouvoir de marché. Il

existe généralement deux bonnes manières ou plus de définir « le marché ». Dans deux affaires notamment, le tribunal de la concurrence sud-africain s'est trouvé confronté à ce problème alors même que l'intérêt des populations pauvres était en jeu. Dans une affaire, une définition plus étroite du marché en cause aurait pour effet de protéger les pauvres d'un amoindrissement de la concurrence, concurrence dont ils étaient dépendants puisqu'elle était pratiquée par une enseigne de magasins de meubles octroyant des prêts à bas prix. Dans une autre affaire, la définition plus étroite du marché aurait pour effet d'assurer la pérennité d'un créneau porteur, celui des polices d'assurance santé à moindre prix et de donner ainsi la possibilité à une multitude de pauvres d'avoir pour la première fois accès à une couverture santé (dans le cadre d'une gestion coordonnée des soins par capitation). Dans ces deux affaires, le tribunal a tranché en faveur de la solution susceptible d'aider le plus la population pauvre (dans l'affaire de l'assurance santé, la décision rendue a été invalidée.)[17]

3. *Les violations liées à la puissance de marché, aux pratiques d'éviction et à l'accès au marché*. Dans de nombreuses affaires, notamment celles portant sur des abus de position dominante, l'instance qui rend la décision est confrontée au choix suivant : faut-il renforcer l'accès aux marché de ceux qui sont dénués de pouvoir ou accorder davantage de liberté aux entreprises en position de pouvoir ? Ce choix s'est posé aux autorités qui ont rendu des décisions, aux États-Unis et dans l'Union européenne, dans les affaires *Microsoft* et *Intel*. La liberté d'accès au marché ou la liberté de pouvoir disputer loyalement des marchés et de ne pas être évincé de segments importants du marché par une entreprise en position dominante exerçant sa puissance est un principe généralement favorable aux personnes privées de pouvoir.[18]

4. *Évictions d'un concurrent « efficient ».* Une récente règle de droit applicable à des pratiques telles que celle des remises de fidélité impose d'établir la preuve que les concurrents évincés étaient tout aussi efficients, faute de quoi, de l'avis général, la loi protègerait des concurrents inefficients. Cette obligation peut ne pas être indiquée dans les pays pauvres où des monopoles bien établis dominent le marché. Les programmes de fidélité sont souvent, sinon habituellement, mis au point par des entreprises en position dominante confrontées à la concurrence d'une seule entreprise innovante afin d'écarter ce rival, les coûts encourus par celui-ci étant généralement plus élevés. Or dans les pays en développement, l'entreprise dominante n'est presque jamais confrontée à un concurrent aussi efficient qu'elle.[19] En outre, les concurrents éventuels ont souvent du mal à entrer ou à revenir sur le marché. De surcroît, il n'existe guère, dans ces pays, de marchés financiers concurrentiels et il est peu probable qu'un nouveau concurrent soit tapi à attendre son heure. Dans ce contexte, une approche plus ancienne mise en œuvre aux États-Unis, selon laquelle les défendeurs peuvent faire valoir que ce sont les inaptitudes du plaignant lui-même qui ont été à l'origine du préjudice subi par celui-ci, pourrait représenter une règle de droit qui conviendrait peut-être mieux.

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17 Voir David Lewis, *Thieves at the Dinner Table: Enforcing the Competition Act* (2012), pp. 100 à 112, qui décrit les affaires *J.D. Group/Ellerine department store* et *Prime Cure/Medicross*.

18 Chaque affaire s'inscrit dans un contexte qui lui est propre et une question de fond se pose concernant le statut du droit de la concurrence de tel ou tel pays. Dans les années 80, le droit américain de la concurrence a ainsi été recalibré à juste titre en faveur de la liberté d'action des entreprises, car le droit était allé trop loin en interdisant des opérations qui n'auraient pas pu porter atteinte à la concurrence, voire auraient pu être efficientes.

19 Dans l'UE, la norme appliquée est parfois que le concurrent soit « potentiellement tout aussi efficient », le caractère « potentiel » pouvant également être difficile à prouver.

5. *Prix excessifs* appliqués par des entreprises de pays qui en interdisent la pratique. Dans les pays pauvres qui n'ont guère de ressources pour faire respecter le droit de la concurrence, l'application de règles relativement simples peut être indispensable pour que l'action répressive y soit efficace. Dans certaines affaires et certaines circonstances, une règle simple venant pallier le manque de ressources est parfois applicable. Sans cette règle, les infractions seraient pratiquement impossibles à prouver. Pour être réaliste, il faut donc choisir entre l'application d'une règle simple ou la tolérance face aux infractions. Dans l'affaire *Mittal* en Afrique du Sud,[20] le groupe Mittal, qui a succédé, dans le secteur de l'acier, à ISCOR, l'entreprise publique historiquement privilégiée, était le seul producteur d'acier important du pays. Mittal était en position « super-dominante ». Le groupe vendait aux fabricants sud-africains de l'acier au prix de parité à l'importation, pesant ainsi sur leur compétitivité sur les marchés mondiaux, tout en vendant son acier exporté au prix bien moins élevé pratiqué au niveau international. Mittal réservait à l'exportation d'importantes quantités de son acier tout en empêchant la vente d'« acier destiné à l'exportation » sur le marché sud-africain. Le tribunal de la concurrence a fait valoir que les faits susmentionnés constituaient une pratique illégale de prix excessifs en Afrique du Sud. Il a rendu cette décision dans un contexte où une mesure corrective, consistant à interdire d'empêcher la vente, en Afrique du Sud, d'acier destiné à l'exportation, pouvait être imposée sans difficulté à Mittal. La cour d'appel a annulé cette décision, en raison de la formulation particulière de la législation et a fait valoir que le plaignant devait prouver que les prix pratiqués dans le pays étaient manifestement excessifs, tout en déclarant néanmoins que les faits évoqués ci-dessus étaient suffisants pour faire basculer sur le défendeur la charge de produire des preuves. La règle assez souple découlant de cette décision aurait néanmoins permis, si elle n'avait pas été invalidée, de dénouer plus facilement des affaires inextricables.

6. *Pouvoir de l'acheteur*. Les fournisseurs des pays en développement sont susceptibles de pâtir, davantage que ceux des pays développés, d'une utilisation du pouvoir de l'acheteur de nature à les spolier et à les pénaliser. Pour certains pays développés, le bien-être des consommateurs peut être la finalité, alors qu'il peut importer davantage, pour les pays en développement, de tenir compte de toutes les formes d'atteintes aux marchés, et non pas seulement des préjudices causés aux consommateurs. Les petits agriculteurs sont particulièrement vulnérables face au tort que leur causent les pratiques d'achat et de distribution monopsonistique, les fusions ayant pour conséquence l'exercice d'un pouvoir de l'acheteur, comme cela a été le cas en Zambie et en Côte d'Ivoire ainsi que l'ont montré des exemples documentés,[21] ou encore les ententes entre acheteurs, comme cela a été le cas par exemple au Malawi sur le marché du thé, du sucre et du tabac.[22]

7. *Propriété intellectuelle*. Cette notion est au cœur des controverses en cours opposant droit de la concurrence et protection de la propriété intellectuelle. Indépendamment des procédures

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20 Harmony Gold Mining Co. Ltd. v. Mittal Steel Corp., Case 13/CR/Feb04 (South African Competition Tribunal 2007), *rev'd*, 70/CAC/Apr07 (Court of Appeal 2009).

21 Voir Thula Kaira, The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia, p. 133 (exploitation of out-grower farmers by ginners in Zambia, pp. 150 à 57) ; Bruno Dorin, From Ivorian Cocoa Beans to French Dark Chocolate Tablet: Price Transmission, Value Sharing and North/South Competition Policy, p. 237 (exploitation of cocoa farmers by chocolate makers in *Côte d'Ivoire*, passim et 306-10), tous deux dans THE EFFECTS OF ANTI-COMPETITIVE BUSINESS PRACTICES ON DEVELOPING COUNTRIES AND THEIR DEVELOPMENT PROSPECTS (H. Qaqaya and G. Lipimile, eds., UN 2008). Voir aussi Promoting Pro-Poor Growth: Agriculture, Annex 3.A1, Spotlight on Global Value Chains – Does it Mean Shutting out Small Producers? (OCDE 2006).

22 Voir CUTS (Consumer Unity and Trust Society, India) (2003), *Spine Chilling Experiences of Anti-Competitive Practices in Malawi*.

judiciaires en instance, les intérêts des populations pauvres seraient mieux servis par un renforcement du droit de la concurrence et une moindre protection de la propriété intellectuelle. Cela vaut particulièrement concernant l'exercice de droits de propriété intellectuelle dont le bien fondé peut-être contestable, comme c'est le cas des règlements prévoyant des versements destinés à retarder une mise sur le marché ; il s'agit de règlements délictueux en vertu desquels des fabricants de médicaments génériques acceptent d'importantes sommes d'argent pour se tenir à l'écart du marché pendant quelques années. Or, les populations pauvres ont grandement besoin de thérapies peu coûteuses, qui sont généralement mises à leur disposition par le segment des médicaments génériques.

Les technologies de la communication et de la connaissance font également l'objet de la violente controverse opposant droit de la concurrence et protection de la propriété intellectuelle. Dans ce domaine-là aussi, les pauvres et les exclus ont grandement besoin de marchés concurrentiels.

On ne saurait cependant ignorer l'argument selon lequel une moindre protection de la propriété intellectuelle serait de nature à entraîner un reflux des investissements dans la recherche-développement. Il nous reste encore beaucoup à apprendre du débat en cours sur cette question.

8. *Règles simplifiées*. Nous savons que les pays en développement pâtissent du fait que leurs ressources humaines et leurs ressources en capital sont rares. Leurs autorités de la concurrence ne disposent pas d'équipes de juristes et d'économistes prêtes à recenser et à analyser des masses de documents et à élaborer de tas de modèles et d'études. À défaut, ces pays ont grandement besoin de règles plus simples. Or, certaines règles simplifiées sont applicables. Ainsi la pratique des prix de vente imposés par certaines entreprises en position d'exercer un pouvoir de marché pourrait être réputée illégale en soi, à moins d'être justifiée, comme c'est déjà le cas dans l'UE et dans une grande partie du monde. La règle énoncée dans l'affaire *Mittal* par le tribunal sud-africain de la concurrence dont nous avons parlé plus haut va également de soi. En outre, l'application d'une règle d'illégalité en soi ou de quasi-illégalité en soi aux ententes injustifiables est bien évidemment largement admise. Il serait possible de définir certaines règles du même type en appliquant une logique inverse, c'est-à-dire en partant du principe, par exemple, de la légalité en soi de certaines pratiques de bas prix. En tout état de cause, les règles et réglementations des pays dotés d'un droit de la concurrence parvenu à maturité sont trop techniques et trop complexes pour les pays pauvres dont les ressources sont insuffisantes. Ce serait en outre leur rendre un mauvais service que de laisser entendre que ces règles devraient être adoptées et mises en œuvre par tous les pays pour se conformer aux « règles internationales ».

Toutes les solutions énumérées ci-dessus ont une certaine efficacité. Elles font à tout le moins partie de l'éventail de solutions qui peuvent fonctionner ou, plus précisément pour ce qui est du droit de la concurrence, des mécanismes d'incitation les plus susceptibles de donner naissance à une économie forte et performante.

Du point de vue des populations pauvres, le sujet de l'efficience impose une autre observation. Dans le cadre du droit de la concurrence, nous prétendons rechercher la maximisation de la richesse agrégée totale ou de la richesse des consommateurs. Or, cette mesure sert-elle au mieux les intérêts des pauvres et des exclus ? Rien n'est moins sûr. Nous pourrions comparer l'argumentation du professeur Ronald Dworkin (souscrivant à la thèse de l'utilitarisme qui est celle du plus grand bien commun pour le plus grand nombre – laquelle se concrétise dans les faits par l'adage « une personne, une voix ») avec celle de M. Richard Posner, qui est à la fois juge et professeur, (souscrivant à la thèse de la maximisation de la richesse – laquelle se concrétise dans les faits par l'adage « un dollar, un peso un rouble, un rand ou un

renminbi, une voix »).[23] Comme l'implique le principe de maximisation de la richesse, plus le consommateur est riche, plus il est souverain. La maximisation de la richesse a de l'importance s'agissant du PIB et de la compétitivité des pays, mais l'utilitarisme peut donner plus de légitimité aux populations démunies et privées de pouvoirs. Pour autant, cet argument ne signifie nullement qu'il faudrait mettre à bas tout notre système, mais il peut être intéressant à la marge, par exemple pour analyser s'il convient de privilégier la liberté des entreprises de pratiquer des remises au détriment de leur liberté de se prémunir contre toute forme de parasitisme.

4. Qu'est-ce qu'implique, du point de vue de la *politique* de la concurrence, une façon de voir favorable aux pauvres et aux exclus ?

Nous nous sommes intéressés jusque-là au *droit* de la concurrence. Nous allons maintenant passer à la *politique* de la concurrence, qui revient à assurer la promotion de la concurrence.[24]

Promouvoir la concurrence est extrêmement important pour les pays en développement, en particulier pour les raisons invoquées par M. Angel Lopez Hoher, énumérées ci-après. Pour ces raisons, il conviendrait sans doute que les pays en développement y consacrent une fraction plus importante du budget de leur autorité de la concurrence respective que les pays développés. M. Lopez Hoher a ainsi déclaré, concernant le Mexique :

> *La promotion de la concurrence est une composante essentielle de l'ensemble de mesures auxquelles peut recourir une autorité de la concurrence, surtout dans les pays où les racines des marchés sont peu profondes et où la concurrence est une notion qui doit encore s'affirmer face à l'interventionnisme de l'État et la recherche de rentes. Le cas du Mexique constitue un bon exemple, pour les raisons suivantes :*
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> *Premièrement, malgré ces deux dernières décennies caractérisées par un programme ambitieux de libéralisation économique, l'économie mexicaine pâtit encore de l'héritage de la politique économique étatique et soumise aux intérêts corporatistes qui y a été menée pendant au moins une soixantaine d'années et qui se fait encore sentir dans des pans importants d'une réglementation défavorable à la concurrence et se manifeste encore par une défiance trop fréquente des forces du marché vis-à-vis de l'État, du congrès, de l'appareil judiciaire et du grand public.*
>
> *Deuxièmement, ces conditions tendent à prévaloir principalement dans les services qui ont un impact horizontal sur le reste de l'économie, comme les télécommunications, les transports, l'énergie et les services financiers. La libéralisation des échanges dans les années 80 et 90 a apporté une discipline de marché à ces secteurs de l'économie mexicaine pour lesquels la concurrence étrangère a été déterminante. Cela étant, dans les secteurs des services non exportables – comme ceux évoqués ci-dessus – cet élan vers une modernisation de l'économie et une adaptation aux conditions de marché a fait défaut, ce qui a donné naissance à une économie duale pesant sur la compétitivité et préjudiciable aux consommateurs sur les marchés d'aval (autrement dit la quasi-totalité de l'économie).*

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23 Voir Ronald Dworkin, Why Efficiency?, 8 Hofstra L. Rev. 653 (1980) ; Richard Posner, The Ethnical and Political Base of The Efficiency Norm in Common Law Adjudication, 8 Hofstra L. Rev. 487 (1980). Voir aussi John Rawls, A THEORY OF JUSTICE (1971): justice requires maximizing the utility of those who are worst off. Id. at 150-61.

24 Il importe également de donner aux pays en développement la possibilité de réaliser des études de marché. Les études consacrées à des marchés qui semblent ne pas bien fonctionner permettent de recueillir des informations précieuses qui peuvent donner lieu à des poursuites judiciaires ou à des parades législatives.

> *Troisièmement, les activités de promotion de la concurrence, quand elles portent leurs fruits (par exemple en supprimant des obstacles artificiels à l'entrée ou des distorsions du marché) rendent possible une évolution structurelle de la dynamique de la concurrence, transformant définitivement et radicalement les mécanismes d'incitation et dispensant les autorités d'avoir à brandir, au cas par cas, la menace de la répression.*[25]

Nous pourrions considérer qu'il existe deux catégories d'actions de promotion de la concurrence : premièrement, la lutte contre les restrictions appliquées par ou au sein de l'appareil d'État, et deuxièmement, les actions visant à améliorer l'environnement international de façon à se protéger contre – ou à tenter de corriger – les restrictions portant préjudice au marché intérieur, pratiquées au plan mondial ou par certains pays étrangers.

4.1 Lutte contre les restrictions pratiquées par ou au sein de l'appareil d'État

Nous avons évoqué ci-dessus les restrictions de la concurrence préjudiciables et exagérément limitatives imposées par l'État et nous avons vu en quoi le droit de la concurrence peut s'y appliquer. Un nombre bien plus grand de restrictions, sans être excessives à première vue, sont sans doute peu opportunes. Pour les remettre en cause, il faut faire preuve de persuasion. Le champ d'application de ces restrictions peut être variable : elles peuvent être appliquées exclusivement à l'intérieur d'un pays ou revêtir une dimension transnationale. On peut citer, à titre d'exemple, les dysfonctionnements mentionnés plus haut observés au Kenya, en Tanzanie et en Afrique de l'Oust. Tous ces incidents témoignent du zèle dont font preuve les autorités de la concurrence des pays en développement qui cherchent à mettre au jour les restrictions portant le plus atteinte aux intérêts des populations du pays, et tout particulièrement à ceux des plus démunis.

L'un des principaux modes possibles d'action en la matière est celui consistant à s'attaquer aux dispositions restrictives contenues dans le droit commercial du pays et en particulier dans sa législation antidumping. Les mesures prises en ce sens sont généralement massivement soutenues par des groupes d'intérêt ; cela étant, comme le montre l'exemple de la Tanzanie, c'est parfois le « marché » qui gagne. Paradoxalement, les autorités de la concurrence d'un grand nombre de petits pays en développement ont bien plus de latitude, au sein de leur système, pour lutter contre les dispositions protectionnistes du droit commercial de leur pays que celles de bon nombre de pays développés parvenus à maturité.

Un autre mode d'action plus modeste mais tout aussi essentiel est celui qui vise les réglementations en vigueur dans le pays. La réglementation est souvent excessive et produit des effets pervers, bien qu'elle soit souvent soutenue par des groupes d'intérêt. Le RIC a pris une mesure importante en organisant, sous l'égide de son Groupe de travail sur la promotion de la concurrence, un projet visant à recenser les méthodologies d'évaluation des effets pro- et anticoncurrentiels de certaines réglementations.[26] Cette initiative pourrait être une première étape pour élaborer un modèle d'identification des réglementations inopportunes préjudiciables à la concurrence afin de pouvoir ensuite les combattre.

4.2 Promotion d'une obligation modérée s'imposant à tous les pays

Les pays pauvres en développement sont les cibles les plus vulnérables des restrictions internationales qui pèsent sur leur croissance économique. Les pays occidentaux, tout en exhortant généralement les populations des pays en développement à s'aider elles-mêmes, choisissent souvent au gré de leurs intérêts

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25 Angel Lopez Hoher, Competition Advocacy in Mexico: Lessons from the Past Decade, Competition Policy International, 27 août 2012.

26 Voir aussi OCDE (Manuel pour l'évaluation de la concurrence, http://www.oecd.org/fr/daf/concurrence/competitionassessmenttoolkit.htm, qui indique une méthode permettant de recenser les restrictions réglementaires inutiles en vigueur sur le marché).

les domaines visés par la libéralisation, s'accrochant souvent aux mesures protectionnistes et aux subventions dans les secteurs où elles portent avant tout préjudice aux pays en développement.[27] Paradoxalement, les pays occidentaux versent plus d'argent sous forme d'aides aux pays en développement que ceux-ci n'en perdent en conséquence de la marginalisation qu'ils subissent du fait des droits de douane, des législations anti-dumping et des subventions pratiqués par les pays occidentaux,[28] sans même parler de leurs ententes à l'exportation. Les Occidentaux proclament que les ententes à l'exportation ne sont pas leur problème, les pays lésés étant libres d'engager des poursuites à l'encontre des participants à une entente extraterritoriale. Mais les pays les plus pauvres n'ont pas les ressources nécessaires pour agir et, de surcroît, comme c'est aussi le cas concernant la pollution, il est plus efficace de faire cesser les infractions à l'endroit où elles sont commises.

Les pays en développement pourraient mettre en œuvre un programme constructif d'actions de promotion. En des périodes plus propices, l'Union européenne a proposé un dispositif en ce sens,[29] qui aurait pu être mis en application dans le cadre de l'OMC mais également en tant que projet autonome. Dans l'esprit de la proposition de l'UE, les pays développés peuvent et devraient être tenus à un devoir de sollicitude lorsqu'ils causent un préjudice, notamment dans des pays en développement et en particulier lorsque leurs ressortissants contreviennent aux principes explicites et largement partagés du droit de la concurrence (autrement dit, lorsqu'ils forment des ententes). Les pays développés peuvent et devraient réviser leur législation à cet égard de manière à étendre leur compétence afin de rendre illégales les ententes injustifiables à l'exportation.[30]

On pourrait en l'occurrence s'inspirer d'une convention en vigueur dans le domaine de la protection de l'environnement, à savoir la Convention de Bâle sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination.[31] Aux termes de cette convention, si un pays signataire interdit l'importation de déchets dangereux, tous les autres pays qui y sont Parties doivent alors doivent rendre illégale l'expédition de déchets dangereux dans le pays en question. Des pays partenaires commerciaux pourraient adopter un modèle analogue pour les ententes injustifiables à l'exportation, assimilables, en droit de la concurrence, à des « déchets dangereux ».

Par ailleurs, s'agissant des ententes ciblant les exclus, les pays développés pourraient modifier leur droit de la concurrence afin de se doter d'une compétence relative à la divulgation de documents et aux dépositions de suspects et témoins se rapportant aux éléments factuels des ententes extraterritoriales. Ils pourraient ainsi exercer un pouvoir d'assignation des témoins dans les cas où certains de leurs ressortissants seraient présumés avoir attenté aux intérêts de pays en développement.

La coopération entre pays attachés à la défense du droit de la concurrence a considérablement progressé pour faire respecter ce droit. L'OCDE, le RIC et la CNUCED constituent d'importants mécanismes et enceintes de coopération. Les forums régionaux en Afrique, en Amérique latine et en Asie

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27 Martin Wolf, Why Globalization Works (2004). Voir le passage, Hypocrisy of the rich, pp. 218 à 18.

28 Wolf, supra.

29 Groupe de travail sur l'interaction du commerce et de la politique de la concurrence, Organisation mondiale du commerce, *Communication from the European Community and Its Member States*, WT/WGTCP/W/184 (22 avril 2002). Ce Groupe de travail a été dissout.

30 Voir Eleanor Fox, Testimony Before the Antitrust Modernization Commission, Hearing on International Issues in Washington, D.C. (15 février 2006), *téléchargeable à l'adresse suivante :* www.AMC.gov*; voir également* Special Committee on International Antitrust, ABA Antitrust Section, The Special Committee's Report 83-90 (1er septembre 1991).

31 22 mars 1989, 1673 U.N.T.S. 125.

favorisent pareillement la coopération, de même qu'une multitude de conventions bilatérales. La coopération est particulièrement indispensable pour les pays pauvres et en développement confrontés à la rareté extrême de leurs ressources, et dont les populations démunies sont souvent des victimes toutes désignées. Toutes les mesures supplémentaires prises en ce sens aideront les pauvres.

5. Conclusion

Nous avons étudié, dans la présente note, ce qui constitue l'essentiel du droit et de la politique de la concurrence, ainsi que leur interaction, en examinant comment ce droit et cette politique pourraient être favorables aux pauvres. Nous avons ainsi observé que :

1. La concurrence est un principe fondamentalement favorable aux pauvres et aux plus démunis. L'accès à des marchés libérés de restrictions artificielles démarginalise les exclus et tend à accroître la mobilité, en favorisant un développement bénéficiant à tous. Il va sans dire que la baisse des prix des biens de première nécessité aide les pauvres. Pour autant, le droit et la politique de la concurrence à eux seuls ne suffisent pas. D'autres conditions indispensables doivent être réunies : l'alimentation, la santé, le logement et l'accès aux capitaux – conditions qui ne sauraient assurément être remplies sans une bonne gouvernance et l'existence d'un État de droit. À cet égard, dégager des synergies pluridimensionnelles crée un cercle vertueux.

2. En quoi la mise en œuvre efficace du droit de la concurrence peut-elle répondre aux besoins les plus impérieux des populations pauvres et exclues ? Premièrement, l'accès de ces populations au marché signifie qu'elles n'en sont pas évincées par des restrictions généralisées servant des intérêts étatiques et clientélistes ou par des restrictions découlant d'un régime dérogatoire étendu. Ce problème n'est pas seulement celui des populations exclues, mais il est essentiel dans l'optique de leur démarginalisation et d'un développement bénéficiant à tous et pourrait donc devenir la toute première des priorités. Deuxièmement, le droit de la concurrence *s'inscrit par essence* dans une perspective favorable aux pauvres, tant du point de vue de la procédure que sur le fond. Trois pistes notamment se dégagent de la discussion ci-dessus : (i) Il conviendrait de réfléchir à des mécanismes procéduraux donnant aux pauvres accès à la justice ; (ii) il importe de chercher à mettre en œuvre des règles simplifiées, économiquement sensées, permettant aux pays pauvres de se dispenser d'armées de juristes et d'économistes. Les autorités et les tribunaux doivent se saisir de toute occasion de mettre en œuvre ces règles simplifiées, faute de quoi paradoxalement la réparation des infractions au droit de la concurrence resterait un luxe réservé aux mieux lotis ; (iii) il existe tout un éventail de moyens de rendre les marchés efficients, innovants et dynamiques. En fait partie l'adoption d'une façon de voir plus favorable aux pauvres et moins avantageuse pour les nantis. Cette façon de voir attache du prix à l'ouverture des marchés, à la concurrence et à la liberté des entreprises de pratiquer des prix durablement peu élevés.

3. En quoi une politique de la concurrence efficace peut-elle répondre aux besoins les plus impérieux des pays à faible revenu ? Premièrement au plan intérieur, du fait que cette politique permet de lutter contre des restrictions anticoncurrentielles imposées par l'État, notamment dans les secteurs pour lesquels les populations sont susceptibles de soutenir les mesures prises en ce sens et les chances de réussite sont les plus grandes. Deuxièmement, au plan international, du fait qu'une telle politique permet de promouvoir des règles et des normes contraignant les nations à faire cesser ou à réparer les préjudices qu'elles causent.

La mise en œuvre d'un droit et d'une politique de la concurrence favorables aux plus pauvres n'est pas la solution miracle pour réduire la pauvreté. C'est seulement l'une des composantes d'un arsenal de mesures qui promettent d'ouvrir plus de pistes et de produire de meilleurs résultats, petit à petit. Comme pour toutes les propositions, des difficultés de mises en œuvre existent et certains arbitrages sont nécessaires. Le moment est venu d'en discuter.

COMPETITION AND POVERTY REDUCTION

By Mr. David Lewis[*]

1. The Problem

While the unique ability of market processes to efficiently allocate goods and services to their most productive uses is now widely accepted, it is equally understood that markets fail generating massive intra- and inter-country inequality. Indeed, even when markets operate effectively, there are swathes of people and entire regions that are left behind. No-one who has read 'Behind the Beautiful Forevers', Katherine Boo's riveting account of life in a Mumbai slum, could claim that even sustained market-driven national growth at an unusually high level guarantees a path out of large scale and crippling poverty.[1] If those responsible for defending markets are concerned, as they must be, with the legitimacy and public acceptance of their actions, then they must be seen to be concerned about these shortcomings and to be doing all in their power to limit their impact on the most disadvantaged.

I will approach this session from the perspective of a competition enforcement agency attempting to identify particular approaches to competition law and policy that will contribute to reducing poverty and inequality. Included here are measures designed to ameliorate potential negative distributional impacts arising from enforcement and merger review decisions that are intended to promote competition. My starting point is that if there are strategic options available to competition policy makers and enforcement authorities that reduce poverty and inequality, then they should be selected.

When considering the relationship between competition, on the one hand, and poverty and inequality, on the other, it's important to remember where we come from. The origins of competition law are in opposition to the power, market power and 'public' power, represented by combinations of firms and monopolies or what we have come to term dominant firms. The negative impact that these firms and combinations were perceived to embody was in their ability to exploit consumers through their unrestrained capacity to effect a reduction in output and a consequent increase in prices. So devoid of restraint was this market power that it was perceived to threaten the capacity of the public authority to achieve a socially acceptable and sustainable balance between producers, on the one hand, and, on the other, consumers and would-be rivals.

The impact of this power on rivals was central. Rivalry was the mechanism which would restrain the capacity of dominant firms to raise prices, thus ease of market access was a principal objective of competition law and policy. Confronted by rivalry, or even the prospect of rivalry, firms would be restrained from reducing output in order to effect an increase in prices. Rivalry would then operate as a constant downward pressure on prices and thus profits. It's important to re-emphasise that competition law and policy was designed to promote rivalry (market mechanisms) in order to effect a distribution of market power and thus surplus away from producers to consumers. If producers, in turn, were to restrain this

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[1] Katherine Boo - *Behind the Beautiful Forevers: life, death and hope in a Mumbai undercity* (Random House, 2012)

downward pressure on their profits they would be compelled to increase their efficiency reflected either in lower costs of production or in the introduction of new, improved products. This underlines that restraining market power in favour of consumers though accessible markets expressed both the central objective and the principal instrument of competition law, with enhanced efficiency a second order outcome. The transmission belt is then from market access to increased rivalry to a distribution away from producers to consumers to strengthened incentives for producers to raise their game in order to restore their lost margins.

So this underlines the egalitarian ('access', 'opportunity', 'restraint of power') and redistributive imperatives (from producers to consumers) at the heart of competition law. In other words competition law and policy is not compelled to 'stretch' its objectives to take on distributive issues – both distribution of power and opportunity and the distribution of income are core objectives.

However, the above characterisation of competition law and policy also serves to emphasize competition law's central relationship to firm level efficiency. This in turn raises the thorny issue of the pitfalls of burdening particular instruments of economic policy with multiple and, in part and at times, conflicting objectives. If fiscal policy or labour market policy are better able to address inequality and poverty while competition and the various policy instruments (competition law and policy, industrial policy, trade policy) designed to promote it are better able to enhance efficiency, is it not preferable to use the 'first best' policy instruments to achieve those objectives which they are capable of addressing most directly? Indeed employing 'second best' instruments may well give rise to outcomes directly at odds with the objectives of the policy maker or the enforcement agency.

We are then obliged to qualify the pro-poor and pro-equality objectives and mechanisms of competition law and policy by stipulating that measures to achieve these first order objectives do not undermine the incentives and capacities of incumbent firms to constantly strive for greater efficiency, not least because, in the absence of increased efficiency, it would not be possible to sustain competition's potential to achieve its promises for consumers and new entrants. In the best of circumstances the efficiency objectives and poverty alleviation objectives and outcomes of competition law enforcement will not be in conflict. But where they are, competition decision makers are obliged to effect a balance between conflicting objectives and to make the terms of the balance or trade-off explicit.

I want, without much further elaboration, to observe that the requirement to balance conflicting rights, objectives and interests is not alien to competition law. To the contrary it is part of the daily task of enforcement and the related functions of advocacy and policy formulation.

At the most fundamental level competition law is concerned with the exercise of property rights, and therefore with ensuring that the holders of these rights, 'producers', do not exercise them through conduct prejudicial to the rights of other participants in the process of consumption ('consumers') and production ('actual or potential rivals'). However, these socio-economic rights – which may be described as the right to basic necessities of life and the right to participate in the market economy - are significantly less well-established in statutory and case law than are property rights.

Certain practices of holders of property rights (that is, producers) are so clearly prejudicial to the interests of other of these participants – notably, the impact on consumers of price fixing and market allocation agreements – that they are proscribed outright. That is, property rights cannot be asserted so as to permit the holders of these rights to co-operate with each other in a manner which prevents other participants in the market economy from enjoying its fruits, in particular lower prices and improved products.

However, the consequences of other exercises of rights in property, notably mergers or unilateral conduct (even of a dominant firm to maintain or extend its dominance) are not nearly as clear cut as in the case of collusion. Either, as is more often than not the case with mergers, these may be, from the perspective of other participants in the economic process, perfectly benign acts and so any intervention on *competition* grounds would constitute an unwarranted intervention in the property rights of the producer.

Or they may reflect (as with unilateral conduct) or portend (as in a merger) greater efficiency while simultaneously representing a potential threat to competition. In these instances competition decision makers have to balance a number of conflicting outcomes and interests. They may be required to assess the (positive) effects of the greater cost savings arising from a merger relative to the (negative) effects of a greater increase in concentration, with both variables, especially the latter, near impossible to quantify; they may be required to make a call on the likelihood of the pass-through of the greater efficiencies to consumers, that is , on the redistributive consequences of a dominant firm's conduct or the merger; they will be concerned not to proscribe pro-competitive conduct, even that which supports or extends dominance, lest it chill such conduct on the part of the particular firm in question and other dominant firms; but they will also worry about the impact that the further entrenchment of dominance, even when effected through pro-competitive conduct, has on the future conduct of the dominant firm. That is to say, particular action by a dominant firm may redound to the immediate benefit of consumers, but, in the medium term may give rise to a market structure in which the incentives of the dominant firm to behave pro-competitively are significantly blunted.

For all these reasons requirements to balance a loss to competition with the computation of the pro-competitive efficiencies realised, or, worse, the repetition of mantras about 'protecting competition and not competitors' are either far more complex than the standard statutory or judicial phrasing suggests or are too glib and superficial to guide actual decision making. Competition relies on the presence of competitors and so, easy on the tongue though it may be, 'protecting competition and not competitors' is ultimately unhelpful to those concerned at the exclusionary conduct, so often evidenced, of dominant firms, even those who have achieved their dominance on the merits.

My point simply is that the most narrowly orthodox competition law is experienced in making difficult trade-offs and striking complex balances which suggests that to require that competition decision makers consider and balance considerations of efficiency, on the one hand, and, on the other, those of equity and poverty alleviation should not unduly tax the capacities of the competition law, the lawmakers or the enforcers and adjudicators.

But to return to where we started, the stark fact is that, however difficult, competition law and its enforcement has little choice but to be seen to be addressing inequality and poverty. The South African Competition Act has been much criticised for its inclusion of 'non-competition' objectives. These – including employment, the impact on small business and black economic empowerment and the 'competitiveness' of national firms - are not only embodied in the preamble to the Act and in its stated objectives, but in the prescribed criteria for merger assessment.

However, the policy makers and the drafters and enforcers of the Act have consistently held that while the Competition Act is correctly construed as a major intervention in the rights of owners of productive assets, it is also a foundational piece of socio-economic legislation. As such its successful adoption and implementation necessitated that it achieve legitimacy not only with those who possess rights in property, but that it also be seen to be addressing the concerns of other classes and interest groups and the major economic problems which they confront, namely unemployment, poverty and inequality in wealth, income and opportunity.

Nor is South Africa alone in the requirement to establish legitimacy for its competition law and its enforcement. Take the two countries in which the legitimacy of competition law is arguably most strongly established, the USA and Germany. I'm convinced that US anti-trust owes its legitimacy to deep-seated public opposition to the constraints on opportunity and access represented by powerful monopolies – anti-trust is, or certainly used to be, perceived as a statutory guarantee of opportunity, in a country where unfettered opportunity to participate in the market economy is a core societal value. As such the legitimacy of US anti-trust is reproduced by periodic attacks by the antitrust enforcers on large firms from Standard Oil to Microsoft that are seen to be denying access to others. In Germany, the legitimacy of the market and competition law's robust defence of it, is contingent upon the continued commitment to the 'social market' which may precisely be viewed as a series of state actions to correct, in the form of a safety net, market outcomes that inevitably exclude sections of the population from its efficiency enhancing qualities.

I want now to identify elements of an approach to competition law enforcement that will strengthen the association between competition, on the one hand, and poverty alleviation and equality, on the other.

2. Some solutions

2.1 Prosecutorial discretion

The most frequently cited contribution that robust competition law enforcement that seeks to limit collusion and reduce entry barriers will make to poverty alleviation is to depress product prices. The extent to which this price effect alleviates poverty will be influenced by the market in which competition law is being enforced. This may then serve to guide the strategic choices of enforcement agencies. Those enforcers with a strong poverty reduction remit are then likely to allocate enforcement resources to defending competition in markets for basic consumer goods and the key intermediate inputs used in their manufacture.

Of course even this apparently self-evident insight is complicated by a range of strategic choices and possible unintended outcomes. So focusing on defending competition in, for example, the market for bread may seem like an obvious allocation of enforcement resources to promote both competition and poverty reduction. However, the impact of this prosecutorial choice may be limited if it appears that cartels in low-technology, easy-entry markets are, even with limited competition enforcement, likely to be unstable and difficult to sustain. In other words, the poverty reduction outcome will be limited if a cartel in bread does not have a significant impact on prices because of the instability of the cartel. On the other hand, cartels in technologically mature markets producing homogenous products – think cement and other building products or electronic components – are likely to be far more durable and so closely watched by competition authorities intent on holding down the prices of basic wage goods.

Or by way of another example, markets in which technology is rapidly evolving and in which there is not a dominant incumbent with exclusionary power, may not be priority candidates for focused enforcement action because the rapid introduction of new products may be sufficient to underpin robust competition. On the other hand, if, as has frequently been the case, these markets are dominated by incumbents capable of excluding or retarding the introduction of new technologies then they too will be prime candidates for the attention of antitrust authorities. ICT markets are most frequently cited examples here. While over time these have become veritable poster boys for the positive impact of competition, they are markets in which incumbents, often state-owned, have famously used their long-established dominance to retard the entry of new technologies. Although ICT products are not obvious basic goods when set against say basic foodstuffs, lower costs of communication will obviously have a far more diffuse impact. Through lowering the cost and ease of everything from job search to market entry by peasant farmers the impact of robust competition law enforcement in ICT markets is likely to more profoundly impact poverty levels and inequality than interventions aimed at defending competition in more obvious basic wage goods

markets. For this reason, antitrust authorities sensitive to poverty and inequality would be particularly intent on ensuring that a dominant incumbent in these markets does not undermine the competitive temperature.

This discretion on the part of the enforcement authorities may also apply to the approach taken to merger assessment. Merger assessment presupposes a predictive analysis and hence uncertainty regarding the actual impact of the merger. From the perspective of poverty alleviation and inequality, there are strong grounds for taking a more robust approach to mergers in some markets rather than others. Hence the South African Competition Tribunal endorsed the Competition Commission's decision to prohibit a merger because the transaction appeared to threaten the development of an embryonic product which would, if successful, have lowered the cost of private health insurance. It is conceivable that this merger would have been approved had it implicated a market of lesser social significance than that for health insurance. However the Tribunal concluded that the nature of the market and parlous state of public healthcare provision in South Africa justified a particularly cautious approach to a merger that may have had the effect of limiting the development of a product that would have promoted access to private healthcare.[2]

And then of course, competition law is confronted with the reality that, even in developed economies, a significant number of people survive on the activities of extremely low productivity enterprises, both trading and other services and basic manufacturing, which are frequently protected by some or other regulatory regime, for example regimes restricting foreign entrants. Competition law would not stand in the way of – would indeed welcome – more efficient enterprise that produced better quality and lower priced goods and services. It would advocate against protectionist regulation and would doubtless point out that the entry of more efficient, albeit frequently foreign owned, firms will alleviate the poverty of customers of these low productivity enterprises. But the price effect of greater efficiency may be accompanied by significant employment loss or a negative impact on entire communities whose cohesion may in no small part be due to the presence of these low productivity enterprises. This issue is most powerfully expressed in respect of the endless debate around the entry of global retail chains into India but it has been no less prevalent an issue in some of the most developed economies, ranging from regulations that protect, or used to protect, small inefficient German retailers to the protection accorded Japanese rice farmers.

An equally complex conundrum for an anti-poverty competition law is presented by the presence of a large informal sector. In least developed economies extremely poverty-stricken members of the society survive on the generally meagre earnings of these informal enterprises. An industrial strategy aimed at alleviating the poverty of informal sector operators would attempt to 'graduate' these to the formal sector. But how will these embryonic formal sector operators survive in the face of competition from those left behind in the informal sector who do not have to meet the regulatory demands imposed on the new formal sector entrants?[3]

So what to conclude from this, other than that there are no obvious answers to the question of how to ensure that competition law and policy supports poverty reduction?

Strategic selection of enforcement priorities could make a significant contribution. However the selection of these priorities should be undertaken with care, with the distinct prospect that the markets earmarked may not be the obvious final end consumer products. And in the process of selection, it is perfectly possible and legitimate to take a more robust approach to defending competition in some markets rather than others of lesser socio-economic significance.

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2 *Medicross Healthcare Group (Pty) Ltd/Prime Cure Holdings (Pty) Ltd (11/LM/Mar05)*

3 See the essay by Thulasoni Kaira on Zambia in Lewis, D. (ed.) (2013), *Building New Competition Law Regimes: Selected Essays*, Cheltenham, UK and Northampton, MA: Edward Elgar Publishing

We will discuss the relationship of competition law and policy to small enterprises below. Suffice to say that the informal sector 'problem' just referred to is not resolved by attempting to restrict entry into the informal sector. It is rather to reduce the regulatory and tax burden imposed on new entrants to the formal sector, enabling them to compete more successfully with their erstwhile fellow informal sector firms and with their better established formal sector incumbents. It also ensures an easier graduation from informal to formal sector for those left behind.

2.2 The inclusion of 'public interest'

The commonly deployed instrument for ensuring that competition enforcement takes heed of distributional or, as they are often termed, 'non-competition' considerations is to require that the impact on 'public interest' of a particular act be factored into the final decision. An assessment of public interest is most commonly required in the evaluation of the impact of mergers. Where this is the case the competition authority is generally responsible for the evaluation of the impact on competition. The political authority is then empowered to override that decision if it is decided that the 'public interest' is prejudiced. Distributional considerations – for example the impact of a merger on employment or on economic activity in a particular region – would generally figure in a decision to override the approval (after a positive competition assessment) of a merger, while 'competitiveness' considerations – or, in the financial sector, 'stability' - may be invoked to overturn the prohibition of a merger on competition grounds.

As already noted, the South African Competition Act includes in the identification of its general purposes a range of 'non-competition' considerations. The 'purposes' clause of the Act stipulates that it is to promote and maintain competition in order to 'promote employment and advance the social and economic welfare of South Africans', to 'ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy' and to 'promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.' These 'non-competition' purposes are included alongside orthodox purposes associated with promoting competition such as promoting 'the efficiency, adaptability and development of the economy' as well as 'to provide consumers with competitive prices and product choices.'

In addition to this framework provision, the merger assessment criteria require that after making its decision on competition grounds, the competition decision maker is to undertake an assessment of the impact of its decision on public interest grounds defined to cover the effect that the merger will have on a particular sector or region, on employment, on the ability of small businesses and businesses owned by 'historically disadvantaged person' to become competitive, and on the ability of national companies to compete in international markets. However, while the political authority is provided with notification of a proposed merger and is entitled to make submissions on the defined public interest grounds, it has no decision making powers. These belong entirely to the competition authority. The employment-reducing effects of a merger have generally been invoked to secure the prohibition of, or the imposition of conditions on, mergers that have passed muster on competition grounds; the inclusion of black shareholders ('black economic empowerment') has on occasion been invoked to secure approval of a merger that is threatened because of a perceived negative impact on competition.

Let's examine the public interest in limiting employment loss. With South African unemployment figures in excess of 30%, we are indisputably dealing with a major social and political issue and a major underlying cause of poverty. On the face of it then there is, in South African certainly, a powerful prima facie argument in favour of prohibiting mergers that will result in significant employment loss, even if the transaction in question does not compromise competition.

On the other hand, in deciding to merge with another company we are dealing with a perfectly legitimate business decision for which at least part of the efficiency rationale may rest on the ability to

rationalise the head count of the merged entity. We are then not only dealing with the sanctity of property rights. We are also confronting the imperative for firms to enhance their competitiveness, a significant aspect of which may be the productivity of their employees. By approving the merger but prohibiting employment reduction, tThe competition authorities are being asked to oblige the merged entity to carry employees in excess of their perceived needs. Taking a short term perspective, this may seem to be an acceptable trade-off but its long run consequence may be inefficient firms which not only pass through their inefficiencies to their customers, but which may ultimately fail under the weight of the inefficiencies imposed by the competition decision makers conditions, thus generating even greater employment loss than would have been the case had the merger been approved without the imposition of job-retention conditions.

The South African competition authorities have generally approached employment-related objections to otherwise unproblematic mergers by encouraging the merging parties and the employee representatives (in what is a highly unionised workforce) to arrive at an agreed solution by utilising the comprehensive statutory framework governing employment and labour relations (the pillar of which is self-regulation by agreement between employers and worker representatives). This agreed solution has then been imposed as a condition for the approval of the merger. This does amount to more than a mere rubber stamp insofar as contravention of the employment condition would not only violate labour law and contractual obligations, but will also threaten the merger itself.

However, agreement between employees and the merging parties has not always been achieved thus obliging the competition authorities to rule on employment. In a recent merger in which the merging parties estimated the loss of 1500 jobs post-merger, the Competition Tribunal attempted to lay down an administrable set of rules governing its approach to employment loss.[4] The Tribunal imposed an evidentiary burden on the merging parties to show that a rational process had been followed in order to arrive at the estimated job losses. The parties failed this test. What emerged was that the extent of job loss was determined, not by the employment requirements of the merged entity, but by an attempt to induce shareholders to agree to the transaction by estimating a level of savings that would be achieved by the merger.

The Tribunal also required the merging parties to demonstrate that the public interest in preventing job loss was balanced by an equally weighty, but countervailing public interest which justified the job loss and which was cognisable under the Act. Again the parties failed the test. They were not able to show that the job loss was necessary to save either of the merging parties - both were prosperous entities. In other words it was not established that it was necessary to countenance some immediate job loss, in order to prevent greater job loss in the longer term. Nor were they able to show that the savings which would accrue as a result of the job loss would be passed on to consumers. In short the parties were not able to show that either long term employment or consumers would benefit from the job loss. Accordingly, the Tribunal approved the merger with a condition imposing a two year moratorium on any merger related employment loss except where it applied to senior management positions.

However, the application of these public interest provisions has been immensely complicated by the economic downturn (and the enhanced concern to staunch employment loss) and, particularly, by a crudely interventionist industrial policy that has demonstrated scant respect for the independence and remit of the competition authorities, and, indeed, for the necessity to balance the impact of a merger on competition with the impact on employment. This is best, if not uniquely, illustrated, in the controversy surrounding the

4 *Metropolitan Holdings Ltd/Momentum Group Ltd (41/LM/July10)*

competition authorities' approval of the acquisition of Massmart, a large South African grocery and general retailer, by the US giant, Walmart.[5]

It was common cause that there were no negative competition implications (Walmart was a new entrant). Indeed it was generally accepted that Walmart's presence would enhance competition in the retail grocery and household products sector. That Massmart had a weak presence in the retailing of fresh food and that Walmart viewed this as a major opportunity for the merged entity strengthened the view that the merger would impact positively on the low income consumers who are Walmart's traditional customer base. However the government elected to sublimate the interests of consumers to that of producers, with the Minister of Trade and Industry stating explicitly that 'we have taken the decision [to intervene] in favour of the production sector at the expense of other sectors such as the consumer sector.'[6]

The 'production sector' that government sought to protect were not rivals of the merged entity but rather suppliers to the retail sector. Government contended that Walmart's global supply chain would result in an increase in imported – read 'Chinese' – products to the detriment of South African producers. It was those producers – - not even necessarily small businesses - in the retail supply chain whose interests were invoked by government in pleading a 'public interest' in prohibiting, or imposing conditions upon the approval of, the transaction. The condition proposed by government was the imposition of a quota on the share of imports in the merged entity's product range.

Amidst great controversy and in the face of considerable public pressure, the competition authorities declined to impose this condition. They pointed out that this effectively amounted to a highly selective trade remedy. Not only would this be in conflict with WTO regulations but the imposition of such a remedy on one firm in a competitive market would significantly reduce the pro-competitive outcomes expected from the merger. Above all, the competition authorities were concerned at the proposed protectionist condition's failure to consider consumer interests. In the words of the Tribunal:

> *Further the conditions will contradict the major objective of competition regulation – to secure lower prices – (because) the procurement conditions would likely effect the merged entity's ability to provide customers with the lowest possible prices. Competition authorities do not lightly impose conditions that contradict their primary mandate, unless there is overwhelming justification for doing so. If we are not for competition then who is?*

Ultimately the transaction was approved with the imposition of a condition – originally proposed by the merging parties and refined and elaborated by the competition authorities – that required the merged entity to invest a specified amount in the strengthening of domestic suppliers and potential suppliers, directed in particular at small and medium sized enterprises in the supply chain. This condition not only meets the public interest objectives stipulated in the Act, but its impact will be pro-competitive.

Walmart notwithstanding, it is more difficult to balance competition and small business interests than it has been to achieve a balance between competition and employment. Paradoxically this is largely because small-business, unlike employment, involves cognisable competition considerations. As already elaborated, market access is a principle objective and instrument of competition law. While concentrated market structures and the conduct of dominant firms are by no means the only constraints on market entry by large firms, there can be little doubt that they do constitute significant entry barriers. Markets in which capital and technological barriers are low are conducive to entry by small firms. If these markets are concentrated then there are grounds for enquiring whether conduct by large firms – on the part of rivals, input suppliers or even customers – may account for the entry barriers encountered by small firms.

5 *Walmart Stores Inc/Massmart Holdings Ltd*. (73/LM/Nov10).

6 *Business Report* 10th August 2011

Impugning conduct that creates these barriers will meet the public interest in supporting small firms. And it will also meet the core competition objective of lowering entry barriers thereby raising the competitive temperature.

The predictable – and generally persuasive – counter is one that questions why input suppliers or customers would rationally engage in conduct that impedes entry and competition. However there are clear cases where large input suppliers favour large customers with preferential supply conditions and prices. This discrimination may, and usually will, be explained by the lower cost entailed in supporting a large customer over a small customer. However in South Africa we have encountered one instance in which there appeared to be no such commercial rationale for the price discrimination practices by the monopoly supplier of a critical input. The firm discriminated in favour of its large customers for no reason other than that they were longstanding customers. Given this evidence and the Act's clear requirement to support small firms, the Competition Tribunal impugned the price discrimination in favour of larger firms in the market.

An argument presented by the respondent – and on which basis the Competition Appeal Court overturned, incorrectly in my view, the Tribunal decision – was that small firms, such as the complainant, did not constitute significant competition and hence their exclusion from the market did not impact negatively on competition. However, the Tribunal rejected this, holding that the usual requirement to show anti-competitive effects is relaxed by the public interest and by the competition interest in promoting the entry of small firms. In short, the Tribunal interpreted the Act's explicit proscription of price discrimination as a hybrid of its competition and public interest concerns.[7]

Clearly though the most direct market access-related mechanism for supporting small firms is through public procurement provisions that favour this class of firms. These are likely to compromise competition. However at least the terms of the trade-off, the short term cost of supporting small business, will be clear (and should be expressly calculated) and by nurturing them competition is likely to be enhanced in the longer run. It would seem that the Walmart condition – where supply side support for small business is provided but demand side support ultimately depends on their ability to supply the competitive good or service- is the most competition-friendly mechanism for supporting small business.

As noted, the presence of a large informal sector poses particular problems for competition law's relationship to small business. A primary industrial and economic policy objective is to graduate these firms from the informal to the formal sector. However, the prospects for achieving this are constrained by the continued presence of informal sector operators whose informal status effectively exempts them from a range of regulatory requirements (including the requirement to pay tax) thus giving the informal operators a competitive advantage vis a vis their newly formalised rivals. Here the competition-friendly approach would not be to restrain the entry of informal entrepreneurs but rather to ease access to the formal sector by reducing the regulatory burdens imposed by formalisation.

The primary lessons to be drawn from South Africa's experience with the incorporation of public interest objectives, objectives which are designed to support employment creation (and limit job loss) and small enterprises, into the decisions of the competition authorities is that it is wholly possible to balance non-competition and competition considerations. Moreover, it is clear that the trade-offs and balances that are required to satisfy this range of competition and non-competition objectives are better made by the competition authority rather than by the more common division between the competition decision maker and the public interest decision maker. The South African system predisposes to the sensible balance achieved in the Warmart case. Certainly in that case if the Minister had been empowered to take the public interest decision he would have simply ignored competition considerations, to the detriment of low income

7 *Nationwide Poles and Sasol (Oil) Pty Ltd* (72/CR/Dec03)

consumers. The question posed by the Competition Tribunal that is cited above – '*If we are not for competition then who is?'* – is more than mere rhetoric: producer interests, even small business, are, almost without exception, better organised and therefore politically more powerful than consumers. While this does not mean that competition law should never be called on to support classes of producers – in the South African case, employees and small business owners – it does mean that the 'representative' of consumer interests, the competition authority, is best positioned achieve a reasoned balance between producers and consumers.

2.3 Competition policy

Entry barriers – and particularly barriers to entry that confront small firms – are more likely the product of poorly conceived and administered public regulations than a consequence of private conduct. Competition law enforcement agencies are generally restricted to using their advocacy powers and capacities to overcome these. There are statutes that give competition enforcement authorities formal powers in relation to the introduction and administration of business regulations. Powers of this sort may be the most effective instruments for achieving anti-poverty objectives, particularly to the extent that these are equated with small business entry.

Products and services subject to price regulation – characteristically in areas like telecommunications, transport and energy – are important direct and indirect components of consumption baskets. Low income consumers will be significantly more dependent on public provision of these basic goods and services than their high income counterparts who increasingly are able to turn to private providers. Competition enforcers are generally not involved in regulatory decision making (although there are exceptions). For a variety of reasons – their mandate to promote the sector; the power of the firms that they regulate; their susceptibility to political influence - sectoral regulators are more likely to be captured by producer interests than are their counterparts in the competition authorities. While competition authorities do not generally enjoy jurisdiction over licensing and pricing decisions or even formal mechanisms for influencing these decisions, they are able to use their advocacy powers to keep consumer interests alive in the regulators' decision making.

Competition authorities enjoy jurisdiction over certain of the conduct of firms in regulated sectors (for example, where they leverage their power in 'their' regulated market in order to exclude rivals in related, but unregulated, markets). Just prior to the passing of the Competition Act, the Competition Board, the predecessor to the Competition Commission, received a complaint to the effect that the South African Broadcasting Corporation, the dominant state-owned television broadcaster, required that all film production houses whose product was to be screened on the SABC channels would be required to use the production facilities of the SABC in the making of the filmed material thus excluding independent facilities providers from the market. This practice is not only anti-competitive but profoundly anti-small business and was halted.

The conduct of regulated firms should be rigorously monitored. Their power is so great, their products and the pricing of them so widely diffused throughout the economy, their impact on low income consumers who rely on public provision so profound, that their conduct and that of their regulators and relevant policy makers will significantly influence the distributional impact of competition policy.

Indeed this will be true of public expenditure in general. Pro-poor competition enforcement will be especially alert to the rigging of public sector tenders whether in large scale public infrastructure or in the procurement of pharmaceuticals and medical equipment. Those responsible for competition policy will, if they are concerned about the distributional impact of their policies, ensure that public sector tender procedures are designed and managed to generate competitive bids and the competition authorities will use their advocacy powers and channels to pressurise for effective bidding processes. Inflated costs in these

areas are easily passed through to the poorest consumers. However it is essential that the public sector support the competition authorities' enforcement action. In one instance where the competition authorities uncovered a cartel of the providers of important medical equipment to public health care hospitals and clinics and levied a large firm on the cartellists, the state (the customer) simply neglected to file a damages claim against the producers concerned.

The ability of competition authorities to influence competition policy, including its distributional outcomes, is significantly enhanced by the increasing use of market enquiries. The South African competition authorities (who do not yet have formal powers to conduct market enquiries although these are contained in an amendment to the Act that the President has yet to promulgate) have conducted a public enquiry into the retail banking market. Again prices in this sector are widely diffused across the economy and competitive conditions influence the willingness of these institutions to provide banking facilities and credit to low income consumers and small businesses.

The Minister of Health has recently publicly requested the competition authorities to undertake an enquiry into the market for private health care services. He is particularly concerned that the high cost of private health care service and the extent of medical inflation severely constrain the prospect of developing health care insurance products for low income employees who are thus obliged to rely on already over-extended public health care providers.

For a variety of reasons, competition enforcement agencies are going to be obliged to extend their remit – at least as far as advocacy is concerned – beyond private conduct enforcement into the broader area of competition policy. One of these reasons is that competition policy - including business regulation, sectoral regulation, state ownership and the conduct of state enterprises, trade policy – may impact more directly on poverty and inequality than enforcement action by competition law authorities. Moreover, the voice of a respected competition law enforcement authority is likely to be heard on any competition-related issue and, in many countries, will be the loudest and most articulate consumer voice.

2.4 Transparency

Although there are exceptional instances, its generally true that consumers are disorganised and disempowered, the more so in the case of low income consumers. To a significant extent, consumer interests are 'represented' in government by competition authorities. Competition authorities are not only required to impact positively on addressing core socio-economic problems – with poverty and inequality high on the list of those problems – they have to be seen to be doing so. Moreover, because consumer interests cut across social classes and interest groups, robust competition enforcement has the capacity to bring together the middle class and the poor, thus significantly enhancing the political power of pro-poor policies and strategies.

The South African Competition Commission has publicised its enforcement strategies and priorities which are expressly directed at supporting government's anti-poverty strategies and its large infrastructure spend programme.

Most enforcement action takes place in the exceptionally transparent setting of public tribunal hearing where, even in consent order hearings, NGOs representing and working among low-income marginalised communities are invited to present their views, and have done so to great effect, including securing the dismissal of the CEO of the country's largest food producer for his failure to prevent widespread cartel conduct on the part of his firm.

The merit of transparency is frequently underestimated. Not only does it serve to inform the public about the way in which competition law and policy works, it demonstrates that powerful interests are being

held accountable for their conduct and are punished for conduct that offends against the interests of consumers and, on occasion, small businesses. While it is difficult to quantify the impact of competition on poverty and inequality, holding powerful interest publicly accountable, holding them to be equal before the law, is an important step forward in the direction of a more equal society. Afflicting the comfortable undoubtedly does bring comfort to the afflicted and is an important signal of a society's concerns for the twin scourges of poverty and inequality.

CONCURRENCE ET RÉDUCTION DE LA PAUVRETÉ

Par M. David Lewis[*]

1. Le problème

S'il est généralement admis, désormais, que le marché est un mécanisme particulièrement efficace pour affecter les biens et les services à leurs usages les plus productifs, on sait aussi que les marchés sont loin d'être parfaits et qu'ils engendrent d'énormes inégalités à l'intérieur des pays et entre eux. En effet, même lorsque les marchés fonctionnent correctement, de vastes pans de la population et des régions entières restent à l'écart du système. Quand on a lu « Behind the Beautiful Forevers », le récit poignant de Katherine Boo sur la vie quotidienne des habitants d'un bidonville de Bombay, il est impossible de prétendre qu'une croissance économique impulsée par le marché, aussi vigoureuse soit-elle, permettrait d'en finir avec la pauvreté massive et écrasante qui sévit dans le monde[1]. Si ceux qui ont pour responsabilité de défendre les marchés s'inquiètent, comme il se doit, de la légitimité et de l'acceptation de leur action dans la population, il est impératif qu'ils s'inquiètent aussi de ces dysfonctionnements et qu'ils fassent tout ce qui est en leur pouvoir pour en limiter l'impact sur les plus défavorisés.

J'aborderai cette session en me plaçant du point de vue d'une autorité de la concurrence qui s'efforce d'appréhender le droit et la politique de la concurrence de façon à y trouver des moyens particuliers de contribuer à la réduction de la pauvreté et des inégalités. Je pense notamment aux mesures destinées à corriger les effets redistributifs potentiellement négatifs que peut avoir l'application du droit, par exemple en matière de contrôle des concentrations, à travers les décisions prises dans le but de promouvoir la concurrence. Mon postulat de départ est le suivant : si ceux qui définissent la politique de la concurrence et qui la font appliquer ont à leur disposition des instruments stratégiques permettant de réduire la pauvreté et les inégalités, ils doivent les utiliser.

Lorsque l'on examine la relation entre la concurrence, d'une part, et la pauvreté et les inégalités, de l'autre, il est important de revenir au point de départ. À l'origine du droit de la concurrence, il y a une opposition au pouvoir, au pouvoir de marché et aux prérogatives de puissance publique exercés par des groupes d'entreprises et des monopoles ou, comme on dirait aujourd'hui, par des entreprises en position dominante. Ce que l'on reprochait alors à ces entreprises et à ces groupes, c'était la possibilité qu'ils avaient d'exploiter les consommateurs dans la mesure où rien ne les empêchait de réduire leur production en vue d'augmenter leurs prix. Ce pouvoir de marché était tel qu'il faisait planer un doute sur la capacité des autorités publiques de trouver un équilibre durable et socialement acceptable entre les producteurs, d'une part, et, de l'autre, les consommateurs et les concurrents potentiels.

L'impact de ce pouvoir sur les concurrents était un élément capital. La concurrence était le mécanisme qui allait empêcher les entreprises en position dominante de faire monter les prix, et c'est la raison pour laquelle faciliter l'accès au marché était l'un des principaux objectifs de la politique et du droit de la concurrence. Face aux concurrents, réels ou potentiels, les entreprises s'abstiendraient de produire moins pour faire monter les prix. La concurrence exercerait ainsi en permanence une pression sur les prix et sur les profits. Il est important de rappeler que le droit et la politique de la concurrence ont été conçus pour promouvoir la compétititon économique (les mécanismes du marché) afin de répartir le pouvoir de

[1] Katherine Boo – *Behind the Beautiful Forevers: life, death and hope in a Mumbai undercity* (Random House, 2012)

marché et d'opérer un transfert de gains des producteurs vers les consommateurs. L'idée étant que pour limiter la pression sur les profits, les producteurs seraient obligés de devenir plus efficients en abaissant leurs coûts ou en améliorant leurs produits. On voit par là que limiter le pouvoir de marché des entreprises au profit des consommateurs en facilitant l'accès aux marchés est à la fois l'objectif premier et le principal instrument du droit de la concurrence, l'amélioration de l'efficience ne venant qu'en second lieu. Accès au marché, renforcement de la concurrence, redistribution des gains au profit des consommateurs et, pour finir, réaction des producteurs qui sont incités à améliorer leur offre pour restaurer leurs marges, c'est ainsi que la courroie de transmission fonctionne.

Les impératifs d'égalité (« égalité d'accès », « égalité des chances », « limitation du pouvoir de marché ») et de redistribution (des producteurs aux consommateurs) sont donc au cœur du droit de la concurrence. Autrement dit, il n'est pas besoin d'avoir une interprétation large des objectifs du droit et de la politique de la concurrence pour y inclure les aspects redistributifs – la répartition du pouvoir et des possibilités d'entreprendre, et la redistribution du revenu sont au centre du dispositif.

Cependant, tels qu'on vient de les décrire, le droit et la politique de la concurrence ont aussi partie liée avec l'efficience au niveau des entreprises. D'où la question épineuse que pose le fait d'assigner des objectifs multiples et parfois contradictoires à certains instruments de la politique économique. Si la politique budgétaire ou celle du marché du travail sont mieux à même de lutter contre les inégalités et la pauvreté, alors que la politique de la concurrence et ses divers instruments (droit de la concurrence, politique industrielle, politique commerciale) sont mieux équipés pour accroître l'efficience, ne vaut-il pas mieux choisir, dans chaque cas, l'outil le mieux adapté au but recherché ? Sinon, ne risque-t-on pas d'obtenir des résultats contraires aux objectifs visés par le pouvoir exécutif ou le régulateur ?

Dans ces conditions, on est bien obligé de relativiser la portée des objectifs d'égalité et de réduction de la pauvreté ainsi que des mécanismes que la concurrence met à leur service, en précisant que les mesures prises pour atteindre ces objectifs prioritaires ne doivent pas diminuer les incitations et les capacités qu'ont les entreprises de chercher en permanence à accroître leur efficacité, en particulier parce qu'en l'absence de gains d'efficience, les promesses que renferme la concurrence pour les consommateurs et les nouveaux entrants sur le marché ne pourraient pas se concrétiser. Dans le meilleur des cas, il n'y aura pas de conflit entre les objectifs d'efficience, les objectifs d'atténuation de la pauvreté et le droit de la concurrence. Mais s'il y en a, les autorités de la concurrence seront alors obligées de trancher et d'expliquer leur choix.

Sans insister davantage, je tiens à dire que l'obligation d'arbitrer entre des droits, des objectifs et des intérêts contradictoires n'est pas étrangère au droit de la concurrence. Au contraire, elle fait partie du travail quotidien que supposent l'application de ce droit ainsi que ses fonctions connexes de pédagogie et de formulation des politiques.

Au niveau le plus fondamental, le droit de la concurrence a trait à l'exercice des droits de propriété et son but est de faire en sorte que les détenteurs de ces droits, en l'occurrence les « producteurs », ne les exercent pas au détriment des droits d'autres acteurs du processus de consommation (les « consommateurs ») et de production (« les concurrents réels ou potentiels »). Cependant, ces droits socio-économiques – c'est-à-dire le droit d'accéder aux biens et services essentiels et le droit de participer à l'économie de marché – sont beaucoup moins clairement établis dans la législation et la jurisprudence que les droits de propriété.

Certaines pratiques des titulaires de droits de propriété (les producteurs) sont si manifestement préjudiciables aux intérêts d'autres agents – je pense en particulier à l'impact sur les consommateurs des accords de fixation des prix et de partage des marchés – qu'elles sont tout simplement prohibées. Autrement dit, on ne peut pas exciper de ses droits de propriété pour conclure des ententes qui auront pour effet de priver d'autres acteurs des fruits de l'économie de marché, notamment sous la forme de prix plus bas et de produits de meilleure qualité.

Toutefois, dans d'autres situations où s'exercent des droits de propriété, en particulier les opérations de concentration ou les conduites unilatérales (même destinées à conserver ou à étendre une position dominante), les conséquences ne sont pas aussi nettes que dans le cas des ententes. Au contraire, comme cela arrive très souvent avec les concentrations, elles peuvent être parfaitement anodines du point de vue des autres acteurs économiques, de telle sorte que toute intervention au nom de la *concurrence* constituerait une atteinte injustifiée aux droits de propriété du producteur.

Ou alors elles peuvent être le signe (pratiques unilatérales) ou le présage (opérations de concentration) d'un gain d'efficience, tout en représentant une menace potentielle pour la concurrence. Dans ces cas-là, les autorités compétentes doivent mettre en balance un certain nombre d'effets et d'intérêts contradictoires. Elles peuvent avoir à évaluer les avantages des baisses de coûts rendues possibles par une opération de fusion par rapport aux inconvénients d'une plus grande concentration, les deux variables, mais surtout la seconde, étant quasiment impossibles à quantifier ; elles peuvent avoir à se prononcer sur la probabilité des retombées attendues pour les consommateurs, c'est-à-dire sur les effets redistributifs que le comportement d'une entreprise en position dominante ou une opération de concentration est susceptible d'avoir ; elles seront soucieuses de ne pas interdire une pratique favorable à la concurrence, même si elle contribue à maintenir ou à renforcer une position dominante, de peur d'en décourager l'entreprise en cause ou d'autres entreprises dominantes ; mais elles s'inquiéteront aussi de l'impact que la consolidation de la position dominante, quand bien même elle résulterait d'une pratique favorable à la concurrence, aura sur le comportement futur de l'entreprise dominante. Bref, l'action d'une entreprise dominante peut très bien avoir des effets bénéfiques pour les consommateurs à court terme et donner lieu par la suite à une situation où cette même entreprise sera beaucoup moins encline à adopter un comportement proconcurrentiel.

Pour toutes ces raisons, l'obligation d'apprécier une atteinte à la concurrence par rapport aux gains d'efficience rendus possibles par une même opération ou, pire, la répétition de formules magiques du type « protéger la concurrence mais pas les concurrents » sont soit bien plus complexes que ne le suggèrent habituellement le libellé des lois et décisions de justice, soit trop superficiels pour guider la prise de décision. Il n'y a pas de concurrence sans concurrents ; par conséquent, lorsqu'on parle de « protéger la concurrence mais pas les concurrents », c'est peut-être une belle formule, mais qui n'est finalement d'aucune utilité pour ceux qui s'intéressent aux comportements d'exclusion, si fréquents, des entreprises dominantes, y compris celles qui ont acquis cette position dans le respect des règles de concurrence.

Ce que je veux dire, simplement, c'est qu'en faisant des arbitrages difficiles et en échaffaudant des compromis, on ne peut s'appuyer que sur le droit de la concurrence le plus rigoureusement orthodoxe, et que si on demande aux autorités de la concurrence d'examiner et de concilier des considérations d'efficience, d'une part, et, de l'autre, des considérations sociales liées à l'équité et à la réduction de la pauvreté, il ne faut pas trop attendre de ce que le droit de la concurrence, le législateur, le régulateur et l'arbitre sont capables de donner.

Mais revenons à notre point de départ. Le fait est que, quelle que soit la difficulté, le droit de la concurrence, tel qu'il est conçu et appliqué, ne peut guère être indifférent au problème des inégalités et de la pauvreté. On a beaucoup critiqué la loi sud-africaine sur la concurrence pour ses objectifs « extérieurs à la concurrence ». Non seulement ces objectifs – emploi, impact sur les petites entreprises et sur le pouvoir économique des Noirs, « compétitivité » des entreprises nationales – sont énoncés dans le préambule de la loi et dans ses finalités, mais ils figurent aussi parmi les critères d'évaluation retenus pour l'examen des opérations de concentration.

Cela étant, les dirigeants, les législateurs et les régulateurs ont constamment soutenu que si la loi sur la concurrence pouvait être à juste titre considérée comme une intervention majeure touchant les droits des propriétaires d'actifs productifs, elle était aussi une pièce maîtresse de la législation socio-économique. De ce fait, il était donc nécessaire, pour le succès de son adoption et de sa mise en œuvre, qu'elle apparaisse comme légitime aux yeux de ceux qui ont des droits de propriété, mais aussi qu'elle réponde aux

préoccupations d'autres classes et groupes d'intérêts confrontés aux grands problèmes économiques que sont le chômage, la pauvreté, les inégalités de patrimoine et de revenu, et l'inégalité des chances.

L'Afrique du Sud n'est pas la seule à devoir établir la légitimité de son droit de la concurrence et des mécanismes mis en place pour l'appliquer. Prenons les deux pays dans lesquels cette légitimité est sans doute la plus forte : les États-Unis et l'Allemagne. Je suis convaincu qu'aux États-Unis la législation antitrust tient sa légitimité de l'opposition viscérale de la société aux contraintes que de puissants monopoles sont susceptibles de faire peser sur l'accès au marché et l'égalité des chances – elle est perçue, ou du moins je suis sûr qu'elle l'était à une époque, comme une garantie légale de l'égalité des chances, dans un pays où la possibilité de participer en toute liberté à l'économie de marché est une valeur fondamentale. C'est ainsi que la légitimité de la législation antitrust américaine se renouvelle périodiquement au travers des attaques lancées par les autorités contre de grandes entreprises, de Standard Oil à Microsoft, soupçonnées de barrer l'accès du marché. En Allemagne, la légitimité de l'économie de marché et la force avec laquelle elle est défendue par le droit de la concurrence reposent sur un attachement jamais remis en cause à une « économie sociale de marché » qui peut précisément être vue comme un ensemble d'interventions étatiques visant à corriger, moyennant la mise en place de filets de sécurité, les situations qui excluent inévitablement certains groupes de population auxquels ne bénéficient pas les gains d'efficacité induits par le jeu du marché.

Je voudrais pointer un certain nombre d'éléments qui devraient permettre, dans le contexte de l'application du droit de la concurrence, de resserrer les liens entre les deux objectifs que sont, d'un côté, la protection de la concurrence, et de l'autre, la réduction de la pauvreté et la lutte contre les inégalités.

2. Quelques solutions

2.1 Le pouvoir d'appréciation de l'opportunité des poursuites

A la question de savoir comment une stricte application du droit de la concurrence visant à limiter les ententes et à réduire les barrières à l'entrée peut contribuer à réduire la pauvreté, la réponse la plus fréquente est qu'elle fait baisser les prix. En réalité, cet impact par le biais des prix dépend du marché sur lequel le droit de la concurrence est appliqué, et de là peuvent découler les choix stratégiques des autorités. Celles dont la mission met plus particulièrement l'accent sur la réduction de la pauvreté seront sans doute portées à consacrer les moyens dont elles disposent à la défense de la concurrence sur les marchés des biens de première nécessité et des principaux biens intermédiaires qui entrent dans leur fabrication.

Naturellement, bien qu'en apparence évidente, cette idée se complique du fait d'une série d'options stratégiques et d'éventuelles retombées inattendues. Ainsi, défendre la concurrence sur le marché du pain, par exemple, peut sembler un bon choix d'affectation des ressources lorsque l'on souhaite promouvoir à la fois la concurrence et la réduction de la pauvreté. Cependant, l'impact de cette décision peut être limité s'il s'avère que des ententes dans des secteurs de faible technologie et où il est facile de pénétrer ont en fait peu de chances, même sans l'intervention des autorités de la concurrence, d'être stables et de durer. En d'autres termes, s'il existe un cartel du pain mais que son instabilité l'empêche d'avoir un impact significatif sur les prix, le résultat obtenu en matière de réduction de la pauvreté sera limité. D'un autre côté, des ententes sur des marchés technologiquement parvenus à maturité et qui ont une production homogène – je pense par exemple au ciment et à d'autres matériaux de construction ou aux composants électroniques –, seront sans doute beaucoup plus durables et mériteront donc d'être plus étroitement surveillés par les autorités de la concurrence si l'objectif est de faire pression sur les prix des biens de grande consommation.

Ou, pour prendre un autre exemple, des marchés où la technologie évolue rapidement et où il n'y a pas d'entreprise dominante en mesure d'exclure les concurrents ne seront peut-être pas les meilleures cibles pour le régulateur, car l'introduction rapide de nouveaux produits pourra suffire à y garantir la vitalité de la

concurrence. En revanche, si, comme cela se produit souvent, ces marchés sont dominés par des entreprises capables d'empêcher ou de retarder l'arrivée de nouvelles technologies, alors oui, eux aussi mériteront au premier chef de retenir l'attention des autorités. Les marchés des TIC sont l'exemple le plus souvent cité de cette situation. S'ils en sont venus au fil du temps à incarner ce que la concurrence peut apporter de positif, ces marchés sont pourtant ceux où des entreprises bien implantées, souvent contrôlées par l'État, sont passées maîtres dans l'art de retarder l'entrée de nouvelles technologies. Certes, les produits dérivés des TIC ne sont pas à proprement parler des biens essentiels comparés aux denrées alimentaires de base, mais il est évident que la baisse des coûts des communications a de vastes retombées. En faisant baisser les prix et en facilitant une multitude de choses, depuis la recherche d'emploi jusqu'à l'accès des paysans au marché, une stricte application du droit de la concurrence sur les marchés des TIC a sans doute un impact plus profond sur les niveaux de pauvreté et les inégalités que des interventions visant à défendre la concurrence sur les marchés de biens de consommation plus courants. Raison pour laquelle des autorités de la concurrence sensibles au problème de la pauvreté et des inégalités seraient particulièrement attentives à ne pas laisser une entreprise en position dominante nuire au climat de la concurrence sur ces marchés.

Ce pouvoir d'appréciation des autorités détermine également la démarche adoptée vis-à-vis du contrôle des concentrations. L'examen de ces opérations suppose une analyse prédictive et induit donc un certain degré d'incertitude quant à leur impact effectif. Du point de vue de la réduction de la pauvreté et des inégalités, il y a de bonnes raisons d'être plus vigilants à l'égard des opérations de concentration sur certaines marchés que sur d'autres. C'est pourquoi, en Afrique du Sud, par exemple, le Tribunal de la concurrence a entériné une décision de la Commission de la concurrence interdisant une opération de fusion au motif que celle-ci semblait menacer le développement d'un produit encore au stade embryonnaire qui aurait fait baisser le coût de l'assurance maladie privé en cas de succès. Il est possible que cette fusion ait été autorisée si le marché en cause n'avait pas eu une dimension sociale aussi importante que celui de l'assurance maladie. Toutefois, le tribunal a jugé que la nature du marché et la situation très préoccupante du système public de santé en Afrique du Sud justifiaient une attitude particulièrement prudente vis-à-vis d'une fusion qui aurait pu avoir pour effet de limiter le développement d'un produit à même de promouvoir l'accès aux soins privés[2].

Et puis, bien entendu, le droit de la concurrence est confronté au fait que, même dans les économies développées, un grand nombre de personnes survivent grâce aux activités d'entreprises extrêmement peu productives, dans le commerce et d'autres services et dans les industries manufacturières de base, qui sont souvent protégées par une forme ou une autre de réglementation, par exemple des mesures restreignant l'accès du marché intérieur aux entreprises étrangères. Dans ces cas-là, les autorités de la concurrence ne s'opposeraient pas à des entreprises plus efficaces qui produiraient des biens et des services moins chers et de meilleure qualité – bien au contraire, même, elles les encourageraient. Elles dénonceraient les mesures protectionnistes et feraient certainement valoir que l'arrivée d'entreprises plus efficaces, seraient-elles étrangères pour beaucoup d'entre elles, contribuerait à réduire la pauvreté parmi les clients des producteurs inefficients. Mais l'effet des gains d'efficience sur les prix pourrait s'accompagner de pertes d'emploi significatives ou déstabiliser des communautés tout entières dont la cohésion dépend en grande partie de la présence de ces petites entreprises à faible productivité. Cette question trouve sa plus parfaite illustration dans le débat sans fin au sujet de l'implantation des grandes chaînes de distribution mondiales en Inde, mais elle se pose aussi avec non moins d'acuité dans certaines grandes économies développées, comme l'Allemagne, où les petits détaillants bénéficient, ou bénéficiaient, de mesures de protection, ou encore le Japon, où de telles mesures mettent à l'abri les producteurs de riz.

Pour une autorité de la concurrence soucieuse de lutter contre la pauvreté, l'existence d'un vaste secteur informel constitue un autre dilemme. Dans les pays les moins développés, les plus pauvres survivent grâce au revenu généralement maigre qu'ils tirent de petites activités non déclarées. En principe,

2 *Medicross Healthcare Group (Pty) Ltd/Prime Cure Holdings (Pty) Ltd (11/LM/Mar05)*

une stratégie industrielle visant à réduire la pauvreté dans le secteur informel devrait tenter d'aider ces personnes à rejoindre le secteur formel de l'économie. Mais comment ces nouveaux venus pourraient-ils faire face à la concurrence de ceux qui sont restés dans le secteur informel et qui, de ce fait, n'ont pas à satisfaire aux exigences réglementaires imposées aux activités nouvellement déclarées[3] ?

Que peut-on conclure de ce qui précède, dès lors, sinon qu'il n'y a pas de réponse évidente à la question de savoir comment mettre le droit et la politique de la concurrence au service de la réduction de la pauvreté ?

Établir des priorités en matière de contrôle de la concurrence peut s'avérer très utile, à condition toutefois de procéder avec précaution, en gardant à l'esprit que les marchés sur lesquels on va décider de concentrer l'attention ne sont pas forcément ceux des produits de consommation finale auxquels on pourrait penser de prime abord. En outre, il est tout à fait possible et légitime de vouloir mettre l'accent sur certains marchés plutôt que sur d'autres ayant une moindre importance socio-économique.

Nous verrons plus loin le sort que réservent le droit et la politique de la concurrence aux petites entreprises. Il va de soi que ce n'est pas en essayant de limiter l'accès au secteur informel que l'on résoudra le « problème » de l'économie parallèle auquel on vient de faire allusion. C'est plutôt en allégeant le poids que la réglementation et la fiscalité font peser sur les nouveaux entrants dans le secteur formel, afin qu'ils puissent affronter dans de meilleures conditions à la fois leurs anciens concurrents du secteur informel et les entreprises déjà bien implantées dans le secteur formel. Ces mesures faciliteraient aussi le passage d'un secteur à l'autre pour tous ceux qui n'ont pas encore franchi le pas.

2.2 La prise en compte de l'« intérêt général »

Le moyen le plus souvent employé pour garantir la prise en compte, dans le contexte de l'application du droit de la concurrence, des considérations de redistribution ou, comme on les appelle souvent, des aspects « extérieurs à la concurrence », consiste à faire intervenir le critère de l'« intérêt général » dans la décision. C'est le plus souvent dans le cadre du contrôle des opérations de concentration qu'une évaluation de l'intérêt général est requise. Dans ce cas, l'autorité de la concurrence est habituellement chargée de l'analyse d'impact sur la concurrence et l'autorité politique est ensuite habilitée à annuler la décision prise à l'issue de cette analyse si elle décide qu'elle porte atteinte à « l'intérêt général ». En règle générale, ce sont des considérations de redistribution – par exemple l'impact d'une concentration sur l'emploi ou sur l'activité économique dans telle ou telle région – qui motivent l'annulation d'une autorisation (préalablement octroyée sur la base de l'analyse concurrentielle), et des considérations de « compétitivité » – ou, dans le secteur financier, de « stabilité » – qui sont invoquées pour annuler une interdiction.

Comme on l'a déjà indiqué, la loi sud-africaine sur la concurrence fait figurer dans l'énoncé de ses objectifs généraux une série de considérations « extérieures à la concurrence ». Ainsi a-t-elle pour objet de favoriser et de préserver la concurrence afin « de promouvoir l'emploi et d'améliorer le bien-être social et économique des Sud-Africains », « de donner aux petites et moyennes entreprises des chances égales de participer à l'activité économique » et « d'élargir l'accès à la propriété, en particulier parmi les groupes historiquement défavorisés ». Ces considérations figurent à côté d'objectifs plus orthodoxes tels que « promouvoir l'efficacité, la capacité d'adaptation et le développement de l'économie » ou encore « assurer aux consommateurs des prix compétitifs et un large choix de produits ».

Outre ces dispositions générales, la procédure d'examen des concentrations prévoit qu'après avoir rendu sa décision sur la base de critères de concurrence, l'autorité de la concurrence doit évaluer l'impact

[3] Voir la contribution de Thulasoni Kaira sur la Zambie *in* Lewis, D. (dir. publ.) (2013), *Building New Competition Law Regimes: Selected Essays*, Cheltenham (Royaume-Uni) et Northampton, MA (États-Unis) : Edward Elgar Publishing.

de cette décision du point de vue de l'intérêt général, c'est-à-dire de l'effet que l'opération de concentration en cause aura sur un secteur ou une région particuliers, sur l'emploi, sur la capacité des petites et moyennes entreprises appartenant à des « personnes historiquement défavorisées » de devenir compétitives et sur celle des entreprises nationales d'affronter la concurrence sur les marchés internationaux. Cela étant, bien que l'autorité politique reçoive notification des projets de concentration et qu'elle soit habilitée à se prononcer à leur sujet au regard des critères définissant l'intérêt général, elle n'a pas de pouvoir de décision. Celui-ci revient en totalité à l'autorité de la concurrence. De façon générale, ce sont les effets négatifs sur l'emploi que l'on invoque pour faire interdire, ou autoriser seulement sous conditions, une opération de concentration qui a déjà obtenu le feu vert au regard des critères de concurrence ; à l'inverse, la présence d'actionnaires noirs est un argument (« émancipation économique des Noirs ») qui a parfois motivé l'autorisation d'opérations de concentration par ailleurs jugées problématiques sous l'angle de la concurrence.

Voyons comment le principe de l'intérêt général peut jouer pour limiter des pertes d'emplois. À plus de 30 %, le chômage est sans nul doute un problème social et politique majeur en Afrique du Sud, en même temps qu'une des causes profondes de la pauvreté. À première vue, il existe donc un très bon argument à priori, au moins en Afrique du Sud, en faveur de l'interdiction des opérations de concentration susceptibles de se traduire par d'importantes pertes d'emplois, alors qu'elles ne soulèvent aucun problème en termes de concurrence.

D'un autre côté, vouloir fusionner avec une autre entreprise est une décision économique parfaitement légitime dont la justification en termes d'efficience tient peut-être au moins en partie à la possibilité qu'elle offre de rationaliser les effectifs de l'entité fusionnée. Ce n'est donc pas seulement de l'inviolabilité des droits de propriété qu'il s'agit en l'occurrence, mais aussi de l'impératif de compétitivité auquel sont confrontées les entreprises, dont un des aspects non négligeables réside dans la productivité de leurs salariés. Demander aux autorités de la concurrence d'autoriser la fusion, mais d'interdire les suppressions d'emplois, c'est obliger l'entité fusionnée à conserver des salariés dont elle n'a pas besoin. À court terme, le compromis peut sembler acceptable ; à long terme, en revanche, cela peut conduire à une situation dans laquelle les entreprises non seulement font subir un préjudice à leurs clients du fait de leur inefficience, mais finissent elles-mêmes par faire faillite à cause des contraintes qui leur ont été imposées par les autorités de la concurrence, avec à la clé des pertes d'emplois bien plus importantes qu'il n'y en aurait eu si la fusion avait été autorisée sans la condition du maintien de l'emploi.

En cas d'objections formulées au nom de l'emploi contre des opérations de concentration ne présentant par ailleurs aucun problème du point de vue de la concurrence, les autorités sud-africaines de la concurrence encouragent généralement les parties à la concentration et les représentants des salariés (dans un contexte où le taux de syndicalisation de la main-d'œuvre est très élevé) à trouver une solution négociée en ayant recours à l'ensemble des textes qui régissent l'emploi et les relations du travail (dont le principe de base est l'autoréglementation par voie d'accord entre employeurs et représentants des salariés). Cette solution convenue d'un commun accord est ensuite imposée comme condition pour obtenir l'autorisation de la concentration. Il ne faudrait pas croire qu'il s'agit d'un simple coup de tampon, car le non-respect de cette condition non seulement constituerait une infraction à la législation du travail et aux obligations contractuelles, mais elle remettrait également en cause l'opération de concentration.

Cela dit, les entreprises et les salariés ne parviennent pas toujours à se mettre d'accord, ce qui oblige alors les autorités de la concurrence à statuer sur la question de l'emploi. Dans une affaire récente où les parties à la concentration prévoyaient la suppression de 1500 emplois après l'opération, le Tribunal de la concurrence s'est efforcé d'énoncer quelques règles simples pour indiquer la façon dont il entendait traiter le problème des pertes d'emplois[4]. Il a demandé aux parties à la concentration de faire la preuve que leur estimation des pertes d'emploi envisagées était le résultat d'un processus rationnel. Cette preuve n'a pas pu

4 *Metropolitan Holdings Ltd/Momentum Group Ltd (41/LM/July10)*

être apportée. En fait, il est apparu que les chiffres ne correspondaient pas aux besoins de la future entité mais avaient pour but d'inciter les actionnaires à approuver l'opération en leur faisant miroiter les économies qu'ils allaient ainsi réaliser.

Le tribunal a également demandé aux parties de démontrer que des motifs d'intérêt général d'égale importance que ceux qui justifiaient la préservation de l'emploi pouvaient être invoqués en vertu de la loi pour justifier la réduction prévue des effectifs. Là encore, les parties n'ont pas réussi à faire cette démonstration. Elles n'ont pas été capables de montrer que la suppression des postes était nécessaire à leur sauvegarde, à l'une ou à l'autre – les deux entités en cause étaient des entreprises prospères. En d'autres termes, il n'a pas été établi qu'il était nécessaire de supporter des pertes d'emplois à court terme afin d'en éviter de plus importantes à plus long terme, et il n'a pas non plus été démontré que les économies qui découleraient des réductions d'effectifs seraient répercutées sur les consommateurs. Bref, ces réductions ne pouvaient pas avoir d'effet positif démontrable ni pour l'emploi à long terme, ni pour les consommateurs. En conséquence, le tribunal a décidé d'autoriser la fusion en imposant un moratoire de deux ans sur toute suppression d'emploi liée à l'opération, sauf pour les postes de direction.

Cela étant, l'application de ces dispositions relatives à l'intérêt général est devenue beaucoup plus difficile avec la crise économique (qui a accentué la volonté de limiter les pertes d'emplois) et, en particulier, à cause d'une politique industrielle directement interventionniste qui fait peu de cas de l'indépendance et des attributions des autorités de la concurrence, et ne cherche pas non plus à concilier le point de vue de la concurrence avec celui de l'emploi. La controverse suscitée par la décision des autorités de la concurrence d'autoriser la reprise de Massmart, un grand distributeur sud-africain, par Walmart, le géant américain, offre une parfaite illustration de cette situation[5].

Il était admis de part et d'autre que l'opération ne posait pas de problème de concurrence (Walmart arrivait sur le marché). D'ailleurs, l'opinion générale était que l'arrivée de Walmart allait stimuler la concurrence dans la distribution alimentaire et le secteur des produits ménagers. Le fait que Massmart soit peu présent dans le commerce des produits frais et que Walmart y voie une formidable occasion à saisir pour la future entité confortait l'idée que la concentration aurait des retombées positives pour les consommateurs à petit budget, clientèle traditionnelle de Walmart. Mais le gouvernement décida que l'intérêt des consommateurs passerait après celui des producteurs, comme en témoignent les propos explicites du ministre du Commerce et de l'Industrie qui déclara à l'époque : « nous avons pris la décision [d'intervenir] en faveur du secteur de la production aux dépens d'autres secteurs tels que celui de la consommation[6] ».

Le « secteur de la production » que le gouvernement cherchait ainsi à protéger ne désignait pas les concurrents de la nouvelle entité, mais les fournisseurs de la grande distribution. L'argument était que la chaîne d'approvisionnement mondiale de Walmart induirait un accroissement des importations – sous-entendu « de produits chinois » – au détriment des producteurs sud-africains. C'était bien l'intérêt de ces producteurs de la chaîne d'approvisionnement – qui ne sont même pas toujours des petites entreprises – que le gouvernement invoquait pour justifier l'interdiction de l'opération ou l'imposition de conditions, au nom de l'« intérêt général ». La condition proposée était l'application d'un quota d'importations dans les achats de produits réalisés par l'entité issue de la concentration.

Face au tollé général et sous la pression de l'opinion publique, les autorités de la concurrence ont refusé d'imposer cette condition, faisant remarquer qu'elle s'apparentait à une mesure corrective commerciale extrêmement sélective, non seulement contraire aux règles de l'OMC, mais dont l'application à une entreprise sur un marché compétitif réduirait sensiblement les effets proconcurrentiels attendus de la concentration. Les autorités de la concurrence étaient surtout préoccupées par le fait que la mesure

5 *Walmart Stores Inc/Massmart Holdings Ltd*. (73/LM/Nov10).

6 *Business Report*, 10 août 2011.

protectionniste proposée ne tenait aucunement compte des intérêts des consommateurs. Selon l'arrêt du Tribunal :

> *En outre, les conditions sont contraires au principal objectif de la régulation de la concurrence – qui est de faire baisser les prix – (dans la mesure où) elles sont de nature à restreindre la capacité qu'aura l'entité issue de la concentration d'offrir aux consommateurs les prix les plus bas possibles. Les autorités de la concurrence n'imposent pas sans réfléchir des conditions qui sont contraires à leur principal objectif ; elles ne le font que si des raisons impérieuses le justifient. Si nous ne défendons pas la concurrence, alors qui ?*

Finalement, l'opération a été autorisée à la condition – proposée à l'origine par les parties et précisée ensuite par les autorités de la concurrence – que l'entité issue de la concentration réalise un investissement d'un certain montant en vue de renforcer les fournisseurs nationaux et les fournisseurs potentiels, parmi lesquels en particulier les petites et moyennes entreprises de la chaîne d'approvisionnement. Cette condition répond bien à l'objectif de protection de l'intérêt général énoncé dans la loi, mais elle aura un effet positif pour la concurrence.

Indépendamment de l'affaire Walmart, il est plus difficile de concilier le souci de préserver la concurrence et les intérêts des petites et moyennes entreprises que de trouver un compromis entre concurrence et emploi. Paradoxalement, cela tient en grande partie au fait que dans le cas des petites entreprises, contrairement à celui de l'emploi, interviennent des considérations de concurrence reconnues par la loi. Comme on l'a déjà indiqué, l'accès au marché est à la fois un objectif essentiel et un instrument du droit de la concurrence. Si la concentration des structures économiques et le comportement des entreprises dominantes sont loin d'être les seules contraintes qui entravent l'accès au marché, il n'y a guère de doute qu'ils constituent de véritables barrières à l'entrée. Les marchés sur lesquels il y a peu d'obstacles financiers et technologiques sont plus ouverts aux petites entreprises. S'ils sont concentrés, il y a donc lieu de se demander si le comportement des grandes entreprises – qu'il s'agisse de concurrents, de fournisseurs ou même de clients – est à l'origine des difficultés rencontrées par les petites pour y prendre pied. Dénoncer de tels comportements servira l'intérêt général en défendant les petites entreprises, et cela permettra aussi d'abaisser les barrières à l'entrée, le grand objectif visé, au bénéfice de la concurrence.

L'objection prévisible – et généralement convaincante – consiste à demander quelle raison pourraient avoir des fournisseurs ou des clients d'adopter un comportement propre à restreindre l'entrée et la concurrence sur le marché. Il est pourtant avéré que certains fournisseurs accordent des conditions préférentielles, en termes de services et de prix, à leurs gros clients. Cette discrimination peut s'expliquer et s'explique d'ailleurs généralement par le fait qu'un gros client coûte moins cher à approvisionner qu'un petit. Toutefois, en Afrique du Sud, nous avons rencontré un cas dans lequel aucune raison commerciale de ce type ne justifiait apparemment les pratiques de discrimination par les prix d'un fournisseur ayant le monopole d'un intrant essentiel. En l'occurrence, si les gros clients bénéficiaient de conditions de faveur de la part de ce fournisseur, c'était simplement en raison de leur ancienneté en tant que clients. Eu égard à cette situation et à la nécessaire défense des petites entreprises inscrite dans la loi, le Tribunal de la concurrence a dénoncé comme étant illégale la discrimination par les prix dont bénéficiaient les grandes entreprises sur le marché.

À sa décharge, le défendeur a fait valoir – et c'est cet argument que la cour d'appel a ensuite invoqué pour annuler, à tort de mon point de vue, la décision du Tribunal de la concurrence – que les petites entreprises, comme celle du plaignant, n'étaient pas de véritables concurrents et que, par conséquent, leur exclusion du marché ne pouvait pas porter atteinte à la concurrence. Le tribunal n'a pas été de cet avis, estimant que dans cette affaire le critère des effets anticoncurrentiels était moins important que d'habitude face aux motifs d'intérêt général et à l'intérêt que présentait, du point de vue de la concurrence, l'entrée des petites entreprises sur le marché. En somme, le tribunal a interprété l'interdiction expresse de la

discrimination par les prix qui figure dans la loi en composant avec les critères de la concurrence et de l'intérêt général[7].

À l'évidence, pourtant, le moyen le plus direct de faciliter l'accès au marché des petites entreprises passe par l'adoption de dispositions en leur faveur dans le domaine des marchés publics. De telles mesures présentent certes un risque pour la concurrence, mais elles ont au moins le mérite d'être claires quant aux arbitrages sur lesquels elles reposent et au coût à court terme (qui doit être expressément calculé) du soutien accordé aux petites entreprises ; de plus, en aidant ce secteur à se développer, elles contribuent sans doute à renforcer la concurrence à long terme. Il semble que la condition imposée à Walmart – fournir un soutien aux petites entreprises du côté de l'offre mais laisser le soutien du côté de la demande dépendre finalement de leur aptitude à fournir des produits ou des services compétitifs – soit le meilleur moyen d'aider les petites entreprises sans nuire à la concurrence.

Comme on l'a indiqué, l'existence d'un vaste secteur informel soulève des problèmes particuliers en ce qui concerne la relation entre le droit de la concurrence et les petites entreprises. L'un des premiers objectifs de la politique industrielle et de la politique économique est d'aider ces entreprises à passer dans le secteur formel. Cependant, tant qu'il restera des entreprises qui échappent à toute une série de règles (parmi lesquelles l'obligation de payer des impôts) parce qu'elles ne déclarent pas leurs activités, bénéficiant ainsi d'un avantage comparatif par rapport à celles qui viennent d'être régularisées, cet objectif sera difficile à atteindre. Dans cette situation, la démarche proconcurrentielle devrait consister non pas à empêcher l'installation d'entrepreneurs informels, mais à faciliter l'accès au secteur formel en allégeant le poids des obligations réglementaires imposées par la régularisation.

Le premier enseignement à tirer de l'expérience sud-africaine en ce qui concerne la prise en compte des objectifs d'intérêt général (création d'emploi et maintien de l'emploi, aide aux petites entreprises) dans les décisions des autorités de la concurrence est qu'il est tout à fait possible de concilier le souci de préserver la concurrence avec d'autres considérations. De plus, il est clair que l'autorité de la concurrence est mieux placée pour effectuer les arbitrages nécessaires et concilier les différents objectifs que ne le seraient deux entités distinctes, chargées de statuer l'une sur les questions de concurrence et l'autre sur les questions d'intérêt général, selon un partage des rôles plus habituel. Le système sud-africain se prête bien à des compromis raisonnables tels que celui qui a été trouvé dans le cas de Walmart. Il est certain que si le ministre avait été habilité à se prononcer sur la question de l'intérêt général, il aurait simplement ignoré les considérations de concurrence, au détriment des consommateurs à faible revenu. La question posée par le Tribunal de la concurrence que j'ai citée précédemment – « *Si nous ne défendons pas la concurrence, alors qui ? »* – n'est pas que pure rhétorique : les producteurs, même petits, sont presque sans exception mieux organisés et par conséquent politiquement plus puissants que les consommateurs. Cela ne veut pas dire que le droit de la concurrence ne devrait jamais être invoqué pour défendre les producteurs – c'est-à-dire, dans le cas de l'Afrique du Sud, les salariés et les petits entrepreneurs –, mais que le « représentant » des consommateurs, l'autorité de la concurrence, est le mieux placé pour trouver le juste équilibre entre producteurs et consommateurs.

2.3 La politique de la concurrence

Les barrières à l'entrée – en particulier celles auxquelles se heurtent les petites entreprises – sont plus souvent le résultat de réglementations publiques mal conçues et mal appliquées que de comportements privés. En règle générale, les autorités de la concurrence ne peuvent compter que sur leur fonction pédagogique pour y remédier. Certaines d'entre elles sont pourtant dotées par la loi du pouvoir d'édicter et d'administrer des règlements applicables aux entreprises. Ces attributions sont sans doute les instruments les plus efficaces pour atteindre des objectifs de réduction de la pauvreté, particulièrement lorsque ceux-ci sont liés à la possibilité pour les petites entreprises d'entrer sur le marché.

7 *Nationwide Poles and Sasol (Oil) Pty Ltd* (72/CR/Dec03).

Les produits et les services dont les prix sont réglementés – typiquement dans des domaines comme les télécommunications, les transports et l'énergie – sont des composantes importantes, directes et indirectes, des paniers de consommation. Par conséquent, il est beaucoup plus important pour les consommateurs à faible revenu de pouvoir compter sur le secteur public pour leur fournir ces biens et services essentiels que pour ceux qui ont un revenu plus élevé et qui, de plus en plus, se tournent vers des opérateurs privés. Les autorités de la concurrence ne participent généralement pas à la prise de décision en matière de réglementation (il y a des exceptions). Pour diverses raisons – l'obligation de défendre le secteur dont elles ont la charge ; le pouvoir des entreprises placées sous leur contôle ; la perméabilité aux influences politiques –, les autorités réglementaires sectorielles sont souvent plus sensibles aux intérêts des producteurs que les autorités de la concurrence. Bien que celles-ci ne disposent généralement d'aucun pouvoir décisionnel en matière d'agrément et de tarification, ni même de mécanismes formels pour influer sur ces décisions, elles peuvent jouer un rôle pédagogique et sensibiliser les régulateurs de façon à ce qu'ils tiennent compte de l'intérêt des consommateurs dans leurs décisions.

Les autorités de la concurrence sont habilitées à examiner certains comportements des entreprises dans les secteurs réglementés (par exemple, lorsqu'elles se servent de leur position de force sur « leur » marché réglementé pour exclure des concurrents sur des marchés connexes non réglementés). Peu de temps avant l'adoption de la loi sur la concurrence, le Conseil de la concurrence, remplacé depuis par la Commission de la concurrence, avait reçu une plainte contre la South African Broadcasting Corporation, le groupe de télévision publique dominant, dénonçant l'obligation faite à toutes les sociétés de production dont les films étaient destinés aux chaînes de la SABC d'utiliser les studios du groupe pour leur fabrication, ce qui revenait à exclure les installations de production indépendantes du marché. Cette pratique a été jugée anticoncurrentielle et profondément contraire aux intérêts des petites entreprises, et il a été décidé de la faire cesser.

Les entreprises réglementées devraient être rigoureusement encadrées. Leur pouvoir est tellement grand, la diffusion de leurs produits et de leurs prix tellement large dans l'ensemble de l'économie et leur impact si profond sur les consommateurs à faible revenu que leur comportement ainsi que celui des régulateurs et des responsables politiques dont elles relèvent conditionnent largement l'impact redistributif de la politique de la concurrence.

En fait, cette remarque vaut pour toutes les sphères de la dépense publique en général. Des autorités de la concurrence soucieuses du sort des pauvres seront particulièrement attentive à la régularité des procédures d'appel d'offres, par exemple, que ce soit pour la construction de grandes infrastructures publiques ou l'achat de médicaments ou d'équipements médicaux. Si les responsables se soucient de l'effet redistributif des politiques de la concurrence, ils veilleront à ce que ces procédures soient bien conçues et bien administrées de façon à obtenir des offres véritablement concurrentielles, et les autorités de la concurrence feront de la pédagogie et useront de leur influence pour garantir l'efficcité des marchés publics. Le gonflement des coûts dans ce domaine est souvent répercuté sur les consommateurs les plus pauvres. Cela dit, il est essentiel que le secteur public soutienne l'action des autorités de la concurrence. Ainsi, dans un cas où les autorités de la concurrence avaient découvert l'existence d'une entente entre les fournisseurs d'un équipement médical important pour les hôpitaux et les dispensaires publics et leur avaient infligé une lourde amende, l'État (le client) ne s'est même pas donné la peine de réclamer des dommages-intérêts aux producteurs concernés.

La capacité qu'ont les autorités de la concurrence d'influer sur la politique établie dans leur domaine, y compris dans ses aspects redistributifs, est largement confortée par le recours croissant aux enquêtes de marché. Les autorités sud-africaines de la concurrence (qui ne sont pas encore formellement habilitées à conduire ce type d'enquête, bien que cela soit prévu dans un amendement à la loi qui doit être promulgué par le Président) ont procédé à une enquête publique sur le marché bancaire des particuliers. Les prix pratiqués dans ce secteur se diffusent très largement dans l'économie et les conditions de concurrence sont

un facteur déterminant pour l'offre de services bancaires et de crédit aux consommateurs peu fortunés et aux petites entreprises.

Le ministre de la santé a récemment demandé publiquement aux autorités de la concurrence de conduire une enquête sur le marché des services de soins privés. Sa crainte est que le coût élevé de ces services et l'inflation des frais médicaux ne compromettent sérieusement la mise au point de produits d'assurance maladie destinés aux salariés modestes et que ceux-ci soient ainsi obligés de recourir aux services déjà surchargés du système public de santé.

Pour diverses raisons, les autorités de la concurrence vont être obligées d'étendre leur champ de compétence – au moins en ce qui concerne leur fonction pédagogique – au-delà du contrôle des comportements privés pour se saisir plus largement de la politique de la concurrence. L'une de ces raisons est que la politique de la concurrence – réglementation des entreprises, réglementation sectorielle, actionnariat public et gestion des entreprises publiques, politique commerciale – peut avoir un impact plus direct sur la pauvreté et les inégalités que la seule application du droit de la concurrence. De plus, une autorité de la concurrence respectée sera sans doute écoutée sur n'importe quelle question relevant de sa compétence ; dans de nombreux pays, il est probable qu'elle sera aussi le meilleur porte-parole des consommateurs.

2.4 La transparence

Malgré certaines exceptions, il est un fait que les consommateurs sont généralement mal organisés et privés de moyens d'agir, en particulier lorsqu'ils sont pauvres. Dans le domaine de l'action publique, leurs intérêts sont donc dans une large mesure « représentés » par les autorités de la concurrence. Celles-ci sont tenues d'apporter leur contribution à la résolution des grands problèmes socio-économiques du pays – au premier rang desquels la pauvreté et les inégalités –, mais il faut aussi que leur action soit visible. En outre, comme l'intérêt des consommateurs transcende les classes sociales et autres lignes de partage, une application rigoureuse du droit de la concurrence est à même de réunir la classe moyenne et les pauvres, renforçant ainsi le poids politique des réformes et des stratégies en faveur des groupes démunis.

La Commission sud-africaine de la concurrence a rendues publiques ses stratégies et ses priorités, lesquelles visent expressément à soutenir la politique de lutte contre la pauvreté menée par le gouvernement et le grand programme d'investissement public dans les infrastructures qui l'accompagne.

La plupart des interventions des autorités de la concurrence ont lieu au tribunal, dans le cadre d'audiences publiques parfaitement transparentes au cours desquelles, même en cas de jugement d'expédient, les ONG qui représentent les populations pauvres et marginalisées et qui travaillent auprès d'elles sont invitées à donner leur avis, ce qu'elles ont d'ailleurs fait avec une grande efficacité puisqu'elles ont notamment obtenu le licenciement du PDG du premier producteur alimentaire du pays, accusé d'avoir laissé se développer des ententes à grande échelle à l'initiative de son entreprise.

La transparence a des vertus qui sont souvent sous-estimées. Non seulement elle permet d'informer le public sur la façon dont fonctionnent la politique et le droit de la concurrence, mais elle montre aussi que des entreprises très puissantes peuvent être amenées à répondre de leur comportement et être sanctionnées si ce comportement contrevient aux intérêts des consommateurs et, parfois, des petites entreprises. S'il est difficile de quantifier les effets de la concurrence sur la pauvreté et les inégalités, le fait de pouvoir mettre publiquement en jeu la responsabilité de ces entreprises et d'affirmer à travers elles le principe de l'égalité de tous devant la justice marque un grand pas en avant dans la construction d'une société plus équitable. Sévir contre ceux qui vivent dans l'opulence est certainement une source de consolation pour les plus démunis ; c'est aussi un signal important par lequel la société exprime sa volonté de lutter contre les deux fléaux que sont la pauvreté et les inégalités.

COMPETITION AND POVERTY

By Mr. L. Alan Winters[*]

We are all concerned about poverty in one way or another and so a natural criterion for any policy which we consider is whether or not it helps to reduce poverty. It is not surprising that scholars are starting to ask this question of competition policy – indeed, possibly it is overdue – just as a bit over a decade ago they asked it of trade liberalisation. Prior to that trade economists had a splendid 'grand theory' to show that trade liberalisation should help poverty reduction in developing countries – the Stolper-Samuelson Theorem – but surprisingly little practical theorising about specific cases or little empirical evidence. Moreover, the debate about trade liberalisation was divisive and highly charged, with the opponents of liberalisation claiming that it worsened poverty and from this premise threatening the whole liberalising 'enterprise'– remember, for example, the Seattle riots in 1999.

I devoted a good chunk of my life analysing the links between trade liberalisation and poverty in developing countries – see, for example, McCulloch, Winters and Cirera (2001), Winters (2002) or Winters, McCulloch and McKay (2004) – supported especially by the World Bank and by DFID. This led to a framework for thinking through the issues and a somewhat clearer understanding of the regularities and the ambiguities of the links. I also like to think that it led to a much more constructive engagement between protagonists in the debates about trade policy. This brief paper attempts to bring those insights to the question of competition policy and poverty. The parallels turn out to be quite close: first, trade liberalisation is about releasing competition across borders from the shackles of policy, and second, either because it is true or because I lack the imagination to see it differently, the analytical apparatus that is required seems to be very similar. At a macro level one wants to think whether policy increases the size of the pie – by fostering efficiency or growth – and at a micro-level one needs to think about how policy affects the incomes of (near-)poor households and the prices at which they buy and sell goods, services and their labour. Before exploring these parallels, however, we need to think a little about what we mean by poverty and how to measure it.

1. Defining poverty

If we are to use poverty as a criterion for policy – any policy – we need to have a clear definition of poverty and, equally important, the means of measuring it[1]. There is no point in declaring that policy addresses or exacerbates – or should address or should not exacerbate - poverty if we cannot devise a reasonably well accepted measure of whether it has done so. Otherwise it just becomes a rhetorical device that ultimately hinders rather than helps effective policy-making. Amartya Sen (1976) argues that poverty measurement entails two steps:

- Identifying the poor within the total population, and
- Creating a numerical measure of poverty (sometimes referred to as aggregation).

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[1] I do not want to labour the point here, but poverty is not the same as inequality and may even move in the opposite direction from it. Reducing inequality may be a perfectly legitimate objective for policy, but it is different from reducing poverty.

The traditional economic approach to measuring poverty is to calculate either the income or consumption expenditure of a household over a given period of time and then to identify as poor the households or individuals who fall below some minimally acceptable level (the poverty line). Thus, poverty is defined simply as a lack of income or consumption, or perhaps opportunity for consumption.

The advantage of simple income- or consumption-based poverty measures is that they allow poverty comparisons to be made across time and, if desired, across countries, and that they admit to relatively straight-forward measurement. However, except in circumstances in which everything of interest can be purchased on fair markets (where prices reflect opportunity costs) it is pretty clear that poverty is a more subtle issue than merely having an income or consumption expenditure that lies below a poverty line: in fact, that it is inherently *multidimensional*. The many dimensions of poverty have been suggested, include:

- Income: having low income or consumption.
- Assets: having little or poor quality land, housing, livestock, or other productive assets.
- Environment: having to live in a polluted or hazardous environment or having to work on poor quality land.
- Education: having little or no education.
- Ill-health or disability: having illnesses of various kinds.
- Powerlessness: being excluded from decisions that have an impact on one's life.
- Discrimination: being subject to arbitrary discrimination on the basis of gender, ethnicity or any other reason.
- Vulnerability: being susceptible to a wide range of 'shocks', such as harvest failure, illness, price changes, violence with serious negative outcomes, etc., which you cannot influence or manage effectively.

Each of these dimensions can be considered a form of poverty in its own right, but the word poverty is generally used to refer to an overarching concept that involves the combination of the many different dimensions of poverty. Thus, a household that has a low income, but whose members are healthy, well educated and live in a pleasant area with good access to services might not generally be considered poor. Alternatively, a household whose current income rises above the poverty line but which has few assets, lives in an environmentally degraded area and is subject to constant discrimination might in some sense be regarded as poor.

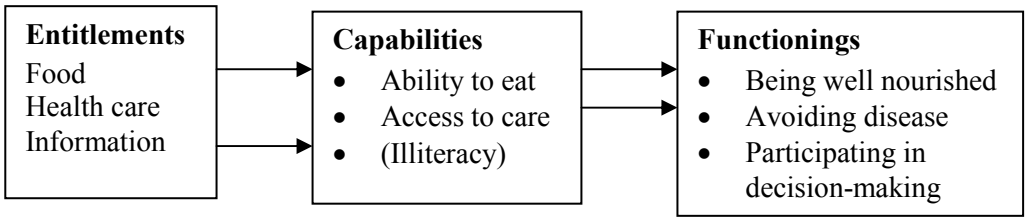
One particularly important aspect of poverty identified in studies that ask poor people how they experience and define poverty is the importance of security (see Narayan, 2000, as the definitive study). Poor households often suffer severe insecurity because of risks from a wide variety of sources, such as illness, injury, disability, old age, death, crime, and domestic violence. Other shocks are 'covariate', experienced by many households simultaneously either regionally or nationally: for example, natural disasters, epidemics, civil war and social upheaval, and macroeconomic, terms-of-trade and other price shocks. When asked, the poor place a high (negative) value on their inability to protect themselves against such shocks: partly, perhaps, because of the human agony of, say, watching a child die unnecessarily and partly because if an already poor household receives even a relatively small further negative shock, it can have potentially devastating consequences by pushing it below subsistence levels. Policy analysis is often conducted just in terms of expected values (mean effects) but Narayan's finding, which was quite a shock to the economics profession, suggests that a wider view may be quite important.

One of the best known approaches to answering the question of what defines poverty in this broader sense is that of Amartya Sen (e.g. Sen, 1999), who describes poverty in terms of capabilities and functionings, which in turn depend on entitlements:

- Functionings: represent the various things that people can do or be in their lives. Basic functionings might include 'being well nourished' or 'escaping avoidable disease', while more complex functionings might include 'being able to take part in the life of the community'.

- Capabilities: represent the ability to convert the 'entitlements' people have - that is, the commodities over which they have control within the existing legal framework - into functionings that they value. Thus, for example, food lies within these people's entitlement set and they have the capability of being able to eat; therefore, they can achieve the functioning of being well nourished.

To illustrate:



Sen's framework helps to explain how individuals may fail to achieve important functionings. For example, disabled people, who may have substantial command over commodities because of their income, may still be unable to translate this into a capability that they might value, such as being able to walk. Alternatively, as the figure shows, information in the form of a newspaper might be available to people, but they may not be able to translate this into a valuable functioning if they cannot read; this is an example of 'capability failure', indicated by the lack of an arrow between the capability and the functioning in the last row in the figure above.

There might also be 'entitlement failure', for example, if people are capable in principle of accessing health but health care is not available. Sen describes poverty as a combination of 'entitlement failure' (the loss of command over resources) and 'capability failure' (the loss of the ability to convert resources into useful functionings).

The challenge in implementing this important conceptual advance in thinking about poverty is deciding which functionings are of most importance and to characterise precisely how people's entitlements are translated into functionings. In practice, economists seek to broaden out from simple income and consumption measures through the inclusion of wider indicators of well-being, but to date there has been no widely accepted set of additional measures.

2. Measures of poverty

The most common approach to measuring poverty is to calculate a measure of household or individual income or consumption expenditure – usually based on data from household surveys. If the survey is representative of the national population, then it is possible to use such sample data to calculate the number of people whose income or consumption falls below a national poverty line. Even with this approach there are problems in collecting accurate income and consumption expenditure information – for example, over the value of services provided by the government such as education or health services or the benefits derived from common land.

More directly, there is the issue of where to draw the poverty line. Absolute poverty lines are usually based on the cost of a basket of basic goods and services, sometimes only of the food necessary to reach a given calorific intake per day. The cost of this 'food only' basket is sometimes used as an extreme poverty line. When the cost of other basic non-food goods, such as housing and clothing, is added, this gives an upper poverty line. The methodology for the construction of poverty lines can become complex: see Ravallion and Bidani (1994) for an example of good practice. Developing countries typically use such absolute poverty lines and for international comparisons and world aggregation we have alighted on the so-called dollar a day criterion, which was first introduced by the World Bank for the World Development Report of 1990 – see Ravallion, Chen and Sangraula (2009) for a discussion of the history and of the updating of the measure to a more recent price base. It was derived as being broadly representative of the national poverty lines used in a sample of developing countries.

Relative poverty lines, on the other hand, are defined by reference to the general standard of living in a given country. The line may be drawn as a fraction of average income or the average wage. For example, Europe countries typically use a threshold of 50% ±10% the median income often used as a relative poverty line. Because relative poverty lines are relative to the general standard of living rather than being based on a minimum set of basic goods, they are higher in richer countries than in poor countries. They are essentially measures of income distribution. They are perfectly legitimate objectives of policy but their ethical underpinnings seem to me to be different from those underpinning concern about absolute poverty. Moreover, at a practical level, in developing counties, a relative poverty line places no value on the principal objective of policy which is usually to raise average incomes.

Having defined a poverty line (the identification, in Sen's terminology), the next job is to define an aggregation. The easiest is merely to count the number of people or proportion of the population below the line – the so-called headcount measure. It is simple and informative but is clearly flawed in placing no value on the extent to which people fall below the line[2]. The latter can be tackled via the poverty gap – the average extent to which the poor fall below the poverty line (as a percentage of the poverty line). But even this treats a dollar for the poorest person as equivalent to a dollar for the person who is nearly at the poverty line, a problem that may be addressed by the poverty gap squared measure which squares the deviations from the poverty line. There are several other such aggregates in the literature, but we make no more reference to them other than to observe that different poverty measures will clearly mandate different policy responses to the same economic problem because they imply different ethical values. Hence in practical terms, the decision about how to aggregate to a single measure of poverty is a first order issue if one wishes policy to be determined by poverty considerations.

If we are persuaded by the multi-dimensionality of poverty we would need practical measures of this before we could apply it to policy. That is, we would need a multi-dimensional indicator of poverty. The UNDP's Human Development Index was one such indicator, which combines (with fixed weights defined by bureaucrats) three aspects of poverty: life expectancy, adult literacy and the logarithm of purchasing power adjusted per capita GDP. In a series of papers Martin Ravallion (e.g. Ravallion 2010) has shown the arbitrariness of the ways in which these elements are weighted together with consequences often quite unintended by the authors. Moreover, the choice of weight by officialdom brings officialdom's ethical weights to the centre, whereas one might have thought that poverty was a matter for individual households.

The UN's Human Poverty Index is similar to the HDI, weighting together the probability at birth of not surviving to age 40 (times 100), the adult illiteracy rate and the unweighted average of the population without sustainable access to an improved water source and children under weight for age. It has since been replaced by the Multidimensional Poverty Index (MDI), developed in 2010 by the Oxford Poverty & Human Development Initiative (OPHI) and UNDP. This disaggregates the basic indicators into sub-

[2] As well as, in common with all poverty measures, ignoring the welfare of people above the poverty line.

indicators – ten in all; it defines a poverty line in each of these and counts people as poor if they are below the threshold in one-third of them.3 In addition it calculates the depth of poverty (distance from the poverty line) and finally calculates the MDI as the product of the percentage of the population who are poor and the depth of their poverty. This approach still implies relative weights between dimensions but in a less obvious way than the simple weighted averages that preceded the MDI. Alkire and Foster (2011a, b) discuss some of the technicalities behind the MDI.

One disadvantage of the multidimensional measures is that they impose considerably greater demands on the availability of timely data. Although economists at OPHI have endeavoured to choose measures that are more readily available and to help statistical offices collect such data, this is clearly a major issue in any attempt to guide policy by poverty impacts.

3. Is aggregation necessary?

The measures discussed so far refer to the whole economy and thus effectively to economy-wide policies that might plausibly have a detectable impact at the level. This is arguably the correct level at which to consider competition policy per se – and indeed things like trade liberalisation and education policy. Specific acts of competition policy, however, operate at a lower level, as, say, do changes to individual tariffs or non-tariff barriers, and so one would want to be able to ask the question of past or prospective competition decisions 'how have/will they affect poverty'? For this one still needs the definition of poverty (the indicator) but the analysis is essentially that of partial equilibrium micro-economics. That is, ignoring any feedbacks from the economy at large, what is the direct effect of the decision on the poor and near-poor, or on the numbers of people who are considered to be poor.

4. Trade liberalisation and poverty on the back of a postage stamp

As noted in the introduction, there are both macro and micro dimensions to the effect of trade liberalisation on poverty. While it is not settled beyond all doubt, I read the macro evidence as strongly supporting the view that openness boosts levels of income (output) and that trade liberalisation boosts growth at least temporarily – Winters (2004), Winters and Masters (2010). The main mechanisms are three:

- that openness induces a more efficient allocation of factors of production across sectors;
- that competition increases the incentives to manage a firm well – it obliges some firms to improve productivity to survive and offers greater rewards to success by opening up export markets; and
- that access to better intermediates, capital goods and ideas from world markets boosts productivity.

There is room to worry that these forces are weaker (or possibly even absent) in very poor countries (e.g. Chang, Kaltani and Loayza, 2009), quite possibly because such countries do not have the skills to access world markets effectively. However, I would view this as still an open question.

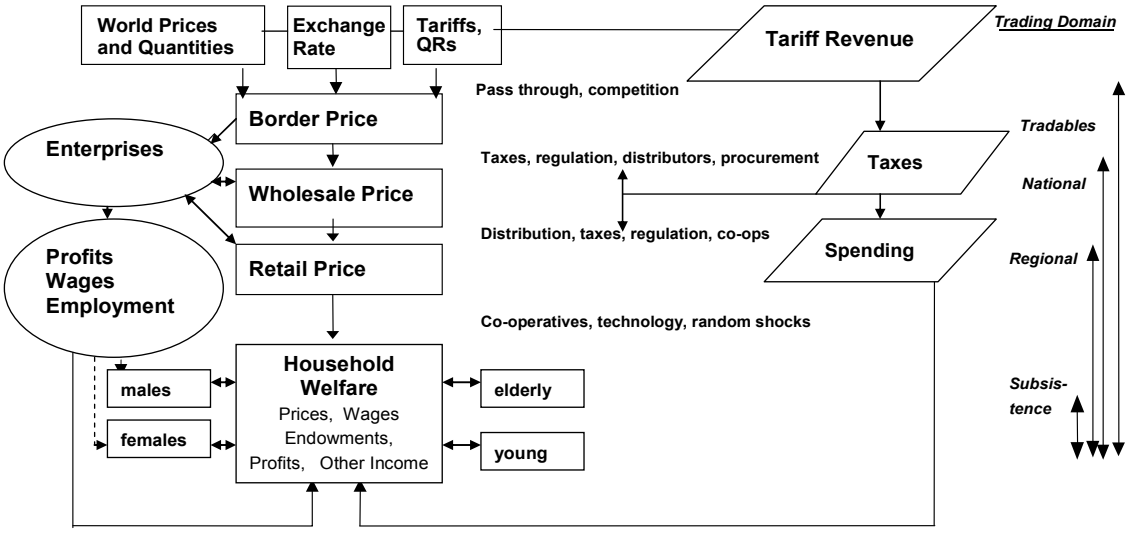
The link from the growth of average incomes (output) to poverty reduction is not absolutely guaranteed; one can certainly imagine cases to the contrary and some have been documented. However, the evidence from Kraay (2006), among others, is persuasive about the strong general tendency for growth to aid poverty reduction. Depending on the poverty measure, Kraay finds that 60%-80% of the cross-episode

3 It is actually slightly more complicated than this because the indicators do not have equal weight in these calculations.

variation in poverty reduction over roughly 1980-2000 is due to differences in the growth of average income[4]. Thus in any particular instance, the burden of proof, I believe, lies with people who argue that growth will not reduce poverty.

At the micro level the following conceptual framework has proved useful in thinking through the static effects of liberalisation – figure 1 below. It identifies three channels of causation through which changes to border prices (world prices, exchange rates or trade policy) are transmitted to poor people: first, on the left, effects felt via enterprises, whose responses to price changes affect production, employment, profits, wages, etc.; second, down the middle, via the prices for goods and services that the poor pay and receive (essentially the way in which the markets for such goods operate, and third, on the right, via the government revenue and spending[5].

Figure 1. Trade Policy and Poverty – Causal Connections



In each of these channels the framework helps to identify certain crucial questions that one must ask in order to identify the likely effect of policy changes on the poor, and hence on poverty (Winters, McCulloch and McKay, 2004). For trade liberalisation those questions are:

- Prices and Markets
  - Do border price shocks get transmitted to poor households?
  - Are markets created or destroyed?
  - How well do households respond?
  - Do the spill-overs benefit the poor?
  - Does trade liberalisation increase vulnerability?

4 An episode here is the period between two reliable household surveys; most countries provide one such episode but some provide two during the sample period.

5 The middle column is expressed in rather western developed-country terms with importers, wholesale and retail steps, but the basic point is that there are many steps between an import entering and it being consumed by the poor and that in any of these, price changes may not be transmitted very effectively.

- Wages and Employment
  - Does liberalisation raise wages or employment?
  - Is transitional unemployment concentrated on the poor?
- Government Revenue and Spending
  - Does liberalisation actually cut government revenue?
  - Do falling tariff revenues hurt the poor?

Experience in applying the framework – e.g Litchfield, McCulloch and Winters (2003), Porto (2006) or Hertel and Winters (2006) – suggests strongly that the important heterogeneity across households is the way in which they earn their living, not their consumption patterns. Households consume some of most goods but typically earn their livings in small number of specific ways. Thus a shock to a consumer good price affects nearly everyone to some extent whereas a shock to a wage rate or to the existence of the market for selling a particular product affects a few people very deeply and others (to a first order approximation) not at all. Hence the large shocks to individual households' poverty status – positive or negative – are more likely to stem from their production/labour status than from the specifics of their consumption basket. The lesson is that we must consider the production and labour market consequences of policy.

5. Competition policy and poverty

The results on trade liberalisation and growth suggest that competition is an important stimulus to efficiency and hence to income levels. There is not much on competition policy and income levels per se, but the parallels are promising. In addition, the burgeoning literature on productivity at firm level frequently identifies competition (possibly, but not always from imports) as a major force behind innovation and improved productivity – especially for firms and countries that are 'not too far behind' the market leaders. For very weak firms just giving up or accepting a gradual decline can be rational, but this in turn releases factors for more productive uses and so enhances progress through this route (Aghion *et al*, 2005).

The rest of this section briefly considers the micro economic analysis of competition decisions. Competition assists consumers/users in getting value for money and incentivises producers to become more efficient. In both ways, it is likely to reduce prices and thereby raise the real incomes of the poor and other consumers. In terms of figure 1, competition policy operates in the middle of the figure – in the cells marked 'wholesale' and 'retail' - and depends for these effects on penetrating to a lower level in the figure – i.e. on the remaining steps of the distribution chain being reasonably competitive. If they are not, lower prices higher up will just go into higher profits lower down – as, for example, Teravaninthorn and Raballand (2009) argue would be the effects of improving road quality in West Africa: they argue that the road haulage sector is so cartelised that benefits of investment will barely be passed onto to users.

The relevant questions about whether price changes are passed on, whether markets are created or destroyed, etc. all generalise directly from trade policy to competition decisions, but whereas trade scholars take the degree of competition in the lower reaches of the chain as given, competition policy should concern itself directly with them. This discussion makes clear the importance of ensuring that the distribution chain to the poor is reasonably efficient. In McCulloch et al (2001) we argued that trade liberalisation is often sufficient to achieve competition and while that has a good measure of truth in it, work on very small countries has persuaded me that if the distribution chain is not competitive, liberalisation will not have much effect on prices. In very small countries, the prices of almost all goods are higher than elsewhere – Winters and Martins (2004) - because the economies scale are insufficient to allow

effective distribution. Thus, for example, in a small island, goods are shipped in piece-meal and there is only one local distributor.

The previous section argued the importance of considering the production side – the left hand side of figure 1. This is more complicated for poverty effects. If a sector is reaping excess profits because competition is weak and it is sharing these with poor people through, say, rent-sharing in employment contracts or cross-subsidised sales, forcing prices down could lead to lower wages or higher prices for previously subsidised consumers. For wages, the costs to the few will be deep – and may be extreme if inefficient jobs are shed – and this must somehow be traded off against smaller per capita gains for the many who purchase the good. Trade economists have long recognised that this asymmetry makes policy reform very complex – e.g. Finger, Hall and Nelson (1982) – and it is clearly likely to be present in competition policy as well. While producer lobbies will be well organised and politically well connected, none of the multitude of consumers will feel it worth bearing the cost of representing their side of the story, even though in aggregate it may be several times larger.

Citing the plight of the poor is extremely powerful politics. I believe that the antidote is transparency that policy is re-distributive and that on occasions some of the losers may be poor or become poor. To pretend that such outcomes are impossible is as counter-productive as pretending that they are inevitable. It should not be a shock-horror that some people (possibly including some poor or near-poor people) suffer from a reform for the general good – and it should not prevent sensible reforms. Reforms must, however, be accompanied with the objective (even if inevitably imprecise) identification of the losers and the poverty effects and a willingness to pursue off-setting or compensatory polices over the short to medium term. Transparency depends substantially on the independence and proper resourcing of the competition authorities but also on a degree of courage on the part of politicians.

It is also important to remember that the lack of competition usually operates to the advantage of those powerful enough to exploit it – multinationals, local magnates, elite labour groups, etc. – so that the number of times that competition policy undermines a practice that actually helps the poor is likely to be very small. Certainly much smaller than is actually claimed.

The constraints implied by competition policies can conflict with industrial policies in either developed or developing countries, and to some commentators this is a major problem. The argument is made that to compete with on world markets with firms from larger and richer countries, domestic firms need to be encouraged to combine into larger units and even permitted to earn super-normal profits from domestic sales in order to support investment in R&D and innovation with which to remain competitive. Whereas competition policy is defined primarily in terms of static efficiency, industrial policies ostensibly focus on dynamic efficiency. 'Infant industry' protection often calls for reduced domestic competition (for example, in the development of 'keiretsu' in Japan), as firm capabilities are developed. According to this view, developing countries need a flexible competition policy, which allows industrial policies aimed at the long-term growth of productivity (see, for example, Singh and Dhumale, 1999). The need to maintain investment may, they argue, require the steady growth of profits and therefore co-operation between government and domestic companies and a limitation of domestic competition.

The net effect of industrial policy on the poor is difficult to disentangle, not least because there is still some controversy about the efficacy of 'infant industry' protection in the first place. Domestic protection implies higher prices in the short and medium term, but successful industrial policy, on the other hand, would benefit the poor in the longer run in terms of income, prices, and possibly employment.

My own view is antithetical to active sector-specific industrial policy. Not only has infant industry protection – or indeed the protection of established or declining industries – rarely been shown *ex post* to worthwhile, but governments will find it hard to identify the cases where it could be beneficial *ex ante,* and

even harder to act on objective evidence in the face of the strong lobbying that the prospect of protection (or its removal) will engender.[6] Rodrik (2007) has advanced the case for 'horizontal' industry policies which act to correct market failures, such as the weak private incentives to innovate if any successful innovation will be imitated. (As an individual innovator, you bear all of the costs when innovation is unsuccessful, but only some of the gains from success because rivals will crowd into any successful activity that you identify). Horizontal policies are an entirely different approach to policy from sector-specific support, and indeed are potentially pro-competitive because they typically open up opportunities to innovate beyond the well-connected and well-financed.

This discussion reminds us that the lack of competition in developing countries often occurs not despite government action but because of it. Explicit favours for certain firms (e.g. official monopolies) or implicit favours through the manipulation of market conditions (e.g. the laws governing credit may make it impossible for firms without great resources to obtain loans) are common. It is thus important that governments not be exempt from competition authority attention. For sure, one may need some over-ride whereby democratic institutions can dominate bureaucracies or a public interest defence for anti-competitive practices, but it should be very hard work and very public work to operate them.

Finally it is worth noting that the progressive tightening of competition rules and the cultivation of institutions to manage competition policy will not only enhance market functioning and market access in developing countries, but also facilitate their general institutional development. Not least, it will inculcate the idea that government too faces constraints. The effects of this on the poor will potentially be very positive, for they are major beneficiaries of the creation of markets and of policies that curb the powers of small elites.

6. Three caveats

Desirable though competition polices are, the process of creating them must be adapted to the developing countries' priorities, being both flexible and gradual. The development of competition policy takes time and is only one of many steps in the process of development. Attempting to implement overly sophisticated institutions in developing countries would very probably be costly and ineffective because of the countries' inability to staff and manage them effectively. Enforcing competition requires rare technical and political skills, and poor competition authorities can be part of the problem not part of the solution. In addition, policy-makers need to ask whether competition authorities represent an appropriate use of available labour in economies with skills shortages. Hence I conclude with three caveats about competition policy in developing countries. They are cautions not vetoes, but they must be seriously addressed in real-world policy decision-making.

First, the political difficulties of introducing and enforcing competition policy are great, for it potentially puts governments in direct conflict with their major producers. At the very least, careful political work is required to build a coalition of consumers and user industries (usually the small and medium-sized enterprises within them) to support competition policy. If it is unsuccessful, the policy might never get underway, or worse, it might be 'captured' by the very firms it is designed to discipline. Avoiding these pitfalls and getting the right degree of independence between competition policy authorities and the government requires careful balancing. (Too close to the government risks political interference, whereas too independent risks non-accountability and capture.)

[6] To be economically worthwhile infant industry policies have to raise efficiency in the infant not only to world levels but beyond that, in order to pay off the costs incurred by government (or more likely consumers) while it was learning to succeed. Baldwin (1969) is an excellent account of the argument, largely repeated (unattributed) by Hausmann and Rodrik (2003)

The second question is at what stage does competition policy become worthwhile. Most competition policy relies on sophisticated law and economics and is very demanding of skilled labour. Moreover, if the government has an effective policy, the private sector will certainly wish to employ its own specialists to protect its interests.[7] As skilled labour is drawn off for these regulatory tasks, the net losers will be owners of other factors of production, which have fewer skilled labour resources to work with. Thus, poor, unskilled workers will pay for competition policy as well as benefit from it.

Third, one should not confuse the desirability of competition policy with the desirability of an international competition policy or an international agreement on competition policy. A policy designed for developed countries could be costly for developing countries and hence set poverty reduction back. It may be too sophisticated for them to manage, with the consequences for capture and the absorption of valuable factors of production that I have just discussed. But it might also tackle the wrong issues from developing countries' points of view. For example, controlling international cartels and standing up to abuses by multinationals is very important for developing countries, but is unlikely to be promoted very actively by developed ones. And finally, it may also absorb undue resources just for developing countries to be represented in the councils in which international agreement is forged and managed.

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[7] It is difficult to think of a single case of law-based competition policy that is not accompanied by private legal activity.

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CONCURRENCE ET REDUCTION DE LA PAUVRETE

Par M. L. Alan Winters[*]

La pauvreté est un problème qui nous regarde tous, d'une manière ou d'une autre, et il est donc naturel, lorsque nous envisageons de mettre en œuvre une politique, d'examiner cette politique au regard de son efficacité pour réduire la pauvreté. Il n'est pas surprenant que les chercheurs commencent à poser cette question au sujet de la politique de la concurrence – en fait, il est peut-être grand temps – tout comme, il y a un peu plus d'une décennie, ils l'ont posée au sujet de la libéralisation des échanges. Avant cela, les économistes spécialistes du commerce développaient une grande théorie selon laquelle la libéralisation commerciale devait aider à réduire la pauvreté dans les pays en développement – le théorème de Stolper-Samuelson – mais, singulièrement, ils n'apportaient guère de solutions pratiques applicables à des cas précis ni de preuves empiriques. De plus, le débat relatif à la libéralisation des échanges était conflictuel et très tendu, les opposants à la libéralisation prétendant que cela aggravait la pauvreté et, forts de ce principe, compromettant l'effort de libéralisation dans son ensemble – on se souvient, par exemple, des émeutes de Seattle en 1999.

J'ai consacré une bonne part de ma vie à analyser les liens entre la libéralisation commerciale et la pauvreté dans les pays en développement – voir, par exemple, McCulloch, Winters etCirera (2001), Winters (2002) ou Winters, McCulloch et McKay (2004) – avec le soutien, en particulier, de la Banque mondiale et du DFID. Cela a permis d'établir un cadre de réflexion sur les enjeux de la question et de comprendre un peu mieux les constantes et les ambiguïtés de ces liens. J'aime à penser aussi que cela a conduit à une participation plus constructive des protagonistes aux débats sur la politique commerciale. Ce bref document tente d'apporter ces éclairages concernant le rapport entre la politique de la concurrence et la pauvreté. En fin de compte, les parallèles sont très proches : premièrement, la libéralisation des échanges consiste à libérer la concurrence internationale des entraves de l'action publique et, deuxièmement, que ce soit parce que c'est vrai ou parce que je manque d'imagination pour voir les choses différemment, l'appareil analytique nécessaire paraît fort similaire. Au niveau macroéconomique, il s'agit de savoir si les politiques appliquées accroissent la taille du gâteau – en favorisant l'efficience ou la croissance – et, au niveau microéconomique, il faut réfléchir aux effets des politiques sur les revenus des ménages (quasi) pauvres et sur les prix auxquels ils achètent et vendent les biens, les services et leur travail. Avant d'explorer ces parallèles, toutefois, il nous faut réfléchir un peu à ce que nous entendons par pauvreté et à la façon de la mesurer.

1. Définition de la pauvreté

Si nous voulons utiliser la pauvreté comme critère de décision concernant l'action des pouvoirs publics – quelle qu'elle soit – il nous faut définir clairement la pauvreté et, chose tout aussi importante, les moyens de la mesurer[1]. Il ne rime à rien de déclarer que l'action des pouvoirs publics réduit ou aggrave la pauvreté – ou qu'elle devrait la réduire ou ne pas l'aggraver – si ne sommes pas capables de concevoir un indicateur raisonnablement acceptable pour mesurer l'effet des politiques. Sinon, cette rhétorique entrave

[1] Je ne veux pas m'attarder sur ce point, mais la pauvreté n'est pas la même chose que l'inégalité et peut même aller en sens opposé. Réduire l'inégalité peut être un objectif parfaitement légitime pour l'action publique, mais c'est autre chose que réduire la pauvreté.

plutôt qu'elle n'accroît l'efficacité de l'élaboration des politiques. Selon Amartya Sen (1976), la pauvreté se mesure en deux étapes :

- l'identification des pauvres dans la population totale, et
- la création d'un indice de la pauvreté (appelée parfois « agrégation »).

La méthode traditionnellement utilisée en économie pour mesurer la pauvreté consiste à calculer les revenus ou les dépenses de consommation d'un ménage sur une période donnée puis à classer comme pauvres les ménages ou les individus qui se situent en-dessous d'un niveau minimum acceptable (le seuil de pauvreté). La pauvreté est donc définie simplement comme une insuffisance de revenu ou de consommation, ou peut-être de possibilité de consommation.

L'avantage des indicateurs simples de la pauvreté fondés sur le revenu ou la consommation est qu'ils permettent de comparer la pauvreté entre périodes et, au besoin, entre pays, et qu'ils se prêtent à une mesure relativement simple. Cependant, excepté dans les cas où tout peut être acheté sur des marchés équitables (où les prix reflètent les coûts d'opportunité), il est évident que la pauvreté est un problème plus subtile que le simple fait d'avoir un revenu ou des dépenses de consommation inférieurs au seuil de pauvreté : en réalité, le problème par nature *multidimensionnel*. Les diverses dimensions de la pauvreté sont les suivantes :

- Revenu : avoir un faible niveau de revenu ou de consommation.
- Actifs : posséder peu d'actifs ou des actifs de médiocre qualité (terres, logement, bétail ou autres actifs productifs).
- Environnement : être obligé de vivre dans un environnement pollué ou dangereux ou de travailler sur des terres de médiocre qualité.
- Éducation : avoir un niveau d'instruction peu élevé ou nul.
- Mauvaise santé ou invalidité : souffrir de diverses maladies.
- Impuissance : être exclu des décisions ayant un impact sur sa vie.
- Discrimination : être soumis à une discrimination arbitraire en raison de son sexe, de son appartenance ethnique ou pour toute autre raison.
- Vulnérabilité : être exposé à divers « chocs » tels que mauvaises récoltes, maladies, variations de prix, actes de violence ayant des conséquences défavorables etc., sur lesquels on n'a aucune influence ni aucun contrôle.

Chacune de ces dimensions peut être considérée comme une forme de pauvreté à part entière, mais le terme « pauvreté » est habituellement utilisé pour désigner un concept général recouvrant une combinaison de nombreux aspects différents de la pauvreté. Ainsi un ménage qui dispose d'un faible revenu mais dont les membres sont en bonne santé, ont un bon niveau d'instruction et vivent dans un lieu plaisant avec un accès facile aux services n'est-il pas forcément considéré comme pauvre. En revanche, un ménage dont le revenu est supérieur au seuil de pauvreté mais qui possède peu d'actifs, vit dans une zone où l'environnement est dégradé et fait l'objet d'une discrimination constante peut, dans un certain sens, être considéré comme pauvre.

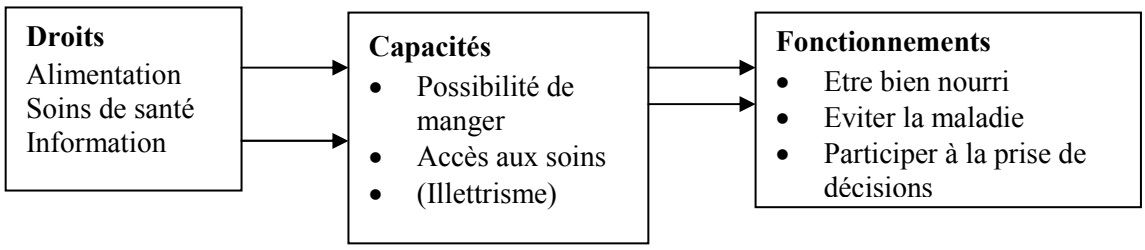
Un aspect particulièrement important de la pauvreté qui est mis en évidence par des études où il est demandé aux personnes pauvres comment elles vivent et définissent la pauvreté est l'importance de la sécurité (voir Narayan, 2000). Les ménages pauvres souffrent souvent d'une grave insécurité en raison de risques d'origines diverses, tels que maladie, blessure, infirmité, vieillesse, décès, crime et violence domestique. D'autres chocs sont des « covariables », c'est-à-dire des chocs auxquels de nombreux ménages sont exposés simultanément au niveau régional ou national : catastrophes naturelles, épidémies, guerre civile et troubles sociaux, et chocs macroéconomiques, chocs sur les termes de l'échange ou autres chocs sur les prix. Lorsqu'ils sont interrogés, les pauvres déplorent surtout de l'impossibilité pour eux de se protéger contre ces chocs : en partie, peut-être, à cause de la douleur humaine ressentie face à la mort d'un enfant, par exemple, et en partie parce que, si un ménage déjà pauvre subit le moindre choc négatif supplémentaire, cela peut avoir des conséquences désastreuses en le faisant basculer en-dessous des niveaux de subsistance. L'analyse est souvent menée simplement du point de vue des valeurs espérées (effets moyens) mais la conclusion de Narayan, qui a provoqué un véritable choc pour la profession économique, est qu'il peut être très important d'adopter une approche plus large.

Une des approches les plus connues pour répondre à la question de savoir ce qui définit la pauvreté dans ce sens plus large est celle d'Amartya Sen (voir, par exemple, Sen, 1999), qui décrit la pauvreté en termes de capacités et de fonctionnements, lesquels dépendent eux-mêmes de ce à quoi l'on a droit :

- Fonctionnements : les fonctionnements représentent les divers états et actions des gens dans la vie. Les fonctionnements de base peuvent être le fait d'être bien nourri ou d'échapper aux maladies évitables, tandis qu'un fonctionnement plus complexe peut être la possibilité de participer à la vie de la communauté.

- Capacités : les capacités représentent la possibilité pour les gens de convertir leurs droits – c'est-à-dire les produits sur lesquels ils ont un contrôle dans le cadre juridique existant – en fonctionnements auxquels ils attachent de la valeur. Ainsi, par exemple, les produits alimentaires font partie de ces droits et les gens ont la capacité de manger ; ils peuvent donc parvenir au fonctionnement qui consiste à être bien nourris.

Illustration :



Le cadre de Sen aide à expliquer ce qui peut empêcher les individus de parvenir aux fonctionnements importants. Des personnes infirmes, par exemple, qui ont peut-être un large accès à des produits en raison de leur revenu, peuvent se trouver dans l'impossibilité de traduire cela en une capacité ayant de la valeur pour eux, comme le fait de pouvoir marcher. Pour prendre un autre exemple dans le graphique, l'information sous la forme d'un journal peut être disponible mais les gens peuvent ne pas être en mesure de la traduire en un fonctionnement ayant de la valeur s'ils ne savent pas lire ; c'est un exemple de « défaut de capacité », indiqué par l'absence d'une flèche entre la capacité et le fonctionnement à la dernière rangée du schéma ci-dessus.

Il peut y avoir aussi un « défaut de droits », par exemple, si des gens ont la possibilité, en principe, d'accéder à la santé mais que les soins de santé ne sont pas disponibles. Sen décrit la pauvreté comme une

combinaison de « défaut de droits » (perte de contrôle sur les ressources) et de « défaut de capacité » (perte de la capacité de convertir les ressources en fonctionnements utiles).

La difficulté, lorsqu'il s'agit d'appliquer cette importante avancée conceptuelle à la réflexion sur la pauvreté, consiste à décider quels sont les fonctionnements qui revêtent la plus haute importance et à décrire précisément la façon dont les droits des gens sont traduits en fonctionnements. Dans la pratique, les économistes cherchent à élargir le raisonnement à partir de mesures simples des revenus et de la consommation en prenant en compte des indicateurs plus généraux du bien-être, mais il n'existe pas à ce jour d'ensemble de mesures additionnelles qui soit généralement accepté.

2. Mesures de la pauvreté

La méthode la plus couramment utilisée pour mesurer la pauvreté consiste à calculer une mesure du revenu ou des dépenses de consommation des ménages ou des individus – habituellement à partir de données tirées d'enquêtes auprès des ménages. Si l'enquête est représentative de la population nationale, il est possible d'utiliser ces données d'échantillon pour calculer le nombre de personnes dont le revenu ou la consommation se situe en-dessous d'un seuil national de pauvreté. Même avec cette méthode, il est difficile de recueillir des informations précises sur les revenus et la consommation – par exemple sur la valeur de services fournis par l'Etat, comme les services d'éducation ou de santé ou sur les avantages tirés de terre communes.

Plus directement se pose la question de savoir où fixer le seuil de pauvreté. Les seuils de pauvreté absolue sont habituellement définis sur la base du coût d'un panier de biens et services essentiels, composé parfois seulement des aliments nécessaires pour assurer un niveau donné d'apport calorique journalier. Le coût de ce panier « composé uniquement de produits alimentaires » est parfois utilisé comme seuil d'extrême pauvreté. Lorsqu'on ajoute le coût d'autres biens (autres que des produits alimentaires) essentiels, comme le logement et l'habillement, ont obtient un seuil de pauvreté élevé. La méthodologie utilisée pour construire les seuils de pauvreté peut être complexe : voir Ravallion et Bidani (1994) pour un exemple de bonne pratique. Les pays en développement utilisent généralement ces seuils de pauvreté absolue et, au cours de nos travaux de comparaisons internationales et d'agrégation mondiale, nous avons relevé le critère de un dollar par jour, adopté pour la première fois par la Banque mondiale pour le Rapport sur le développement dans le monde de 1990 – voir Ravallion, Chen et Sangraula (2009) pour un examen de l'historique et de l'actualisation de la mesure en fonction d'une base de prix plus récente. Ce critère a été calculé comme représentant à peu près les seuils de pauvreté nationaux utilisés dans un échantillon de pays en développement.

Les seuils de pauvreté relative, en revanche, sont définis par référence au niveau de vie général dans un pays donné. Le seuil peut être fixé en proportion du revenu moyen ou du salaire moyen. Les pays d'Europe, par exemple, utilisent habituellement un seuil de 50 % ± 10 % du revenu médian qui sert souvent de seuil de pauvreté relative. Les seuils de pauvreté relative étant définis par rapport au niveau de vie générale et non sur la base d'un ensemble minimum de biens essentiels, ils sont plus élevés dans les pays riches que dans les pays pauvres. Ils mesurent essentiellement la distribution des revenus. Ce sont des objectifs parfaitement légitimes de l'action publique mais leurs fondements éthiques me semblent différents de ceux concernant la pauvreté absolue. Par ailleurs, au niveau pratique, dans les pays en développement, un seuil de pauvreté relative n'attache pas de valeur à l'objectif principal des pouvoirs publics qui est généralement d'améliorer les revenus moyens.

Une fois le seuil de pauvreté défini (la phase d'identification, selon Sen), il faut définir une agrégation. Le plus facile est de compter simplement le nombre de personne ou de calculer la proportion de la population qui se situe en-dessous du seuil – ce que l'on appelle le compte individuel des personnes. Cette méthode est simple et instructive mais elle a pour inconvénient évident de ne pas chercher à

déterminer à quel point les revenus des pauvres sont éloignés du seuil de pauvreté[2]. Ce déficit peut être mesuré par l'écart de pauvreté – l'écart moyen entre le niveau de vie des pauvres et le seuil de pauvreté (en pourcentage du seuil de pauvreté). Cependant, même cette méthode traite un dollar pour la personne la plus pauvre comme l'équivalent d'un dollar pour la personne qui est presque au seuil de pauvreté, un problème qui peut être résolu en mesurant l'écart de pauvreté au carré, c'est-à-dire en calculant le carré de l'écart par rapport au seuil de pauvreté. On trouve plusieurs autres agrégats de ce type dans les études existantes, mais nous ne nous y référons plus, si ce n'est pour observer que des indicateurs de pauvreté différents exigent à l'évidence des réponses différentes des pouvoirs publics au même problème économique car ils impliquent des valeurs éthiques différentes. D'un point de vue pratique, par conséquent, la décision concernant la façon d'établir une agrégation pour obtenir une mesure unique de la pauvreté est un problème de premier ordre si l'on veut que l'action publique soit déterminée par des considérations relatives à la pauvreté.

Si nous sommes convaincus du caractère multidimensionnel de la pauvreté, nous avons besoin d'en avoir des mesures pratiques avant de pouvoir l'appliquer à l'action publique, c'est-à-dire qu'il nous faut un indicateur multidimensionnel de la pauvreté. L'indice de développement humain du PNUD est un indicateur de ce type, qui combine (avec des pondérations définies par des bureaucrates) trois aspects de la pauvreté : l'espérance de vie, l'alphabétisation des adultes et le logarithme du PIB par habitant corrigé en fonction du pouvoir d'achat. Dans une série de documents, Martin Ravallion (voir, par exemple, Ravallion 2010) a montré le caractère arbitraire de la pondération de ces éléments entre eux, avec des conséquences souvent non voulues par les auteurs. De plus, le choix du coefficient de pondération par l'administration place les pondérations éthiques de l'administration au centre alors que l'on aurait pu penser que la pauvreté concernait les ménages considérés individuellement.

L'indice de pauvreté humaine des Nations Unies est similaire à l'IDH, pondérant la probabilité à la naissance de ne pas atteindre 40 ans (fois 100), le taux d'illettrisme des adultes et la moyenne non pondérée de la population sans accès durable à un point d'eau amélioré et des enfants en sous-poids pour leur âge. Il a été remplacé depuis par l'indice de pauvreté multidimensionnelle (IMD) établi en 2010 par l'Oxford Poverty & Human Development Initiative (OPHI) et le PNUD. Cet indice subdivise les indicateurs de base en sous-indicateurs – dix en tout ; il définit un seuil de pauvreté dans chacun de ces sous-indicateurs et considère les gens comme pauvres s'ils se situent en-dessous du seuil dans un tiers de ces sous-indicateurs.3 Par ailleurs, il mesure la profondeur de la pauvreté (la distance par rapport au seuil de pauvreté) et il calcule l'IMD en multipliant la proportion de la population qui est pauvre par la profondeur de cette pauvreté. Cette méthode implique toujours des poids relatifs entre les dimensions mais de façon moins évidente que les moyennes pondérées simples qui étaient utilisées avant l'IMD. Alkire et Foster (2011a, b) examinent certaines caractéristiques techniques de l'IMD.

L'un des inconvénients des mesures multidimensionnelles est qu'elles sont plus exigeantes en termes de disponibilité de données actualisées. Même si les économistes de l'OPHI s'efforcent de choisir des indicateurs plus faciles à obtenir et d'aider les bureaux de statistique à collecter ces données, cela pose à l'évidence un problème majeur dans toute tentative de définir des politiques en fonction de leur impact sur la pauvreté.

3. Une agrégation est-elle nécessaire ?

Les indicateurs examinés jusqu'à présent se rapportent à l'ensemble de l'économie et donc, en fait, aux politiques qui pourraient avoir un effet perceptible au niveau de l'économie tout entière. On peut faire

[2] Ainsi que, comme dans toutes les mesures de la pauvreté, de ne pas prendre en compte le bien-être des personnes qui sont au-dessus du seuil de pauvreté.

[3] C'est en fait un plus compliqué que cela car les indicateurs n'ont pas un coefficient de pondération égal dans ces calculs.

valoir que c'est le niveau auquel il convient d'envisager la politique de la concurrence en soi – et, de fait, des actions telles que la libéralisation commerciale et la politique de l'éducation. Certaines mesures de politique de la concurrence opèrent toutefois à un niveau moins élevé, comme les modifications des droits de douane touchant les différents produits ou des obstacles non tarifaires, et l'on veut dès lors pouvoir se demander, au sujet des décisions passées ou futures concernant la concurrence, « quel effet ont-elles/auront-elles sur la pauvreté ? ». Pour cela, nous avons besoin de la définition de la pauvreté (l'indicateur) mais l'analyse est essentiellement celle de la microéconomie de l'équilibre partiel, c'est-à-dire une analyse qui, sans tenir compte des éléments d'information provenant de l'économie dans son ensemble, cherche à déterminer l'effet direct de la décision sur les pauvres et les quasi-pauvres, ou sur le nombre de personnes qui sont considérées comme pauvres.

4. Quelques mots sur la libéralisation commerciale et la pauvreté

Comme indiqué dans l'introduction, l'effet de la libéralisation commerciale sur la pauvreté revêt une double dimension, macro- et microéconomique. Malgré l'absence de preuve irréfutable, j'interprète les données d'observation relevées au niveau macroéconomique comme indiquant nettement que l'ouverture élève les niveaux de revenu (production) et que la libéralisation des échanges stimule la croissance, du moins temporairement – Winters (2004), Winters et Masters (2010). Trois principaux mécanismes entrent en jeu :

- l'ouverture induit une affectation plus efficiente des facteurs de production entre les secteurs ;
- la concurrence renforce les incitations à bien gérer une entreprise – elle oblige certaines entreprises à améliorer leur productivité pour survivre et récompense davantage la réussite en ouvrant des marchés d'exportation ; et
- l'accès à des biens intermédiaires, des biens d'équipement et des idées de meilleure qualité en provenance des marchés mondiaux accroît la productivité.

On peut s'inquiéter du fait que ces forces sont plus faibles (voire inexistantes) dans les pays très pauvres (voir, par exemple, Chang, Kaltani et Loayza, 2009), fort probablement parce que ces pays n'ont pas les compétences pour accéder efficacement aux marchés mondiaux. Cependant, je serais d'avis que cette question reste ouverte.

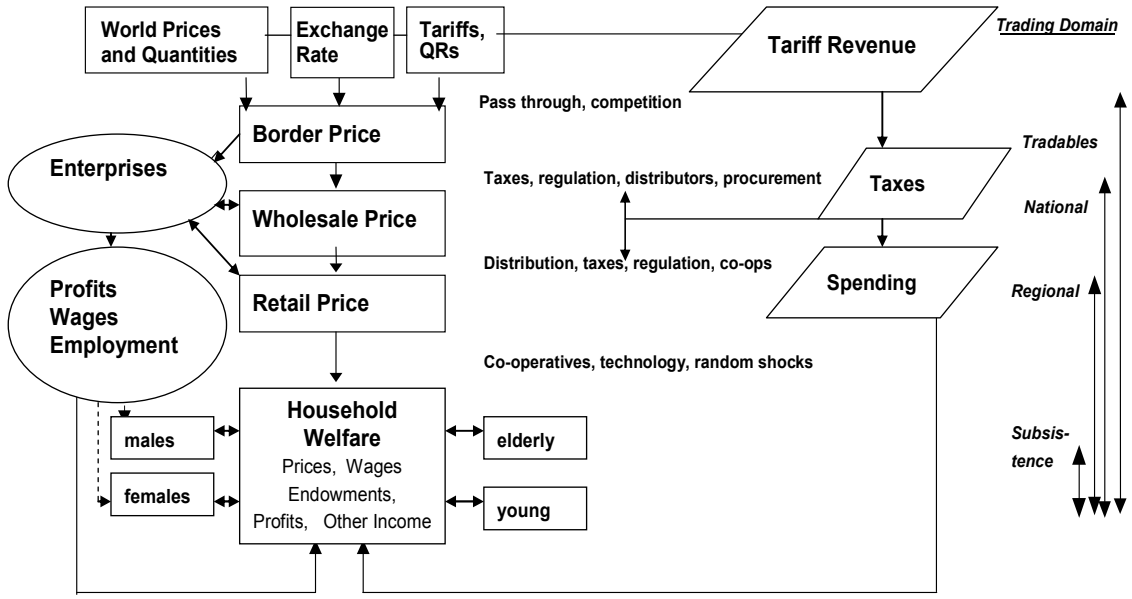
L'existence d'un lien de causalité entre la progression des revenus moyens (production) et la réduction de la pauvreté n'est pas garantie de façon absolue ; on peut certainement imaginer des cas indiquant le contraire, dont certains ont fait l'objet d'études. Cependant, les éléments d'observation recueillis par Kraay (2006), parmi d'autres, montrent de façon convaincante que la croissance tend généralement de façon très visible à favoriser la réduction de la pauvreté. Selon l'indicateur de pauvreté utilisé, Kraay constate que la variation de la pauvreté au cours de l'épisode allant à peu près de 1980 à 2000 est due, pour 60-80 %, à des différences dans la croissance du revenu moyen[4]. Par conséquent, dans tout cas particulier, la charge de la preuve incombe, à mon avis, à ceux qui prétendent que la croissance ne réduit pas la pauvreté.

Au niveau microéconomique, le cadre conceptuel ci-après se révèle utile pour examiner dans le détail les effets statiques de la libéralisation – graphique 1 ci-dessous. Il identifie trois liens de causalité à travers lesquels les effets des facteurs influant sur les prix à la frontière (prix mondiaux, taux de change ou politique commerciale) sont transmis aux pauvres : premièrement, à gauche, les effets transmis par le biais des entreprises, dont les réactions aux variations de prix affectent la production, l'emploi, les bénéfices, les salaires etc.; deuxièmement, au milieu, les effets transmis par le biais des prix des produits et services que

[4] Un épisode désigne ici la période comprise entre deux enquêtes fiables auprès des ménages ; la plupart des pays présentent un épisode de ce type, mais certains en présentent deux au cours de la même période d'échantillon.

les pauvres paient et reçoivent (essentiellement la façon dont les marchés de ces biens fonctionnent) et, troisièmement, à droite, les effets transmis par le biais des recettes et dépenses publiques[5].

Graphique 1. Politique commerciale et pauvreté – liens de causalité



Pour chacun de ces liens de causalité, le cadre aide à identifier certaines questions cruciales à poser pour déterminer l'effet probable des variations de la politique commerciale sur les pauvres et, partant, sur la pauvreté (Winters, McCulloch et McKay, 2004). En ce qui concerne la libéralisation commerciale, ces questions sont les suivantes :

- Prix et marchés
  - Les chocs sur les prix à la frontière sont-ils transmis aux ménages pauvres ?
  - Des marchés sont-ils créés ou détruits ?
  - Les ménages réagissent-ils bien ?
  - Les retombées profitent-elles aux pauvres ?
  - La libéralisation commerciale accroît-elle la vulnérabilité ?
- Salaires et emploi
  - La libéralisation accroît-elle les salaires et l'emploi ?
  - Le chômage transitoire est-il concentré sur les pauvres ?
- Recettes et dépenses publiques
  - La libéralisation réduit-elle effectivement les recettes publiques ?
  - La baisse des recettes des droits de douane nuit-elle aux pauvres ?

5 La colonne du milieu est exprimées dans l'optique des pays développés occidentaux, avec les importateurs, les étapes du commerce de gros et du commerce de détail, mais le point fondamental est qu'il y a de nombreuses étapes entre l'entrée des importations et leur consommation par les pauvres et que, à chacune de ces étapes, les variations de prix ne sont pas toujours transmisses de façon très efficace.

L'application du cadre – voir, par exemple, Litchfield, McCulloch et Winters (2003), Porto (2006) ou Hertel et Winters (2006) – laisse fortement penser que la grande hétérogénéité entre les ménages réside dans leurs moyens de subsistance et non dans leurs habitudes de consommation. Les ménages consomment quelques-uns de la plupart des produits mais ils gagnent généralement leur vie selon un petit nombre de manières spécifiques. Ainsi un choc sur le prix d'un bien de consommation affecte-t-il presque tout le monde dans une certaine mesure alors qu'un choc sur le taux de salaire ou sur l'existence du marché de vente d'un produit particulier touche un petit nombre de personnes très profondément et d'autres (selon une première approximation) pas du tout. Par conséquent les chocs importants sur l'état de pauvreté des différents ménages – positifs ou négatifs – proviennent plus probablement de leur statut du point de vue de la production/du travail que des caractéristiques de leur panier de consommation. L'enseignement à titre est qu'il faut examiner les effets de l'action publique sur la production et sur le marché du travail.

5. Politique de la concurrence et pauvreté

Les résultats des études sur la libéralisation des échanges et la croissance semblent indiquer que la concurrence stimule grandement l'efficience et, partant, accroît les niveaux de revenu. Il n'y a pas beaucoup d'études sur la politique de la concurrence et les niveaux de revenu en eux-mêmes, mas les parallèles sont prometteurs. Par ailleurs, les études émergentes sur la productivité au niveau de l'entreprise identifient souvent la concurrence (des importations, peut-être, mais pas toujours) comme un facteur majeur d'innovation et d'amélioration de la productivité – surtout pour les entreprises et les pays qui « ne sont pas trop loin derrière » les leaders du marché. Pour les entreprises très faibles, il peut être rationnel d'abandonner ou d'accepter simplement un déclin progressif, mais cela libère des facteurs pour des utilisations plus productives et, ainsi, accentue le progrès suivant cette voie (Aghion et al, 2005).

Le reste de la présente section examine brièvement l'analyse microéconomique des décisions de politique de la concurrence. La concurrence aide les consommateurs/utilisateurs à optimiser leurs dépenses et incite les producteurs à améliorer leur efficience. Ces deux influences sont de nature à réduire les prix et, ainsi, à améliorer le revenu réel des pauvres et des autres consommateurs. Selon le graphique 1, la politique de la concurrence opère au milieu du schéma – dans les cases « wholesale » (commerce de gros) et « retail » (commerce de détail) -- et dépend, pour ces effets, de la pénétration dans le bas du schéma, -- c'est-à-dire que les étapes restantes de la chaîne de distribution doivent rester raisonnablement concurrentielles. Si elles ne le sont pas, des prix plus bas dans la case du haut se traduiront simplement par des bénéfices plus élevés dans la case du bas – comme ce serait le cas, par exemple, selon Teravaninthorn et Raballand (2009), de l'amélioration de l'état des routes en Afrique de l'ouest : ces auteurs font valoir que les ententes sont telles dans le secteur du transport routier que les avantages de l'investissement ne sont bénéficient guère aux utilisateurs.

Les questions de savoir comment les variations de prix sont répercutées, comment des marchés sont créés ou détruits etc. généralisent toutes directement de la politique commerciale aux décisions de politique de la concurrence, mais alors que les chercheurs spécialistes des échanges considèrent comme donné le degré de concurrence au bas de la chaîne, la politique de la concurrence devrait s'y intéresser directement. Cette discussion fait ressortir l'importance de veiller à ce que la chaîne de distribution allant jusqu'aux pauvres soit raisonnablement efficiente. Dans McCulloch et al (2001), nous avons fait valoir que la libéralisation commerciale est souvent suffisante pour faire jouer la concurrence et que, si cela est vrai dans une bonne mesure, les travaux sur des pays de très petite taille m'ont persuadé du fait que, si la chaîne de distribution n'est pas concurrentielle, la libéralisation n'aura guère d'effet sur les prix. Dans les très petits pays, les prix de presque tous les produits sont plus élevés qu'ailleurs – Winters et Martins (2004) – parce que les économies d'échelle sont insuffisantes pour permettre une distribution efficace. Ainsi, par exemple, sur une petite île, les produits sont expédiés en petites quantités et il n'y a qu'un seul distributeur local.

La section précédente a mis en avant l'importance d'examiner la production – la partie gauche du schéma 1. Cela est plus compliqué en ce qui concerne les effets sur la pauvreté. Si un secteur engrange des

bénéfices excessifs parce que la concurrence est faible et s'il partage ces bénéfices avec les pauvres par le biais, par exemple, d'un partage de rente sous forme de contrats d'emploi ou de ventes bénéficiant de subventions croisées, faire baisser de force les prix pourrait conduire à des salaires plus bas ou à des prix plus élevés pour les consommateurs qui bénéficiant auparavant de subventions. En ce qui concerne les salaires, les coûts pour les quelques personnes concernées seront lourds – et pourraient être extrêmes si des emplois inefficients sont supprimés – et il faut en quelque sorte mettre cet aspect en balance avec des gains par habitant moins importants pour les nombreux individus qui achètent le produit. Les économistes spécialistes des échanges reconnaissent depuis longtemps que cette asymétrie rend la réforme de l'action publique très complexe – voir, par exemple, Finger, Hall et Nelson (1982) – et il est évident que cette asymétrie se retrouve également dans la politique de la concurrence. Tandis que les lobbies de producteurs sont bien organisés et politiquement bien connectés, aucun des nombreux consommateurs ne jugera qu'il vaut la peine de supporter le coût de se faire représenter, même si, globalement, ils sont bien plus nombreux.

Exposer la situation difficile des pauvres est un moyen politique extrêmement puissant. Je suis convaincu que l'antidote est la transparence, que la politique a un effet redistributif et que, dans certains cas, certains des perdants peuvent être pauvres ou le devenir. Prétendre que ces résultats sont impossibles est tout aussi contre-productif que prétendre qu'ils sont inévitables. Il ne doit pas être choquant que certaines personnes (y compris, peut-être, certains pauvres ou quasi-pauvres) souffrent d'une réforme opérée dans l'intérêt général – et cela ne doit pas empêcher des réformes intelligentes. Les réformes doivent toutefois s'accompagner d'un effort d'identification objective (même si elle est inévitablement imprécise) des perdants et des effets sur la pauvreté et d'une volonté de poursuivre des politiques compensatoires sur le court/moyen terme. La transparence dépend pour une grande part de l'indépendance des autorités de la concurrence, qui doivent disposer de ressources suffisantes, mais aussi du degré de courage des politiciens.

Il faut aussi se rappeler que l'absence de concurrence profite habituellement à ceux qui sont assez puissants pour l'exploiter – multinationales, magnats locaux, groupes privilégiés etc. – si bien qu'il est sans doute rare que la politique de la concurrence sape une pratique réellement favorable aux pauvres, certainement beaucoup plus rare qu'on ne le prétend en réalité.

Les contraintes qu'impliquent les politiques de la concurrence peuvent être en contradiction avec les politiques industrielles, que ce soit dans les pays développés ou dans les pays en développement, et pour certains commentateurs cela représente un problème majeur. L'argument utilisé est que, pour être en mesure de concurrencer sur les marchés mondiaux des entreprises de pays plus grands et plus riches, les entreprises nationales doivent être encouragées à se regrouper en unités plus importantes et même être autorisées à réaliser des bénéfices supérieurs à la normale grâce à leurs ventes nationales afin de pouvoir investir dans la R&D et l'innovation de façon à rester compétitives. Alors que la politique de la concurrence se définit principalement en termes d'efficience statique, les politiques industrielles sont centrées ostensiblement sur l'efficience dynamique. La protection des « industries naissantes » exige souvent une concurrence nationale réduite (dans le développement des « keiretsu » au Japon, par exemple), durant la phase de développement des capacités des entreprises. Selon ce point de vue, les pays en développement ont besoin d'une politique de la concurrence flexible, qui permet de mettre en œuvre des politiques industrielles visant la croissance à long terme de la productivité (voir, par exemple, Singh et Dhumale, 1999). La nécessité de maintenir l'investissement peut, selon ces auteurs, obliger les entreprises nationales à accroître régulièrement leurs bénéfices et, par conséquent, à coopérer avec les gouvernements, et à limiter la concurrence intérieure.

L'effet net de la politique industrielle sur les pauvres est difficile à discerner, en raison surtout de la controverse qui persiste au sujet de l'efficacité de la protection des « industries naissantes ». La protection nationale requiert des prix plus élevés dans le court et moyen terme, mais une politique industrielle efficace devrait plutôt profiter aux pauvres à plus long terme du point de vue des revenus, des prix et, éventuellement, de l'emploi.

Personnellement, je suis contre une politique industrielle active au niveau sectoriel. Non seulement la protection des industries naissantes – ou, de fait, la protection d'industries établies ou en déclin – se révèle rarement valable *ex post*, mais les gouvernements auront du mal à déterminer les cas où cette stratégie pourrait être bénéfique *ex ante,* et plus de mal encore à agir sur la base de preuves objectives face aux fortes pressions que la perspective de la protection (ou sa levée) provoquera.[6] Rodrik (2007) préconise des politiques industrielles « horizontales » destinées à corriger des défaillances du marché, telles que la faiblesse des incitations à innover pour le secteur privé si une innovation réussie risque d'être imitée. (En tant qu'innovateur individuel, vous supportez la totalité des coûts lorsque l'innovation échoue, mais vous ne recueillez qu'une partie des gains lorsqu'elle réussit car les concurrents se précipitent dans l'activité que vous aurez initiée). Les politiques horizontales sont une stratégie entièrement différente du soutien sectoriel et, de fait, elles peuvent être favorables à la concurrence car elles ouvrent généralement des possibilités d'innover au-delà des activités bien connectées et bien financées.

Cette discussion nous rappelle que l'absence de concurrence dans les pays en développement s'observe non pas en dépit de l'action des pouvoirs publics mais à cause de leur action. Il est courant que certaines entreprises bénéficient d'avantages explicites (des monopoles gouvernementaux, par exemple) ou implicites, du fait de la manipulation des conditions du marché (les lois régissant le crédit peuvent mettre les entreprises qui ne disposent pas de ressources importantes dans l'impossibilité d'obtenir des prêts, par exemple). Il est donc important que les gouvernements ne soient pas exemptés du contrôle de l'autorité de la concurrence. Certes, il peut être nécessaire de ménager une certaine priorité qui fait que des institutions démocratiques peuvent primer sur la bureaucratie ou que des pratiques anticoncurrentielles peuvent être défendues dans l'intérêt public, mais cela doit être très difficile à faire et cela relève exclusivement des pouvoirs publics.

Enfin, il importe de noter que le durcissement progressif des règles de concurrence et la sensibilisation des institutions à la gestion de la politique de la concurrence non seulement amélioreront le fonctionnement des marchés et l'accès aux marchés dans les pays en développement mais faciliteront aussi leur développement institutionnel général. Cela inculquera notamment l'idée que les pouvoirs publics, eux aussi, sont soumis à des contraintes. Cela peut avoir des effets très positifs sur les pauvres car ce sont eux les principaux bénéficiaires de la création de marchés et de la mise en œuvre de politiques qui limitent les pouvoirs d'une poignée de privilégiés.

6. Trois réserves

Aussi souhaitables que soient les politiques de la concurrence, leur mise en place doit être adaptée aux priorités des pays en développement, à la fois souple et progressive. L'élaboration d'une politique de la concurrence prend du temps et ne représente qu'une des nombreuses étapes du processus de développement. Tenter d'établir des institutions trop perfectionnées dans les pays en développement serait sans doute coûteux et inefficace en raison de l'impossibilité pour ces pays de les pourvoir en personnel qualifié et de les gérer de manière efficace. Pour faire appliquer les règles de concurrence, il faut des compétences techniques et politiques rares, et des autorités de la concurrence dépourvues de ces compétences risquent davantage de compliquer le problème que de le résoudre. Par ailleurs, les décideurs publics doivent se demander si des autorités de la concurrence représentent une utilisation appropriée de la main-d'œuvre disponible dans des économies souffrant de pénuries de compétences. Je termine par conséquent en formulant trois réserves au sujet de la politique de la concurrence dans les pays en développement. Il s'agit de mises en garde et non de vétos, mais elles doivent être prises au sérieux pour l'élaboration des politiques dans le monde réel.

6 Pour être économiquement valables, les politiques de protection des industries naissantes doivent porter l'efficience dans l'industrie naissante non seulement aux niveaux mondiaux mais au-delà, afin de compenser les coûts encourus par l'Etat (ou, plus vraisemblablement, le consommateur). Baldwin (1969) développe très bien cet argument, en grande partie repris par Hausmann et Rodrik (2003)

Premièrement, les difficultés politiques que posent l'instauration et l'application d'une politique de la concurrence sont grandes, car cela peut créer un conflit direct entre les gouvernements et leurs principaux producteurs. Au minimum, il faut faire un travail politique rigoureux pour former une coalition de consommateurs et d'industries utilisatrices (généralement les petites et moyennes entreprises de ces industries) afin de soutenir la politique de la concurrence. Si l'on n'y parvient pas, la politique de la concurrence peut ne jamais voir le jour, ou pire, elle peut être « capturée » par les entreprises mêmes qu'elle vise à discipliner. Pour éviter ces pièges et assurer le juste degré d'indépendance entre les autorités de la concurrence et le gouvernement, il faut bien peser les enjeux. (Une trop grande proximité avec l'Etat risque de créer une interférence politique, alors qu'une trop grande indépendance risque d'aboutir à l'absence de responsabilité et à la capture).

Deuxièmement, la question qui se pose est celle de savoir à quel stade la politique de la concurrence vaut la peine d'être instaurée. Pour l'essentiel, la politique de la concurrence repose sur un droit et une doctrine économique perfectionnés et demande une main-d'œuvre hautement qualifiée. De plus, si l'Etat a une politique efficace, le secteur privé souhaitera certainement recourir à ses propres spécialistes afin de protéger ses intérêts.[7] Dès lors que de la main-d'œuvre qualifiée sera prélevée pour ces tâches réglementaires, les perdants nets seront les propriétaires des autres facteurs de production, qui disposeront de ressources moins importantes en main-d'œuvre qualifiée. Les travailleurs pauvres, peu qualifiés, paieront donc le prix de la politique de la concurrence autant qu'ils en profiteront.

Troisièmement, il ne faut pas confondre l'utilité d'une politique de la concurrence avec l'utilité d'une politique internationale de la concurrence ou d'un accord international sur la politique de la concurrence. Une politique conçue pour les pays développés pourrait coûter cher aux pays en développement et, partant, faire échec à la réduction de la pauvreté. Une politique de ce type est peut-être trop perfectionnée pour qu'ils puissent la gérer, avec les conséquences que cela entraîne en termes de capture et d'absorption de précieux facteurs de production, comme je viens de le souligner. Cependant, cela pourrait aussi revenir à s'attaquer à de faux problèmes du point de vue des pays en développement. Lutter contre les ententes internationales et contre leurs abus, par exemple, est très important pour les pays en développement mais les pays développés n'y aideront sans doute pas très activement. Enfin, cela peut aussi absorber des ressources excessives simplement pour que les pays en développement soient représentés au sein des conseils qui établissent et gèrent des accords internationaux.

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[7] On imagine difficilement un seul cas de politique de la concurrence fondée sur le droit qui ne s'accompagne pas d'une activité juridique privée.

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SUMMARY OF THE DISCUSSION

By the Secretariat

1. Introductory speeches

1.1 OECD Deputy Secretary-General, Mr Richard Boucher

OECD Deputy Secretary-General Richard Boucher gave the opening remarks. Mr Boucher noted that the OECD and UNCTAD have been mandated by the G20 to guard against any relapse into protectionism. Facing the challenges to the global economy in 2013 will require open markets and good governance. Europe is stagnating and emerging dynamic economies are slowing down. Although better governance and freer trade during the past 30 years have led to less absolute poverty, there are still more than a billion people in the world in this condition. They pay relatively more for basic services or even do not have access to them. Stronger domestic competition makes exporters more competitive, helps the "little guy" against monopolists, and helps to fight the sorts of corruption that are encouraged by government regulations that protect monopolies.

1.2 UNCTAD Secretary-General, Mr Supachai Panitchpakdi

The keynote speaker was UNCTAD Secretary-General Supachai Panitchpakdi. Mr Panitchpakdi said that UNCTAD is mandated to encourage competition and consumer protection. In his view, "development-led globalisation" involves the real sector, creation of productive capacity and jobs, and provides more opportunities for the poor and for women. Participants in a meeting last year in Beijing with the WTO agreed that the global value chain can operate effectively only with more competition and fewer obstacles to trade and competition. Freer trade by itself does not automatically reduce poverty; other domestic policies are needed, including competition policy, though there is not a direct link. Consumer protection is also important. Poor households spend disproportionately on basic necessities, and competition policies focussed on lowering their prices would help. But as well as lower prices, the poor need higher incomes, more jobs, and more choices, and competition can help here. Also, competition in mobile telephony, for example, gives poor producers better access to markets, better information about prices for their products, and enables mobile banking.

Within the agricultural sector in developing countries there is often excessive market power for inputs, as well as in processing and distribution. In Latin America, there is a historical legacy of a few families owning key industries and large amounts of land. It is difficult for governments to counter that, and sometimes their rules and regulations help it to persist. The poor thus face high barriers to becoming independent producers. Competition rules can help dismantle those structures and dilute the concentration of power. Of course, some government measures are ostensibly to help the poor, via price controls, subsidies and limiting market entry, but they reduce competition. When price controls are lifted, prices go up and the poor are worse off than before.

Another serious problem is that across the world, public infrastructure projects are becoming bigger and bid-rigging is becoming more prevalent. There is a governance issue here that the OECD could help address. Tax-payers' money that could be used to fight poverty is being wasted.

Mr Panitchpakdi drew a distinction between "experience" goods (which consumers learn about via personal experience), "credence" goods (which consumers must purchase on faith, for example pharmaceuticals), and "search" goods (for which comparative information is desirable, but not necessarily easily available). Because they have lower levels of education and access to IT, the poor are less able to choose search goods wisely. In conclusion, Mr Panitchpakdi stressed that competition should be part of the culture, and that prevention is better than punishment. It is important to prevent industrial associations from becoming clubs to protect their members. To better help the poor, competition policies should prioritise areas that benefit the poor most directly. Nevertheless, stronger competition within and between countries does not necessarily result in less inequality.

1.3 OECD Competition Committee Chairman, M. Frédéric Jenny

After welcoming the 400 delegates from 95 countries to the 12th Global Forum on Competition, M. Jenny noted that it was not clear at the beginning that the GFC would be a success. The intention was to promote dialogue between countries that had a lot of competition policy experience and those that had less. It has been successful because the topics chosen are of interest to both. The OECD focuses on integrating policies among its member countries, but how does competition policy integrate with other policies in developing countries, and how useful is it for those countries? Are competition policy and its enforcement in developing countries contributing to the achievement of more general and important national goals? M Jenny believed that there is a natural fit, which explains why so many countries are attending the Global Forum this year.

There are good economic arguments to suggest a macro relationship between competition policy, its enforcement and poverty reduction. Stronger competition leads to greater productivity, faster growth and hence there should be less poverty. In countries that have developed via market mechanisms, a significant proportion of the population has been lifted out of poverty. But stronger competition is not sufficient: appropriate trade, consumer, regulatory and industrial policies need to be in place. Policies need to be "joined up", and we have learned from the crisis that competition does not always prevent markets from failing.

The forum will hear of examples in which competition policy helped to alleviate poverty. But it is also the case that stronger competition, for example from deregulating prices, can make the poor worse off in the short term. Similarly, inefficient firms will fail, and employees will lose their jobs. Another example is the deregulation of utilities in Latin America, which led to poor non-payers being cut off from supply, and a major backlash against deregulation. Thus stronger competition needs to be accompanied by a stronger safety net to protect the poor during a transition period.

The design of competition law is also an issue. Should countries with large numbers of people in poverty have different competition laws or a different focus? Should competition laws adapt to circumstances? One might not want to go too far down that road. Should competition policies care about the impact on income distribution? Typically they do not; they focus on the allocated benefit for society as a whole. But distributional issues are very important in some countries. Is there another instrument that is better, is it in place, and does it support competition policy?

2. Plenary session: Competition and poverty reduction

2.1 Introduction by M. Jenny

The Chairman proposed to divide the discussion into six sub-topics, each introduced by an expert, followed by interventions from the floor. The sub-topics would be: the basics of poverty, its causes, and the relationship between competition policies and poverty alleviation; the effect of competition policy on poor consumers in theory and in practice, and whether some of the poor are hurt by competition policies;

the impact in theory and practice of competition policy on poor business owners, or the ability of the poor to develop businesses; whether government interventions, for example price controls or subsidies, are better than competition law enforcement at helping the poor; whether competition policy authorities should prioritise their interventions to help alleviate poverty; and whether there is such a thing as a pro-poor competition policy or law in countries where poverty is a major problem. He called on Professor Winters to address the first sub-topic.

2.2 Basics of poverty

2.2.1 Presentation by Professor Alan Winters, University of Sussex, UK

Professor Winters underscored that when discussing poverty, it is important to be clear about what it is. To be useful, the concept has to be definable and measurable. Poverty is not the same thing as inequality, and poverty can be absolute or relative. A simple measure could be a minimum level of food and shelter below which life is not sustainable or acceptable. But the poor value also security, physical and economic. For developing countries, absolute poverty is the appropriate focus. Timely and accurate data are essential for policymaking. A summary measure of poverty for a country – the proportion below the poverty line – is too crude, because one also needs to know how far below the line they are on average. A better measure is the aggregated square of the gap for those below the line.

Poverty affects individuals, but when making policy decisions, averages are important. The impact of competition policy at the macro and individual levels will be different. Competition policy is similar to trade policy in that respect. Reducing international trade barriers leads to faster growth but there will be losers, including some of the poor. One cannot say that there will be no losers; a trade-off has to be made. The impact on poverty depends mostly on who gets or loses the jobs and to a lesser extent on what happens to wages. Individual wages typically rise or fall by small amounts, but you are either employed or unemployed. During the transition to higher average income levels through better efficiency, income distribution will be affected, not necessarily towards greater equality.

2.2.2 Presentation by David Lewis

Mr Lewis said that competition is omnipresent, whether good or bad, and has implications for everything, including poverty. The opening of markets has lifted millions out of poverty and created opportunities for prosperity for individuals and countries. But rapid opening, as in Russia, led to sudden massive price increases and deeper poverty. Liberalisation of markets in China lifted millions out of absolute poverty but is gradually resulting in higher inequality. South Korea is an example of successful state capitalism, with protection accorded domestically to enterprises that successfully competed on global markets. In South Africa, electricity prices were kept low to subsidise the mining industry, but they are too low to justify investment in new capacity. If prices are allowed to rise, poor rural households will be unable to benefit from the electrification programme. In many low and middle-income countries, prices of some basic necessities are controlled or subsidised, and enforcing competition will hurt the poor.

Is it competition or lack of it that causes poverty and inequality? In Lewis' view, poverty results from three factors: unemployment and low wages; costly and low quality public services; and lack of access to non-wage income in the informal sector. Competition policy is not specifically directed at labour markets, but weak competition in the supply of basic goods and services puts a floor under wages and can result in high unemployment. For similar reasons, competitive public procurement processes and privatisation of public goods and services can help lower their cost. But the poor disproportionately rely on public provision of things like health services, and as supply shifts towards private provision, the poor exert less political pressure. Similarly, competition policy can usefully be directed at encouraging small businesses in the informal sector to graduate towards the formal sector. SMEs in the formal sector typically suffer from

difficult market access and regulatory barriers, but also from competition from SMEs in the informal sector.

2.2.3 Interventions from the floor: Zambia, BIAC, Tunisia, Romania, Morocco

A delegate from Zambia discussed the sugar market in Zambia. There are barriers to entry from imports because of a government requirement that sugar be treated with Vitamin A, high prices, and market dominance. The competition authority is making a regional study under the auspices of the African competition forum. The authority is looking for a solution and is favouring advocacy.

A delegate from BIAC emphasised that stronger competition can help developing countries by fighting corruption, opaque governmental actions, and cosy relationships between state actors and incumbent businesses. A robust competition policy signals to offending enterprises that marginalised players can fight back. Both political leadership and business support are required; otherwise legislation will not be implemented. More transparency in the public sector will boost confidence and help attract foreign direct investment. BIAC stands behind the OECD's commitment to fighting corruption. It is good for consumers and governments alike.

A delegate from Tunisia emphasised that the country suffers from a heavy legacy of corruption that grew under the previous regime. For example, the previous National Solidarity Fund to help the poor was actually a fake. Opaque public procurement processes delivered poor quality results, if any. The new government is trying to fight corruption, which is often a symptom of inadequate competition. Implementing competition policy helps fight corruption, and it helps the poor. The Tunisian competition authority is imposing severe sanctions on firms violating competition law.

A delegate from Romania highlighted two cases from the pharmaceutical sector. The competition authority had investigated bid-rigging for insulin supply and dialysis products. In both cases, the justification given for not organising national tenders after a previous supply contract lapsed was supply security, but the consequent entry barriers were found to be unjustified. More competition leads to lower prices, helping poor consumers. The Romanian authorities have introduced the OECD competition tool kit. It is important for competition authorities to intervene at an early stage of any harm to competition, but they have to be asked to do so. The Romanian authority attempts to make preliminary competition impact assessments during the draft legislation stage for public policies, and suggest alternatives.

A delegate from Morocco said that it is difficult to explain how competition can help fight poverty. In that country, about 8.9% of the population experiences absolute poverty and 28% relative poverty. There is also poverty in the sense that the poorer citizens resent the lifestyles of the very rich, and feel discriminated against. Many feel that competition and markets have not helped the poor. A study found that price support schemes helped the wealthiest, but proposals to reform them were unpopular because people felt that there would still be illicit financing, and that direct support for the poor was necessary.

2.3 Effect of competition on poor consumers

The Chairman reiterated that the relationship between competition and poverty is very complex, that policies directed at poverty may affect competition and vice versa, that implementing competition law can create new pockets of poverty even though its long-run effects are beneficial, and that competition policy is therefore not a direct instrument to fight poverty. Competition authorities have difficulties explaining how competition policy can alleviate poverty to ministers and to the public.

The Chairman then invited Cécile Fruman of the World Bank to address the Forum.

2.3.1 Presentation by Ms Fruman

Ms Fruman said that alleviating poverty is the central theme of the World Bank's work. The challenge is to lift billions out of poverty by creating jobs and encouraging inclusive income growth for the less well-off. The Bank's simulations suggest that these goals can be achieved within 15 to 50 years, a quite broad range. Making markets frequented by the poor more efficient by promoting competition is important, and innovation is a key supporting factor. The private sector, including micro enterprises in the informal sector, is crucial to job creation, but there are risks of collusion as well as rewards from promoting the private sector.

Competition by itself is not a "silver bullet", but part of a comprehensive package of supporting policies. But workers do benefit from the removal of entry barriers. Anticompetitive markets also hurt poor consumers, especially where the product involved figures highly in the budget of the poor. An example is the sugar market in Kenya, where anti-competitive practices especially harm the poor because their elasticity of demand is low and they spend a higher proportion of their budget on sugar. Another example is the pyrethrum market in Kenya, which the government controls by mandating a monopoly supplier. That practice has led to a loss of 75% of world market share over 30 years. The focus of competition policy and its implementation should be on key sectors, accompanied by rapid assessments, and competition policy should be integrated with other policies. Advocacy and "telling stories" that show that interventions in key markets help the poor are important for winning acceptance for competition policy by governments and the public.

2.3.2 Presentation by Ms Susan Lonie, Mobile Payments Consultant

Ms Lonie explained that she had helped introduce mobile money transfer services as an adjunct to mobile telephone services, first in Kenya with M-PESA and subsequently in other countries. Services like M-PESA are specifically designed for poor people in emerging economies. It is different from mobile banking; indeed, it is targeted at people without bank accounts, who frequently have neither regular incomes nor the documentation necessary for opening a bank account. Many users live in remote rural areas, whereas bank branches are typically located in towns and cities. Living with a cash economy is very inconvenient and highly risky, especially for women in urban environments and rural dwellers. Previously, if you wanted to send small sums from town to the village back home you might have to entrust the money to a bus driver and hope that he would halt at the agreed stop. But mobile money transfer is now possible because of widespread cell phone ownership in Africa, and two thirds of Kenyan adults use mobile money services.

The business model entails building up a network of agents, for example petrol stations and retail outlets, who debit the senders and credit the recipients, the transfer being made by secure text messaging via an application. The operator charges a small fee on each transaction. Mobile money services have been very successful and there are now 170 operators, with a further 100 intending to enter. Competition between mobile operators keeps costs down, but interoperability between operators is difficult.

The introduction of mobile money transfer service faced opposition from banks in Kenya, but the Ministry of Finance did not intervene and the Kenyan central bank gave approval. Now, some Kenyan banks co-operate with M-PESA and act as agents. Opposition by banks has also occurred in other countries, mainly because the banks think that mobile money is like a bank but without the regulation. In Nigeria, only banks are allowed to provide mobile phone money transfer services, and their introduction into India has been delayed for 4 years. In the longer run, competition among mobile operators and between them and banks will benefit consumers. There has to be regulation, but it needs to be good regulation.

2.3.3 Presentation by Mexico

A delegate from Mexico said that monopolies harm competition and can also affect equity. Cartelisation results in prices being 20% higher or more, and static welfare losses can be up to 13% of GDP. But lack of competition also reduces incentives to be efficient and innovate, and it hinders growth. There are also impacts on income distribution, but these have not been widely studied. Comanor and Smiley concluded in 1975 that the past and present existence of monopolies had a major impact on the distribution of household wealth and welfare. A recent study by Carlos Urzia of Mexico's Federal Competition Commission also found substantial negative effects on equity. Referring to distributive and regional effects of monopoly power in markets for basic foodstuffs and medicines, the delegate said that negative welfare effects of monopoly power are stronger for lower household incomes within a region. Furthermore, the poorer the region is, the stronger the negative effects are. Those results help guide competition policy to alleviate poverty. In the case of medical products, reforms have saved $30 billion of taxpayers' money over three years. Chicken and tortilla suppliers in some regions have been heavily fined. But other public policies, for example trade barriers, subsidies and faulty public procurement, can have negative effects.

The Chairman raised the question of whether competition policy authorities should specifically look at local markets that are important for poor consumers. He called on David Lewis of Corruption Watch, South Africa, to address that subject.

2.3.4 Intervention by David Lewis

Lewis began by noting that, in its written submission, South Africa emphasised that competition policy is shaped by a particular national context, its historical legacy, and the choices that societies make with respect to market mechanisms, and that it has to be aligned with national objectives. It is an exercise in "embedded autonomy": the agency is embedded in society and responsive to its needs, but autonomous from particular interests.

In South Africa, policies were aimed at protecting the mining sector for many years, enabling it to extract rents from the rest of the economy. Policies also aimed to limit competition in general. That reduced the living standards of the poor, and poverty persisted across generations, primarily because of lack of employment opportunities. Even 18 years after the end of apartheid, nearly half the population has incomes of only $3-$4 per day. It is difficult to isolate the impact of competition policy on poverty, as there are both short-term and long-term effects, and multiple causes of prices, some of which are beyond the scope of competition policy. Competition authorities rarely analyse the specific impact of competition policy on the poor.

The aims of competition policy are to strengthen competition and raise employment, enabling SMEs to enter and compete. Stronger competition also makes exports more competitive. But given the national context of widespread poverty, the South African agency prioritises areas that affect the incomes of the poor, for example in agricultural markets, including markets for agricultural inputs. The wheat value chain was analysed and found to be characterised by market dominance by a few firms. The authority fined offenders, and they undertook to reduce prices. Bread prices went down for a while, but then rose again as world wheat prices rose.

In South Africa, the unemployment rate is close to 70% for those in the lowest income decile, and government policies try to focus on creating jobs. One case was the entry of Wal-mart in the retail sector, which strengthened competition, reduced prices, and introduced formal grocery stores in previously underserved areas. But there were fears that informal employment in the sector would be hit and that

domestic suppliers would face competition from imports. In the end, entry was allowed, subject to employment safeguards and conditions for funding other entrants.

This underscores that competition policy implementation results in losers as well as winners, especially in the short term, and that some of the losers will be poor. There is an issue of how to manage the transition to the longer term, ensuring that the poor do not lose their livelihoods. The NGOs and civil society want the competition authority to do more to alleviate poverty, whereas the business sector favours focussing on core consumer issues. Competition policy is only one instrument in alleviating poverty; skills have to be developed and access to finance has to be improved.

2.3.5 Intervention by the CUTS

A delegate from CUTS agreed that competition policy is only one instrument for stimulating growth and creating jobs, and it is not confined to rich countries. There are concentrations of economic power, sometimes criminal, in developing countries, for example in the transport sectors. Competition policy can help, but there are short-term and long-term effects as well as direct and indirect effects. Safety nets and vouchers can play a useful role in alleviating poverty, and they obviate the need to depend on a public distribution system. It should also be understood that inequality is not the same thing as poverty, and that eliminating poverty will not necessarily reduce inequality.

Market dominance raises barriers to entry for small businesses in the informal sector. Examples are the proposed merger of two Zambian poultry firms that would force out roadside sellers, and the Bata shoe company in India, which prevented its small suppliers from selling direct or to competitors. In huge countries like India or Mexico, one needs local competition laws and authorities, a single capital-based authority is not optimal. Advocacy can be very useful when there are practices that are not per se illegal but are nevertheless anti-competitive.

The goals of competition policy in developing countries are not quite the same as for advanced countries, where the focus is purely on ensuring that markets function well. In developing countries, there also has to be a development outcome, and competition authorities need to sell their ideas to governments and parliaments, pointing out the potential for revenue gains as well as the important welfare losses stemming from inadequate competition. CUTS intends to launch a study on the effects of competition on income distribution, and the benefits and losses, that could be used to advocate before finance, planning and budget ministries.

The Chairman invited the panel experts to comment.

2.3.6 Comments by panel members: David Lewis, Professor Fox, Professor Winters

David Lewis noted that there is an interaction between product and labour markets. High prices of basic foodstuffs in South Africa put a floor under wages, resulting in unemployment. The beer market is monopolised, and its employees are well paid, but mechanisation means that there are not many of them. Some public monopolies, such as transport and telecoms, shared rents with employees in the form of overstaffing. In such cases, employees have an interest in preserving the monopoly. The markets for basic wage goods are also characterised by weak competition, and should be prioritised by the competition authorities.

Professor Fox (New York University School of Law) said that governmental restraints of trade and anti-competitive regulations are major causes of high prices and blocked opportunities for the poor, but many competition authorities regard them as peripheral to their antitrust enforcement. In a different context, there are limits to what competition policy can do about excessive concentration, and levelling the playing field might result in lower efficiency. There are trade-offs.

Professor Winters asked what the proper domain of competition policy is. In his view, competition authorities should look only at competition. They should be aware of the impact of competition policy on employment and development, but might not want to take them into account. If competition policy makes some of the poor worse off, then other policies should be used to counteract that.

The Chairman noted that in developed countries, competition authorities can concentrate on competition, but in developing countries they need to have legitimacy relative to a global plan for their advice to be followed. For example in some developing countries, governments have said that if the competition authority cannot do anything about the high price of grain, they would impose price or export controls. Competition authorities must be seen to be helpful in countries that do not have a tradition of competition law enforcement.

2.3.7 Interventions from the floor: Mauritius, US

A delegate from Mauritius noted that the World Bank said that there could be short-term adverse effects from competition, and politicians are very interested in the short term and not much in the long term. Competition authorities cannot look at everything, and advocacy is important to explain to governments and citizens what the benefits of competition are. If everybody does what they are best at, the world will be a better place.

Responding to an earlier comment, a US delegate said that Congress sometimes contacts the FTC when energy prices are high or volatile, and the FTC has specialist staff that look at the energy industry to see if there is any distortion resulting in high prices. In 1979, restrictions were introduced and the result was long queues. The elimination of price controls on natural gas in the 1980s led to greater supply and lower prices.

2.3.8 Summary of the morning discussion, and further interventions from the floor: Kenya, Czech Republic, US

After lunch, the Chairman said that one theme had been that competition authorities should try to implement competition law and not alleviate poverty, and there had been examples where implementation led to innovation or direct benefits for consumers. But other delegates felt strongly that there are ways of implementing competition law that respond to concerns about poverty. In addition, there were examples of competition law enforcement that made the poor worse off, for example the lifting of price controls on housing in the Czech Republic. He invited further interventions from the floor.

A delegate from Kenya said that they had an ongoing initiative with the World Bank to quantify the impact of competition enforcement, especially where it affects the poor. The road passenger transport sector includes both minibuses and large buses. The former, “Matatus,” are important for transporting poor people and their goods and are typically owned by poor entrepreneurs. You need about $5,000 to buy one. In the early 1970s, the big bus companies complained of unfair competition, but their arguments were not accepted and there are now around 40,000 such minibuses. Previously, there was competition between them. But then the minibus owners started to join together to raise prices, allocate routes and raise barriers to entry. The competition authority intervened, and fares have subsequently moderated, there has been more entry, and the poor are better off.

A delegate from the Czech Republic agreed that enforcing competition law can make the poor worse off, for example in his country after rent controls were lifted in 2006. The Czech Republic does not consider itself a poor country, but the liberalisation of the housing market could have been done differently had the competition authority been consulted.

A US delegate cited a 12-year study by the McKinsey Global Institute, which concluded that growth depends on competition, and in its absence, inefficient companies cannot be eliminated in favour of efficient ones. Similarly, a World Development Report concluded that markets help the poor to sell their labour and products to finance investment. It is not just enforcement that is important, it is also having an economy with a competition culture. In their written submission, the US refers to market interventions that helped the poor in the areas of hospital care, pharmaceuticals, and energy.

2.3.9 Questions and responses concerning mobile money services: Namibia, Benin, Congo

A delegate from Namibia asked about Ms Lonie's role in facilitating the development of a regulatory framework for mobile money, as there is no such framework in several countries. A delegate from Benin asked if there were any country selection criteria for the introduction of mobile money transfers, and a delegate from The Congo said that the system was now in that country. But how do suppliers of micro-credit react to the introduction of mobile money?

Ms Lonie replied that she was not a regulator, but she knows how the system works, and she met with regulators to give advice. Poor people save a lot of time and money using SMS-based money transfers, usually for quite small amounts, so risks are low and restrictive regulations are not needed, unlike for conventional banks. She had recently met with a Benin telecoms operator, who intended to launch a mobile money service there. With regard to micro-finance, M-PESA's initial objective in Kenya was to allow people to repay micro-credit loans, but they found that they could do much more than that. Some technologically astute micro-finance institutions use mobile money services that allow them to take on more customers and make more loans. Others find operating a paper-based system and a technical system in parallel to be too much of a challenge.

2.4 Impact of competition on poor business owners

2.4.1 Presentation by Mr Qaqaya

Mr Qaqaya began by explaining UNCTAD's work on competition policy and development. For UNCTAD, economic development and poverty alleviation are the final objectives and competition is an intermediate one. Competition policy is broader than competition law. Because of market characteristics, legal constraints and enforcement difficulties, competition law and policy are harder to implement in developing countries, where they are most needed, than in advanced ones. Informal markets are more important, market sizes are smaller, transaction costs and barriers to entry are high, there is a lack of a competition culture, and political economy problems are severe. He noted that the discussion so far had focussed on the extreme poor, the billion or so with incomes below the $1.25 per day mark. A market-led approach might not help the extreme poor very much. They largely exist outside the market economy and may have no cash income. For them, traditional poverty alleviation policies are more important. But there are also about 4 billion poor people in the world with incomes between $2 and $4 per day who are not integrated into world markets and pay high prices for communications, transport and other goods and services. They would benefit from a market-led approach to poverty alleviation in which competition policy could play a major role.

The poor are also producers, often in the informal sector, where markets may be inefficient and uncompetitive. Those markets would benefit from entry by formal businesses, which would increase consumer welfare. Access to basic health care and pharmaceutical products also raises welfare. Mobile telephony and financial innovation can raise productivity, wages, and employment by facilitating migrant remittances and creating jobs in the tourism industry.

2.4.2 Interventions from the floor: Pakistan, Papua-New Guinea, Benin, Morocco, Pakistan

A delegate from Pakistan said it is necessary to establish a link between the poverty alleviation programme and competition law in Pakistan, and secondly the link between competition law enforcement and poverty alleviation. There are three classes of the poor: the absolute poor who cannot meet basic survival needs; the transitory poor for whom any misfortune threatens survival; and the relatively poor, whose incomes are below a given proportion of national average incomes and who lack access to good health care, education and upward mobility.

For the poorest of the poor, Amartya Sen emphasises the importance of programmes that create environments in which people have lives they value, and opportunities to change. Competition policy can assist other policies here by countering corruption and rent-seeking, for example cartelisation of basic necessities, bid-rigging, or forcing people to purchase items they do not need. In Pakistan, competition law stems from agreements with the IMF and World Bank on a poverty alleviation programme which focuses on broad-based growth, macro stability, better governance, human capital and targeting the poor and vulnerable. The competition authority intervened in 2008 on interest-rate fixing by banks for small savings. In another case, a university had obliged all new students to purchase a particular lap-top computer, sold at a high price, and the authority successfully intervened.

A delegate from Papua-New Guinea said that the introduction of mobile telephone competition there was the result of sustained advocacy by the Treasury and the independent Consumer and Competition Commission. The rural population has profited because fruit and vegetable producers gained more bargaining power with middlemen and the whole population had better access to income earning possibilities as well as better access to basic banking facilities. Fishermen are also better able to judge supply and demand conditions when they have access to mobile telephony. Given the positive effect of competition on development, perhaps aid donors should consider giving direct aid to competition agencies to assist their work.

A delegate from Benin affirmed that competition is a development tool, but also a two-edged sword. Before introducing new competition and new competition laws, existing small-scale producers need time to eliminate inefficiencies in their businesses, as they are less able than big firms to ride out a drop in demand for their output, or delayed payment for supplies, and they have limited access to credit. If they lose their incomes, they will not be able to feed their families. A solution would be for the government to encourage them to form collectives to purchase equipment at lower cost and spread reimbursements over longer periods. The government could also provide training facilities.

A delegate from Morocco agreed that by reducing entry barriers, competition helps SMEs, but they still have difficulties competing with large companies. A solution would be more government support over a limited time period for SMEs.

A delegate from Pakistan said that the remark by the delegate from Benin showed that there are two sides to the issue of whether competition policy helps to alleviate poverty. The delegate added that there also needs to be competition within the public sector, and that if competition authorities broaden their viewpoints too far, looking at distribution issues and poverty, they risk losing their focus. Many policy building blocks are needed, such as capital markets, the private sector, the legal framework, safety nets, health, education, each with its particular focus, to get the best results.

2.4.3 Intervention by the World Trade Organisation

A delegate from the WTO argued that the issue of poverty and competition policy is important, but not as complicated as some say. Competition policy should address the needs of poor producers as well as

poor consumers, and producers are also consumers of inputs. In developing countries, input markets are often cartelised, including at the international level, and competition authorities can help by directing efforts at those markets, as well as at transport and other infrastructure markets. Public procurement markets are also often restricted to a limited number of enterprises that can submit bids. The public supply of health services, transportation and education is more costly as a result. While it is true that the effects of implementing competition policy create losers in previously protected sectors, as well as winners, and some of the losers might be poor, or become poor, the remedy is to strengthen social safety nets, not to argue that competition policy principles are wrong. Competition policy is only one instrument to alleviate poverty, but it is an important one.

2.4.4 Interventions by Senegal, Korea, Brazil

A delegate from Senegal said that although stronger competition sometimes makes the rich richer, there is also a negative impact from the lack of competition. For example in Senegal, large banks charge prohibitively high interest rates to small producers. Lack of competition among banks therefore leads to negative effects for poor producers. The delegate also mentioned several examples in which strengthening competition improved the lives of poor people. Peanuts are a major crop, and the government sets the price. But the market was liberalized, which enabled poor rural peanut farmers to sell their crops at the higher world price. Similarly, keen competition between mobile telephone companies has created incomes for people selling pre-paid cards. Mobile money services have lowered the cost of money transfers, and because of competition, businessmen can take advantage of arbitrage possibilities.

A delegate from Korea said that a connection between competition and poverty alleviation can occur through outsourcing production from an advanced country to a developing one for competitive reasons. Some workers would lose their employment in the advanced country, but safety nets are adequate there and perhaps labour markets are flexible. So although outsourcing is contentious, it can help alleviate poverty in the poor countries. Nevertheless, competition authorities should focus on competition, and other policies should address poverty. Some theoretical or empirical research is desirable to analyse the impact of competition policy on the poor. If a firm was already efficient, stronger competition will not affect its behaviour or employment. If not, the firm might have to dismiss workers, but not necessarily the worst paid ones.

Because of the globalising economy, there is a need for greater concordance in competition policies across countries. A well-designed competition policy leads to a well-organised competition environment, which will result in sustainable long-term growth and less poverty.

A delegate from Brazil said that although they had no data on the impact of competition policy on poor businesses owners, they believe that competition can certainly help them at least some of the time. Although market concentration is falling in Brazil, it remains and gives rise to entry barriers for poor entrepreneurs. Transaction costs and information asymmetries also hinder them. Brazil's competition authorities focus on unreasonable actions, not necessarily actions involving market dominance.

2.5 Poverty reduction and government intervention

Are "pro-poor" government controls and interventions preferable to competitive markets in fighting poverty, and is there potential for conflict?

2.5.1 Presentation by Professor Winters

Professor Winters stressed that, as a threshold matter, one needs to understand the causes of poverty to combat it effectively and the causes differ from country to country.

Trade liberalisation can help to relieve poverty because it leads to faster growth, but there are losers as well as winners. Higher prices for some goods or services will affect the poor somewhat, but losing their employment will affect them seriously. Competition stimulates productivity in developing countries, but the distribution channel is important. If the distribution network has weak competition, liberalising production might not have much effect on poverty. Also, if the implementation of competition laws squeezes enterprises in developing countries, they might react by squeezing wages. When competition is weak, public or private enterprises can in principle share rents with their poor workers. However, big companies do not seem to share much this way, whatever the rhetoric about the dangers of competition or privatisation.

Competition policy is like trade policy; there will be substantial negative effects on a few, who will lobby hard against implementation, and smaller positive effects on many. The correct approach is to be honest that there will be losers, and that compensatory policies will be needed. They include retraining, health and education policies, and facilitating moves to areas where there are jobs. Regulatory reforms can also help create new jobs for those displaced from inefficient firms. Industrial policies that exempt some firms from competition law enforcement on the grounds that they will one day be competitive should be scrutinised very carefully. It is not enough that they be profitable one day, they need to be so profitable that they can repay their previous support.

An exception can be made for horizontal industrial policies that alleviate financial market failure or help start-ups, which is akin to competition policy in that the intention is to stimulate entry. Competition interventions might be undertaken with poverty in mind, but authorities should focus on cases where competition is weakest. The impact on poverty should be predicted and pre-emptive measures taken to offset any negative effects. The poor should be protected with general anti-poverty policies, such as cash transfers, whatever the cause of their poverty.

The Chairman said that in many cases, the competition authorities are not in charge of competition policy and perhaps nobody is. So advocacy may be their only weapon in the absence of market solutions with their allocative benefits. He invited David Lewis to comment on Professor Winters' remarks.

2.5.2 Intervention by David Lewis

Mr Lewis said that it was an uncomfortable discussion for reasons raised by Professor Winters. There are those who believe that competition policies can and should alleviate poverty, whereas competition policy practitioners feel that competition policies should focus on securing productivity and efficiency gains. But there is also the legitimacy question. Competition policy is a major social and economic one so the competition authorities must at least make a bow towards societies' larger objectives. If there are multiple goals, for example strengthening competition and alleviating poverty, then one needs multiple instruments.

It must be remembered that the origin of competition policy was to counter market and public power in favour of consumers. The transition is from market access to stronger competition, to greater efficiency and a consequent redistribution of wealth away from producers and to consumers. One needs to be careful about doing anything from an egalitarian perspective. But competition law is capable of making trade-offs, they happen all the time. The balancing of rights and interests is at the heart of competition law and the economists, lawyers and judges are capable of doing that.

2.5.3 Intervention by the World Bank

Ms Fruman said the discussion showed that there have been instances in which competition policy reduced poverty, and that it is heartening that Mexico and South Africa are conducting in-depth analyses of

the links. She added that there is a consensus that compensatory policies need to be introduced to protect the poor when competition law enforcement results in harm to them, whether expected or not. Finally, Ms Fruman agreed with Professor Winters that industrial policy-based exemptions from competition law should be hard to win and hard to grant, and competition authorities should push hard against them.

2.5.4 Intervention by Australia

A delegate from Australia noted that competition policy is not an end in itself but a means to an end, namely raising living standards by reducing prices and raising productivity. So there should be no conflict between competition policy and addressing poverty. It is not true that the links between competition policy and poverty reduction are too difficult to understand, but there does not exist a single formula that would put a country on a self-perpetuating path of poverty reduction. Some distortions hold prices artificially low, of course. When implemented, there will be losses in some sectors, but gains in others. In Australia, an analysis showed that competition policy had raised per capita GDP by around 2.5%. Employment fell in industries subject to competition, but this was more than offset by gains elsewhere. Much depends on how quickly the released resources can be redeployed. Australia has well-functioning markets so redeployment is rapid. In countries where markets do not function well, redeployment will be slow or might never happen. In response to a query by the Chairman, the delegate agreed that redeploying resources in economies dominated by a single industry that becomes subject to international competition would be difficult.

2.5.5 Intervention by Mr Qaqaya

Mr Qaqaya stated that in the case of developing countries, introducing competition often takes the form of disengagement by the state from the economy, rather than strengthening competition in a particular market. The disappearance of publicly provided goods and subsidies will have a direct impact on the poor. There needs to be a policy framework in place when economic reforms are introduced in order to anticipate their impact. Piecemeal policies should be avoided.

2.5.6 Intervention by Professor Fox

Professor Fox said that efficiency has become a mantra. Efficiency is usually defined and used only in terms of what is efficient for the firm. But empowering those who are left out is also an important aspect of efficiency, and societies will not be efficient until they use their human resources fully.

2.5.7 Intervention by Professor Winters

Professor Winters said he agrees that competition policy arose as a challenge to power, but that does not imply that it should be the only way of tackling power or equity issues. If a law or an institution or system does its job well, do not then load it with a much bigger brief. Of course there are always trade-offs, but a competition authority should not decide to ignore a really bad anticompetitive issue just because there are many poor workers who benefit from it. One needs to think about what else can be done for those poor workers.

The Chairman replied that no competition authority had expressed a wish to be a central player on the poverty issue, but rather they are aware of the issue and should not miss a chance of making a contribution, while retaining a focus on competition policy.

2.5.8 Intervention by David Lewis

David Lewis said that if one has the option to pursue a competition policy that is pro-poor and pro-equity, then one should do so. Prosecutorial discretion can help the poor. The successful prosecution of the

bread case (see above, 2.3.4) boosted the competition authority's standing, but that cartel was inherently unstable and evidence was easy to come by. Dr Supachai said that ICT markets are technology-driven, so robust competition law enforcement is unnecessary. But if a market is dominated by the incumbent, the technology will not diffuse and huge potential gains in terms of job search and market information sharing will be lost. So one should attack abuse of dominance in that market rather than pursuing stable cartels in basic wage goods markets. Discretion should also be exercised with merger activity. For example, if a merger in the health care insurance sector could lead to new products and lower insurance costs, then a more robust approach should be taken than for a market which makes little difference to society.

When delegates were talking about small business activity, it was not always clear whether they had in mind a small struggling low-productivity firm, or a dynamic Silicon-Valley type of firm. There is a world of difference and different considerations need to be applied from a competition policy standpoint. In developing countries, large numbers of people survive from activities in very low productivity enterprises. If one sees that there is a market where there are no obvious technological or other apparent barriers to entry, yet there is large-firm dominance, then one needs to examine them carefully. More often than not, one finds an exercise of market power that discourages entry.

The most common way to deal with non-competition issues is the inclusion of a public interest clause in the competition law. In South Africa, a proposed merger may be acceptable from a competition viewpoint, but prohibited because of potential job losses. This a difficult issue: one could impose an employment condition for the merger, or end up with two weaker firms, and even bigger job losses in the longer term. A specific example is the Walmart case in South Africa, where Walmart acquired a major retailer there, Massmart. From a competition viewpoint, there were no problems, but the government worried about post-merger job losses on the ground that Walmart would sell imported Chinese goods rather than domestically produced ones. They repeatedly petitioned the independent competition authority to prohibit it or impose a domestic production quota. The Tribunal ruled against the government because the objective was to provide consumers with the lowest possible prices, not to protect producers, although they did in fact allow a kind of buy-local requirement. It is politically difficult for competition authorities to argue against procurement actions that favour small domestic producers, but at least they can publicise the cost of supporting small firms.

Entry barriers in developing countries are more likely to be the result of poor public regulations than private conduct. Large firms are or often were state-owned and subject to regulation, so the competition authorities cannot attack them directly, but they could use advocacy in favour of regulatory reform to make entry easier.

Finally, consumers – and poor consumers in particular – are disorganised and disempowered in general, and the competition authorities represent their interests in government. The authorities must be seen to be doing so. The population needs to see that justice is being done, that the law applies to everyone, including powerful corporate interests. While this might not directly affecct poverty and inequality, it is a step in the direction of a more egalitarian society. Implementation of competition policy in this way also leads to better corporate governance.

2.5.9 Intervention by Ms Lonie

Ms Lonie said that competition in the supply of mobile money and mobile telephony was indeed desirable. In the case of M-PESA in Kenya, the mobile money service is financed by a small fee on each transaction. This fee is subject to a tax, which will be raised by 10%. M-PESA will pass this on to clients. It is a small amount but it matters for poor consumers. Another mobile money service does not charge transaction fees at present, which is good for competition and consumers, but the government now wants them to charge a transaction fee, presumably so that it can be taxed.

2.6 Is there a pro-poor competition policy?

2.6.1 Presentation by Professor Fox

Professor Fox said that she would address competition law more than competition policy. If one is designing a competition law for a society where there are many poor people, how should it be designed? Would one ask different questions? How would such a law affect outsiders? Competition policy authorities in developing countries generally say that what hurts those countries and their poor the most is government restraints (and sometimes private restraints) that hurt the poor, raise entry barriers, and raise prices. So should anticompetitive acts by the state be considered under the competition laws? An UNCTAD project sent questionnaires to competition authorities, asking them if they did so. It is obvious that the law should cover state-owned enterprises, but less obvious that it should cover complicit state officials, which is important in procurement and bid-rigging cases. If a state official can be a defendant in an antitrust case, this would be a good development and help fight corruption. They recommend that competition authorities should have the power to challenge unduly anticompetitive state legislation. Regulated industries present difficulties; there is a danger of regulatory capture, so the competition authorities should have concurrent authority.

Intellectual property is sometimes exempted and abuse of intellectual property is often a problem in developing countries. Offshore acts should also be covered, since they hurt the vulnerable. An example is the potash cartel, which hurts farmers in the importing countries.

The question of procedure needs to be raised. Is there a right of private action? Do the poor as well as the rich have access to justice?

In developing countries, it is abuse of dominance that is the biggest offender, because of histories of statutes and privileges. The competition law should be able to enforce actions in this area, but this is often not the case.

Professor Fox raised four additional points concerning whether a competition law design is good for the poor or outsiders. First, firms should not have the power to block discounters. Second, how the market is defined in particular cases matters; sometimes it will be more pro-poor or more pro-establishment. Third, there is the issue of leverage, for example loyalty rebates granted by a large firm to drive small innovating firms out of the market. This is a difficult issue because loyalty rebates have some pro-competitive aspects and the large firm may be more efficient. It can be argued that there is no violation unless the rebates block equally efficient competitors. Fourth, excessive pricing, an example of which was the South African Mittal steel case. Mittal had a domestic monopoly but exported steel at the world price. The Tribunal ruled that imports should be permitted, a simple rule that obviated the need for detailed cost and price data. The Tribunal was overruled, however. More generally, developing countries need simpler rules than those in mature advanced countries, which have teams of economists and lawyers that can work for months on individual cases.

Finally, advocacy is important, including advocacy against practices that would be illegal if carried out in their own country, but harm those in other countries, for example export cartels, where those harmed might have no redress. Raising consciousness of the impact of competition policy on the poor is needed.

2.6.2 Intervention by David Lewis

David Lewis regretted that the issue of prosecuting state officials in antitrust actions had come at the end of the day rather than at the beginning. This is an area where corruption meets competition. Some civil engineering projects are so big and complex that it is inconceivable that there is no collaboration. In South Africa, neither state officials nor companies have ever been prosecuted for anticompetitive practices even

when the competition authority has produced clear evidence. Perhaps the government did not want to offend the cartelists more than they had already been offended by the competition authority, or perhaps they preferred to enter into some industrial policy deal.

2.6.3 Intervention by the US and response by Professor Fox

A delegate from the US wondered how controversial Professor Fox's presentation was actually intended to be. It could be that the situations described were ones in which mainstream competition policy was applied, and they benefited the poor. For example in the US, the FTC has examined proposed hospital mergers, and there was support for the proposition that the monopoly hospitals better served the poor. Would a pro-poor competition policy that specifically took into account the impact on a particular segment of the population lead to different results from one based on efficiency and consumer welfare considerations? If that is the case, then they are redistribution policies advanced by competition law.

In response, Professor Fox said that her remarks were not intended to be controversial and they favoured robust, innovative, competitive markets. There was no reference to trade-offs, which would imply that the market would benefit from a particular action but pro-poor policy would be against it. There is a lot of flexibility in the law. There is room to ask the question and find an answer consistent with traditional policy.

2.7 Summing up the day

The Chairman observed that there had been a rich discussion with many country examples. Defining poverty is complex and relating poverty alleviation to competition policy is perplexing. The meeting had moved from examples of competition policies having an impact on poverty to a discussion of the scope for taking on board concerns about poverty within the traditional competition policy paradigm that promotes efficient markets. The consensus seemed to be that, given an efficient market focus, there is nevertheless scope for taking poverty concerns on board when prioritising cases, such as when making market studies or when there are public interest clauses.

Professor Fox put the question in an interesting way by suggesting that the pro-poor attitude is a mindset that does not require a different law, just asking oneself a set of basic questions on things that the competition authorities have to assess, like market definitions, the harm of some practices, the time frame, or the depth of the market. There have not been many discussions of those issues, so this has clearly been experimental. We have heard that the same sort of issue will be taken up in other fora, particularly at UNCTAD.

2.8 Address by OECD Secretary-General, Angel Gurria

The Secretary-General emphasised that the OECD's work on competition has an important impact on country policies, which is the best way to measure the OECD's relevance. In Mexico, citizens pay 30% to 40% too much for their basic basket of goods and services because of a lack of competition, and it is the poorest people in the poorest regions that are hit the hardest. Examples of competition helping the poor include mobile money services and competitive mobile telephony markets in general, which help the poor by giving them cheap access to information and are revolutionising agricultural and fisheries markets in developing countries. Another example is the transport sector in Papua-New Guinea where competition has lowered prices and allowed the poor to benefit from the tourism industry. Enforcement is all-important, and finance ministries should strengthen the budgets of the competition authorities.

SYNTHESE

Par le Secrétariat[1]

À la lumière des débats qui ont eu lieu durant le Forum, des contributions écrites soumises par les délégués et de la note de référence du Secrétariat, les principaux points suivants peuvent être dégagés :

(1) La pauvreté a de multiples facettes et ne peut pas se définir uniquement par rapport à un niveau arbitraire de revenu

Les mesures simples de la pauvreté telles que le nombre de personnes vivant sous un certain seuil de revenu exprimé par rapport au revenu médian ou par rapport à une valeur absolue, par exemple 1.25 USD par jour, sont trompeuses. Elles ne donnent aucune information sur la distance qui sépare en moyenne les pauvres du seuil retenu.

Outre un revenu monétaire très faible (ou nul), la pauvreté absolue se caractérise par l'absence d'accès aux services sociaux indispensables tels que soins médicaux et éducation, et par une situation de privation en termes d'alimentation, de logement et de communication. À cela s'ajoutent l'absence de choix et de possibilités, l'insécurité physique et la précarité économique. Beaucoup de ceux qui entrent dans cette catégorie, comme les petits paysans pratiquant une agriculture de subsistance dans des zones rurales reculées, vivent largement en dehors de l'économie de marché, de sorte que les politiques de la concurrence ont peu de chances d'avoir un impact sur leur existence.

Cependant, comme l'ont fait remarquer les délégués, à côté des situations extrêmes, il y a des populations bien plus nombreuses dont le revenu est légèrement supérieur au seuil de pauvreté absolue mais qui ne sont encore pas bien intégrées dans l'économie mondiale ou dans les économies nationales et que le moindre problème médical ou financier suffirait à faire basculer dans la misère. Toutes ces personnes sont directement concernées par la vigueur de la concurrence, car elle retentit sur leur niveau de vie.

(2) La concurrence est à même d'accélérer la croissance et de faire baisser les prix, mais cela n'est pas suffisant pour éliminer la pauvreté

De l'avis général, une concurrence plus vive se traduit par une baisse des prix au bénéfice des consommateurs, y compris les pauvres. Plusieurs délégués ont également souligné les retombées positives de la concurrence sur la croissance économique. Une étude effectuée par McKinsey, les pays qui ont pris des mesures en faveur de la concurrence affichent de meilleurs résultats en termes d'innovation, de compétitivité à l'exportation et de croissance du PIB. C'est ainsi que des millions d'individus ont pu sortir de la pauvreté, particulièrement en Chine, à mesure que les possibilités d'emploi et de création d'entreprises se développaient. L'accélération de la croissance permet en outre de dégager des ressources qui peuvent être utilisées pour financer des politiques sociales aux objectifs ambitieux.

1 La présente synthèse ne reflète pas nécessairement l'opinion unanime des participants au Forum mondial sur la concurrence. Elle résume simplement les principaux points soulevés lors de la table ronde ou abordés dans les contributions écrites des délégués et dans la note de référence du Secrétariat.

Toutefois, les délégués ont également reconnu que la croissance et la baisse des prix ne sont pas des conditions suffisantes à elles seules pour éradiquer la pauvreté. Même dans les pays dotés d'une économie florissante et de marchés concurrentiels pour les biens et les services essentiels, la répartition du revenu peut être telle qu'une fraction de la population se trouvera quand même en situation de pauvreté absolue, s'il s'agit d'un pays en développement, ou de pauvreté relative, s'il s'agit d'un pays développé. D'autres politiques, dans le domaine des échanges, de la corruption et de la fiscalité, par exemple, sont également indispensables pour lutter contre la pauvreté.

(3) En outre, l'intensification de la concurrence fait des perdants et des gagnants

Un certain nombre de délégués ont attiré l'attention sur les effets aggravants que des mesures en faveur de la concurrence peuvent avoir sur la pauvreté. Si ces mesures consistent à lever le contrôle des prix sur les produits alimentaires de base, l'énergie ou les loyers, à supprimer les subventions dont ceux-ci bénéficient ou celles qui maintiennent les prix des produits agricoles à des niveaux artificiellement élevés, il est probable que les couches les plus pauvres de la population en pâtiront de façon disproportionnée, au moins dans un premier temps. Ce résultat n'est toutefois pas considéré comme une raison de conserver ou de renforcer ces contrôles, puisque les mesures de libéralisation ont par ailleurs des effets bénéfiques pour des catégories plus aisées.

La fin du partage des rentes économiques avec les salariés ou des sureffectifs, en cas de sanctions contre des ententes et des monopoles ou de démantèlement de ces derniers, est un autre effet potentiellement négatif pour les pauvres d'une intensification de la concurrence. Pour certains participants plutôt sceptiques, reste à savoir, cependant, dans quelle mesure les entreprises qui dégagent des rentes partagent effectivement celles-ci avec leurs salariés.

De façon plus générale, les intervenants ont insisté sur le fait que la concurrence fait des perdants et des gagnants, surtout pendant une période de transition, et que certaines catégories de pauvres peuvent se trouver du côté des perdants. Le renforcement de la concurrence n'a pas seulement pour effet de faire baisser les prix, il détruit aussi des emplois tout en en créant d'autres. De plus, des prix plus bas n'ont pas toujours une incidence déterminante sur les possibilités de consommation des individus ou des ménages, tandis que la perte d'un emploi, elle, peut être catastrophique. Compte tenu de ces divers aspects, les populations de nombreux pays en développement expriment parfois un certain scepticisme quant aux bienfaits de la concurrence et craignent qu'elle ne contribue à aggraver les inégalités, chez elles comme au plan mondial. C'est pourquoi il est utile de prévoir des mesures d'accompagnement destinées à remédier directement à la pauvreté, par exemple en matière de reconversion professionnelle ou d'aide à la mobilité géographique. En outre, il faudrait être honnête lorsqu'on fait la promotion de la concurrence, et ne pas cacher les conséquences négatives qui peuvent en découler à court terme pour certaines catégories de personnes.

(4) La mise en œuvre du droit de la concurrence aide les pauvres, qu'ils soient producteurs ou consommateurs

Dans de nombreux pays en développement, les marchés se caractérisent souvent par la présence d'une ou deux grandes entreprises, parfois encore dans le giron de l'État ou qui l'étaient précédemment, et d'une kyrielle de petites entreprises. L'application du droit de la concurrence permet de démanteler les cartels, de combattre les comportements anticoncurrentiels en obligeant les entreprises dominantes à rivaliser avec d'autres entreprises, et de réduire les obstacles auxquels se heurtent les petites entreprises pour pénétrer sur le marché et s'y développer. Les mesures qui facilitent l'entrée sur le marché sont doublement bénéfiques pour les pauvres, non seulement parce

qu'elles font pression sur les prix des biens et des services qu'ils consomment, mais aussi parce qu'elles élargissent leurs perspectives d'emploi et de création de petites entreprises.

(5) Le progrès technique et la concurrence conjuguent leurs effets bénéfiques pour les consommateurs et les producteurs pauvres

Plusieurs délégués ont évoqué la téléphonie mobile et les applications ingénieuses qu'on peut en faire comme autant de moyens efficaces d'améliorer les revenus et le bien-être des pauvres, à condition que la concurrence entre les fabricants de téléphones et entre les prestataires de services fassent suffisamment baisser les prix.

Les "paiements mobiles", c'est-à-dire la possibilité d'envoyer de petites sommes d'argent grâce à une application de téléphonie mobile, permettent d'effectuer des transferts d'argent entre particuliers de façon beaucoup plus rapide, plus sûre et plus fiable que lorsqu'il faut confier les fonds à des conducteurs de bus, par exemple, comme de nombreuses personnes le font encore dans les pays en développement pour acheminer des fonds sur de longues distances. À l'heure actuelle, au Kenya, environ deux tiers des adultes ont recours aux services de paiement mobile de plusieurs opérateurs qui utilisent un réseau d'agents généralement constitué de commerçants et de garagistes.

Bien que les paiements mobiles ne soient pas des services bancaires (ils sont destinés à ceux qui n'ont pas ou ne peuvent pas avoir de compte en banque), les banques en place dans certains pays ont tenté de contrer leur développement. Dans un cas au moins, des banques ont réussi à faire en sorte que le service soit proposé par leur intermédiaire et non plus par les opérateurs de téléphonie mobile. Les prestataires de services de paiement sur mobile estiment quant à eux qu'une réglementation minimum de leur marché devrait suffire puisque les transactions portent généralement sur de faibles montants et qu'ils ne distribuent pas de crédit.

En leur donnant accès en temps réel aux informations commerciales dont ils ont besoin, les services de téléphonie mobile assurés par les différents opérateurs en concurrence sur le marché permettent aux producteurs pauvres, par exemple des pêcheurs ou des petits cultivateurs de fruits et de légumes dans des zones isolées, d'optimiser leur temps et leur travail, tout en réduisant le pouvoir de marché des intermédiaires.

(6) Les priorités du droit et de la politique de la concurrence ne sont pas les mêmes dans les pays développés et dans les pays en développement

Les délégués et intervenants des pays développés ont noté que la pauvreté absolue n'est pas vraiment un problème chez eux et qu'il existe des politiques sociales pour traiter la pauvreté relative. Le droit et la politique de la concurrence ont été mis en place pour briser les ententes injustifiables et ils sont en vigueur dans la plupart des cas depuis plusieurs décennies. Ils sont principalement perçus comme des instruments permettant de protéger les consommateurs des distorsions du marché engendrées ou entretenues par les producteurs, et de réduire les barrières à l'entrée. Les politiques de la concurrence stimulent la croissance et élèvent les niveaux de vie matériels, mais leur impact sur le revenu ou l'emploi des pauvres est une considération secondaire. De plus, dans les pays développés, les autorités de la concurrence peuvent généralement s'appuyer sur des équipes d'économistes et de juristes, elles sont souvent indépendantes de l'exécutif, et elles disposent légalement de pouvoirs suffisants pour poursuivre les contrevenants. C'est ce cadre institutionnel qui a favorisé l'émergence d'une "culture de la concurrence" dans les pays développés.

D'après les témoignages de certains de leurs délégués, en revanche, les autorités de la concurrence des pays en développement ne disposent pas de nombreux experts économiques et juridiques chevronnés, et leurs pouvoirs d'intervention sont souvent limités. Dans ces pays, la

première des priorités est le développement : il s'agit avant tout d'extirper de la pauvreté absolue une part non négligeable de la population et de faire en sorte que le plus grand nombre possible d'habitants puisse avoir accès aux biens et services essentiels que sont l'eau salubre, l'éducation et l'accès au traitement médical. Une multitude de petits producteurs et de consommateurs pauvres vivent aux côtés d'une petite poignée de propriétaires fonciers et d'hommes d'affaires très riches. Dans ce contexte, la crédibilité politique des autorités de la concurrence repose dans une large mesure sur la perception que l'on peut avoir de leur contribution à la réduction de la pauvreté et à la création d'emplois. Il serait risqué pour elles d'affirmer que leur seul objectif est de combattre les pratiques anticoncurrentielles des producteurs et que l'impact de leur action sur la pauvreté ou les inégalités est sans importance. En outre, elles sont souvent confrontées, dans les secteurs où elles interviennent, à des entreprises dominantes relativement grandes qui jouissent de solides soutiens politiques. Les marchés sont de petite taille, le secteur informel est développé et les plus pauvres vivent en dehors du système de marché. Dans ces conditions, la pédagogie est souvent le meilleur sinon le seul instrument dont disposent les autorités de la concurrence pour influer sur les décisions gouvernementales et éduquer le public.

(7) Le droit et la politique de la concurrence peuvent-ils être "favorables aux pauvres" ?

Les délégués ont tous reconnu que la concurrence n'est pas une fin en soi, mais un moyen de parvenir à une fin, celle-ci étant de promouvoir le bien-être des consommateurs et, au bout du compte, de relever les niveaux de vie. Il n'y a donc pas d'incompatibilité fondamentale entre les objectifs de la politique de la concurrence et la réduction de la pauvreté.

Dans les pays où la pauvreté est à la fois grave et répandue, l'impact sur la situation des pauvres peut être un critère de décision retenu par les autorités de la concurrence pour le choix des dossiers à traiter. Les délégués ont donné plusieurs exemples :

- Les chaînes de distribution des produits alimentaires de base et d'autres biens de première nécessité sont souvent contrôlées par des cartels. La répression de ces ententes est extrêmement bénéfique pour les pauvres, si bien que dans certains pays les autorités de la concurrence préfèrent combattre la collusion sur ces marchés plutôt que sur celui des produits de luxe, par exemple. Parmi les autres ententes visées notamment pour leurs effets préjudiciables aux pauvres, les délégués ont également cité celles portant sur les denrées agricoles, le pain, la volaille, les tortillas, le sucre, les transports routiers et les médicaments ;
- Certaines autorités de la concurrence privilégient le renforcement de la concurrence sur les marchés des biens essentiels où la demande est très élastique, car il suffit dans ce cas de petites baisses de prix pour alimenter les achats d'un très grand nombre de personnes dans les couches les plus défavorisées ;
- Les restrictions gouvernementales imposées aux échanges internationaux et les réglementations mal conçues applicables aux marchés de produits sont très souvent à l'origine des prix élevés et des barrières à l'entrée observés dans les pays en développement. Il est fréquent que seul un petit nombre d'entreprises, de préférence nationales, soient autorisées à soumissionner aux marchés publics. La corruption est une pratique courante, mais même lorsque les autorités de la concurrence sont en mesure de démontrer l'absence de concurrence dont elle est la cause, il est rare que des mesures soient prises pour y remédier et les agents publics impliqués ne sont pas inquiétés. La corruption décourage l'investissement étranger et national, et alourdit les coûts supportés par les entreprises. Les soumissions concertées peuvent accroître de 20 à 30 pour cent le coût des marchés publics. Néanmoins, pour les autorités de la concurrence de certains pays, la publicité et les mesures de sensibilisation sont sans doute de meilleurs moyens d'action que les procédures judiciaires ;

– Les ententes à l'exportation font augmenter les coûts et les prix dans les pays importateurs. Malheureusement, ceux-ci ne disposent pas tous des moyens et des compétences nécessaires pour s'attaquer à ces pratiques. Dans l'optique de la réduction de la pauvreté, les autorités de la concurrence des pays exportateurs devraient attirer l'attention sur les retombées des ententes injustifiables à l'exportation pour les pauvres des autres pays, et militer contre les exemptions dont ces ententes bénéficient.

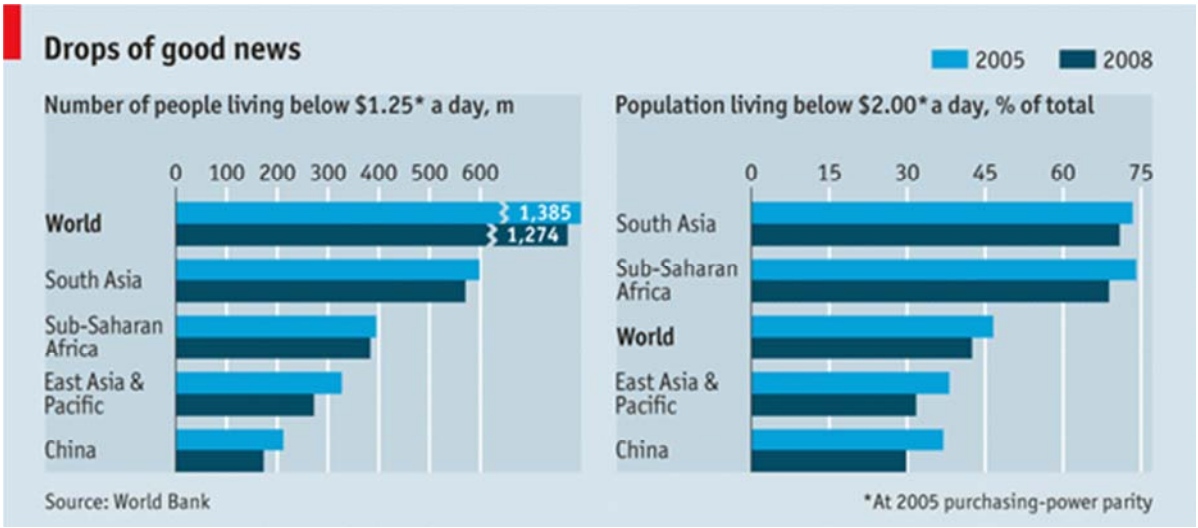
NOTE DE RÉFÉRENCE

Par le Secrétariat [*]

1. Introduction

Depuis quelques années, les statistiques de la pauvreté sont exceptionnellement encourageantes. Pour la première fois depuis qu'elle a commencé à recueillir des données en 1981, la Banque mondiale a observé un repli du nombre de pauvres dans toutes les grandes régions entre 2005 et 2008 (graphique 1, premier diagramme).

Graphique 1. Nombre de personnes vivant dans la pauvreté absolue, par région, 2005 et 20081



La lutte contre la pauvreté n'en demeure pas moins l'un des défis majeurs pour les États. Le chiffre de référence de 1.25 USD par jour correspond à une extrême indigence. Si on relève ce seuil à seulement 2 USD par jour, on constate que 45 % de la population mondiale vivent encore dans la pauvreté (graphique 1, second diagramme.) Il n'est pas exagéré de dire que « la pauvreté absolue est un problème d'envergure ».[2]

Les pouvoirs publics cherchent donc des moyens de progresser dans la lutte contre la pauvreté en agissant sur de nombreux leviers, y compris celui de la concurrence. Pour soutenir ces efforts, la session de 2013 du Forum mondial sur la concurrence de l'OCDE analysera les retombées de cette dernière sur les

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[*] Ce rapport a été rédigé par Zsofia Tari et Jeremy West, Division de la concurrence de l'OCDE.

[1] Ces deux diagrammes figurent dans l'article « Global Poverty: A Fall to Cheer », *The Economist* (3 mars 2012), disponible à l'adresse suivante : www.economist.com/node/21548963.

[2] Gary Fields, « *Poverty and Low Earnings in the Developing World* », *in* Philip Jefferson (dir.pub.), Oxford Handbook of the Economics of Poverty 249, 251 (Oxford University Press: 2012).

populations défavorisées. Nous examinons dans le présent document ses répercussions sur les plus démunis en tant que consommateurs (la demande) et en tant que petits entrepreneurs ou salariés (l'offre). Dans les deux cas, il s'agit de définir si la concurrence atténue la pauvreté ou pas.

1.1 Les pauvres en tant que consommateurs de biens et de services essentiels

Les personnes les plus défavorisées ne sont pas toujours considérées au premier chef comme des consommateurs. Or, elles consomment forcément pour vivre. Comme tout un chacun, les pauvres ont besoin de certains biens et services de première nécessité. Il s'agira par exemple de produits alimentaires comme le poulet, le riz, les haricots et les galettes de maïs ; de services financiers, comme les transferts d'argent et les petits crédits ; de carburant ; et d'infrastructures publiques comme les réseaux urbains de transport en commun. Pour les pauvres, l'argent ainsi dépensé représente une part des revenus (souvent nettement) supérieure à ce qu'elle est pour les consommateurs plus aisés. Lorsque le prix de ces achats est indûment élevé, les consommateurs pauvres subissent donc un préjudice disproportionné. Pour eux, une augmentation des prix peut rendre ces produits essentiels absolument inabordables, ou accessibles uniquement au sacrifice d'un autre achat tout aussi fondamental. À l'inverse, une baisse des prix peut atténuer la pauvreté en mettant des produits auparavant inabordables (ou de plus grandes quantités de ces produits) à leur portée. C'est pourquoi la politique de la concurrence semblerait à première vue offrir un moyen intéressant de réduire la pauvreté.

La hausse des prix peut être motivée par de nombreux facteurs, comme une inflation généralisée ou des ruptures d'approvisionnement. Mais quand les prix montent parce que des fournisseurs de biens et services fusionnent avec leurs concurrents, adoptent des pratiques anticoncurrentielles pour les étouffer, ou établissent avec eux une entente pour fixer les prix, la protection de la concurrence peut amener une baisse substantielle des prix. D'autres facteurs peuvent affaiblir indûment le degré de concurrence et augmenter artificiellement les prix, comme l'existence d'une réglementation restrictive ou partiale. Paradoxalement, certaines mesures gouvernementales motivées par le souci d'agir en faveur des plus démunis font parfois, en portant atteinte à la concurrence, plus de mal que de bien. Cela peut notamment être le cas lorsque l'État applique des programmes de subventions et de contrôle des importations et des exportations, ou impose le maintien en service de lignes de transports peu fréquentées. Les autorités de la concurrence peuvent recenser ces mesures et préconiser des réformes favorables à la concurrence, et encourager la prise en compte de la concurrence dans les politiques de lutte contre la pauvreté en général.

1.2 Les pauvres en tant que petits entrepreneurs et salariés

La concurrence peut également avoir un effet favorable en permettant aux pauvres d'accroître leurs revenus. Si les marchés, au lieu d'être fermés, monopolistiques ou cartellisés, sont ouverts et concurrentiels, ils devraient en principe offrir davantage de possibilités aux petits entrepreneurs et aux salariés pauvres. À une échelle plus large, si l'intensification de la concurrence sur les marchés stimule la croissance macro-économique, et si celle-ci dynamise l'emploi et les salaires, la concurrence peut avoir sur l'ensemble de l'économie des retombées qui rejailliront aussi sur les pauvres.

On pourrait à l'inverse faire valoir que, dans certaines circonstances, la concurrence risque d'empêcher les pauvres de faire fructifier de petites entreprises ou de trouver et de conserver un emploi. Dans un contexte de vive concurrence, les employeurs peuvent être amenés à supprimer des postes ou à diminuer les salaires dans le cadre de mesures visant à rehausser leur efficience par exemple. Les innovations introduites sous l'effet de la pression concurrentielle peuvent rendre certains emplois obsolètes. Un marché qui, à une époque, pouvait accueillir de petits intervenants inefficients gagne en efficacité à mesure que la concurrence s'intensifie, de sorte que des pauvres qui créent leur entreprise avec un capital modeste n'ont plus aucune chance d'y survivre. Les employeurs bien établis eux-mêmes font parfois faillite

lorsqu'ils ne parviennent plus à soutenir la concurrence de rivaux plus performants et, lorsqu'ils disparaissent, les emplois disparaissent avec eux, y compris ceux qu'occupaient les pauvres.

Comment concilier ces forces contraires ? Est-il attesté que le renforcement de la concurrence est effectivement favorable aux entrepreneurs et aux salariés ? Dans l'affirmative, les principaux bénéficiaires en sont-ils essentiellement les grandes entreprises et les riches, ou bien les pauvres en recueillent-ils également les avantages ?

1.3 Autres considérations

Qu'il s'agisse d'aider les pauvres en diminuant les prix de leurs achats ou en augmentant leurs revenus potentiels, l'efficacité de la concurrence à atténuer la pauvreté ne dépend pas uniquement de la qualité du droit de la concurrence et de l'autorité compétente dans un pays, mais de plusieurs facteurs. Par exemple, si la corruption et la non-transparence règnent au sein de l'administration publique, l'intensification de la concurrence risque de ne pas améliorer la situation des personnes vivant en dessous du seuil de pauvreté. Il peut également être difficile pour l'autorité responsable d'intervenir. Dans bon nombre de pays, les lois susceptibles de résoudre les problèmes en matière de concurrence existent mais ne sont pas toujours appliquées comme il convient, peut-être parce que les autorités ne disposent pas du pouvoir et de l'influence politique nécessaires pour lutter contre les entreprises multinationales, qui entretiennent souvent de bonnes relations avec d'autres secteurs de l'administration. Nous nous penchons également sur ces questions.

Pour encadrer le reste du débat, nous examinons dans les parties 2 et 3 les différentes façons de définir la pauvreté et recensons ses causes principales. Dans la quatrième partie, nous passons brièvement en revue les effets que, selon les principes économiques, la concurrence sur les marchés des biens et des services de première nécessité devrait avoir sur la pauvreté. Nous analysons ensuite quelques exemples de retombées concrètes de la concurrence sur les consommateurs pauvres. La cinquième partie porte sur les effets théoriques et pratiques de la concurrence sur les pauvres en tant qu'entrepreneurs et en tant que salariés/demandeurs d'emploi. La sixième partie examine si les mesures interventionnistes comme les contrôles sur les prix, les obstacles aux importations et les subventions auraient des conséquences plus bénéfiques pour les pauvres que la concurrence. La septième partie analyse le problème de l'incidence éventuellement mitigée de la concurrence sur la pauvreté, compte tenu de l'appauvrissement des acheteurs et des vendeurs observé sur certains marchés. Enfin, la huitième partie propose des mesures que les autorités de la concurrence pourraient adopter en vue de réduire la pauvreté.

2. Définitions de la pauvreté

Si la réduction de la pauvreté est généralement jugée souhaitable, la définition de la pauvreté prête davantage à controverse. Il n'en existe pas qui soit objectivement correcte, et la plupart des observateurs reconnaissent que toute définition doit être appréciée en fonction de contextes politiques, économiques ou sociaux particuliers.[3] Par exemple, si la pauvreté est un problème pour les pays en développement comme pour les pays développés, le seuil officiel de pauvreté est généralement supérieur dans les seconds.

Un article paru en 2005 dans *The Economist* illustre cette constatation. Il compare la vie d'un camionneur au chômage de l'industrie houillère de la région des Appalaches aux États-Unis à celle d'un médecin dans la République démocratique du Congo. Les revenus des deux hommes étaient à peu près identiques, de 521 USD et de 250-600 USD par mois respectivement, mais le camionneur américain était considéré extrêmement pauvre, le médecin congolais très prospère. Aux États-Unis, le revenu annuel médian était en 2004 de 44 389 USD. Le plus souvent, même les familles américaines « démunies »

[3] Ruth Lister, Poverty (Key Concepts), Polity Press (2004), Chapitre 1.

possèdent un téléviseur, leurs enfants sont généralement scolarisés, et elles ne sont habituellement pas obligées de produire leurs propres aliments pour survivre. Au Congo, en revanche, le revenu annuel s'élevait en moyenne à 673 USD, et les services fondamentaux comme l'eau courante et l'électricité eux-mêmes étaient rares.[4]

On peut définir la pauvreté au moyen de trois concepts distincts : les revenus, les besoins fondamentaux, et les capacités. Le plus couramment utilisé est celui des revenus, en vertu duquel une personne est pauvre si ses revenus sont inférieurs à un montant donné. Le concept des besoins fondamentaux prend en compte les aspects matériels qui doivent être satisfaits pour mener une vie à tout le moins tolérable, ce par quoi on entend généralement des services tels que la santé de base et l'éducation. La notion de capacités se polarise sur les besoins essentiels, comme une alimentation, des vêtements et un logement corrects, mais prend également en considération des aspects sociaux tels la participation à la vie d'une communauté.

Pour chacun de ces concepts, il existe deux méthodes permettant de mesurer la pauvreté : on peut définir un seuil de pauvreté absolue, ou choisir un seuil de pauvreté relative. Les pays en développement, où la pauvreté est généralement un problème de plus grande ampleur, utilisent d'ordinaire des seuils absolus, les pays développés privilégiant souvent des mesures relatives adaptées à leurs habitants et aux normes spécifiques de leur société.[5]

2.1 Seuils de pauvreté absolue

On entend par seuil de pauvreté absolue le niveau de revenus au-dessous duquel les conditions minimales permettant de mener une vie décente ne sont pas satisfaites. Ces seuils sont généralement définis par un État ou par une organisation internationale. Ainsi, en 1990, la Banque mondiale a défini la pauvreté comme étant l'incapacité à atteindre un niveau de vie minimum, et a établi un seuil de pauvreté international de 1 USD par jour pour observer l'incidence de la pauvreté extrême dans le monde.[6] Cet indicateur a été largement adopté.

Pour l'établir, la Banque mondiale a recensé les seuils de pauvretés nationaux dans les pays à faible revenu. Elle les a convertis en une monnaie commune pour faciliter leur comparaison. Elle a utilisé les parités de pouvoir d'achat (PPA) pour tenir compte des variations du pouvoir d'achat de différentes monnaies sur les marchés intérieurs. Les seuils de pauvreté se situaient entre 275 USD et 360 USD par an en parité de pouvoir d'achat, d'après les prix des produits de base de 1985. Comme ces chiffres correspondent à près de 1 USD par jour, c'est ce montant qui a été couramment retenu comme seuil de pauvreté.[7] Le recours à un seuil absolu et à la notion de PPA pour définir la pauvreté a pour avantage que

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4 « The Mountain Man and the Surgeon: Reflections on Relative Poverty in North America and Africa », *The Economist* (20 décembre 2005). Disponible à l'adresse suivante : www.economist.com/node/5323888.

5 Martin Ravallion, « Poverty Lines across the World », *World Bank Policy Research Working Paper* n° 5284 (2010), p. 3.

6 Banque mondiale, *Rapport sur le développement dans le monde 1990* – La pauvreté (1990), p. 26. Disponible à l'adresse suivante : http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/12/13/000178830_98101903345649/Rendered/PDF/multi_page.pdf.

7 En 2008, ce chiffre a été porté à 1.25 USD par jour (en PPA 2005). Martin Ravallion, Shaohua Chen et Prem Sangraula, « Dollar a Day Revisited », *World Bank Policy Research Working Paper* 4620 (2008).

deux personnes disposant du même pouvoir d'achat par rapport aux produits de base sont traitées de la même manière, même si elles vivent dans des pays différents.[8]

Le seuil de 1 USD par jour s'est vu reprocher de ne pas refléter le coût réel des besoins essentiels d'un être humain. Néanmoins, près d'un cinquième de la population des pays en développement vit encore en deçà de ce seuil.

2.2 Seuils de pauvreté relative

Les seuils de pauvreté relative sont établis par rapport à une médiane ou une moyenne, et sont plutôt utilisés par les pays développés. Ils se situent généralement entre 40 % et 60 % du revenu médian national. Ils varient d'un pays à l'autre et évoluent également dans le temps. Ils augmentent quand le pays s'enrichit, et diminuent quand il s'appauvrit. À la différence des seuils absolus, « les seuils relatifs ne prétendent pas représenter des minimums physiologiques, et correspondent (généralement) à une proportion constante du revenu courant moyen ou de la consommation courante moyenne ».[9] Les seuils relatifs étant toujours fondés sur la médiane ou la moyenne de la population, la pauvreté ainsi définie ne peut jamais être éliminée (à moins que la distribution ne soit relativement uniforme).

Le sociologue Peter Townsend utilise une définition plus subjective de la pauvreté relative :

> *Les individus, familles ou groupes de la population peuvent être considérés en état de pauvreté quand ils ne disposent pas des ressources nécessaires pour s'assurer le type d'alimentation, participer aux activités et jouir du niveau de vie et de confort qui sont habituels, ou au moins largement encouragés ou approuvés dans les sociétés auxquelles ils appartiennent. Leurs ressources sont si sensiblement inférieures à celles qui sont déterminées par la famille moyenne qu'ils sont en fait exclus des modes de vie, des habitudes et des activités courants.*[10]

La définition de la Commission européenne, adoptée en 1975, est très similaire à celle de P. Townsend, si ce n'est que la question de la participation sociale n'y est pas explicitement mentionnée : « On entend par personnes pauvres les individus, les familles et les groupes de personnes dont les ressources (matérielles, culturelles et sociales) sont si faibles qu'ils sont exclus des modes de vie minimaux acceptables dans l'État membre dans lequel ils vivent. »[11]

2.3 L'approche globale

Certaines approches intègrent les méthodes absolue et relative sans fixer de seuil précis. La plupart des organisations internationales intervenant dans la lutte contre la pauvreté publient une définition ou une explication générales de la pauvreté. Il s'agit habituellement de définitions globales qui prennent en considération, outre la pénurie alimentaire, les aspects sociaux et psychologiques de la pauvreté.

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8 Martin Ravallion et Shaohua Chen, « Weakly Relative Poverty », *World Bank Policy Research Paper* n° 4844 (2009), p. 3.

9 Ravallion, *supra* n.5 p. 3.

10 Peter Townsend, *Poverty in the United Kingdom*, University of California Press (1979).

11 Cette définition de la pauvreté a été établie par la Commission européenne durant son premier Programme de lutte contre la pauvreté (1975-1980). Elle figure dans le Rapport conjoint de la Commission et du Conseil sur l'inclusion sociale. Disponible à l'adresse suivante : http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_fr.pdf p. 10.

L'OCDE ne souscrit pas à une définition particulière de la pauvreté, mais dans ses Lignes directrices sur la réduction de la pauvreté, le Comité d'aide au développement de l'Organisation en donne la description suivante :

> *La notion de pauvreté recouvre différentes dimensions du dénuement. En général, elle renvoie à l'incapacité d'atteindre des normes de bien-être sur le plan économique et social, mais aussi sur d'autres plans. Le caractère pluridimensionnel de la pauvreté est désormais largement reconnu. Il est solidement attesté par des travaux de recherche menés dans ce domaine, notamment par d'importantes études participatives qui ont analysé ce que les pauvres eux-mêmes entendent par pauvreté. Elle englobe des mesures de la pauvreté absolue comme les taux de mortalité infantile et juvénile, et des mesures de la pauvreté relative, telle qu'elle est définie selon des normes variables selon les sociétés.*[12]

D'après la Banque mondiale, « [l]a pauvreté se caractérise par un profond dénuement, un manque aigu de bien-être. . . . Être pauvre, c'est avoir faim, ne pas avoir un toit ni de vêtements décents, être malade et ne pas pouvoir se faire soigner ; c'est être illettré et sans instruction. Les personnes démunies sont particulièrement exposées à des événements extérieurs qui échappent à leur contrôle. »[13] « Il s'agit essentiellement de déterminer si les ménages ou les particuliers disposent de ressources suffisantes pour satisfaire à leurs besoins… Ont-ils suffisamment de nourriture ? Un logement ? Ont-ils accès aux services de santé ? À l'éducation ? »[14]

Le Conseil économique et social des Nations Unies a une définition similaire qui met l'accent sur l'incapacité à participer à une société :

> *« La pauvreté est un déni de choix et de possibilités, une violation de la dignité humaine. Elle se traduit par un manque de capacité fondamentale à participer utilement à la société. Elle signifie ne pas disposer des moyens nécessaires pour nourrir et vêtir une famille, ne pas avoir accès à une école ou à un centre de soins, ne pas posséder de terre sur laquelle cultiver sa propre nourriture ou ne pas avoir d'emploi pour gagner sa vie, ne pas avoir accès au crédit. Elle est synonyme d'insécurité, d'impuissance et d'exclusion des individus, des ménages et des communautés. Elle entraîne une vulnérabilité à la violence, et implique souvent de vivre dans des environnements marginaux ou fragiles, sans accès à l'eau potable ou à l'assainissement. »*[15]

L'économiste Amartya Sen, lauréat du prix Nobel, s'est appuyé sur l'approche globale pour définir la pauvreté dans son livre *Un nouveau modèle économique. Développement, justice, liberté*. Il y explique que la pauvreté économique frustre les individus de la liberté d'échapper à la faim et à la malnutrition, de se procurer les remèdes existants pour se soigner, de se vêtir ou de se loger décemment, d'accéder à l'eau

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12 OCDE, La réduction de la pauvreté, Les lignes directrices du CAD (2001), p. 37. Disponible à l'adresse suivante : http://publications.oecd.org/acrobatebook/4301091e.pdf.

13 Banque mondiale, Rapport sur le développement dans le monde 2000/2001 : Combattre la pauvreté, p. 19. Disponible à l'adresse suivante : http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2007/05/09/000090341_20070509132502/Rendered/PDF/226840FRENCH0W1747201351X001PUBLIC1.pdf

14 Jonathan Haughton et Shahidu Khandker, *Handbook on Poverty and Inequality*, Banque mondiale (2009), p. 2. Disponible à l'adresse suivante : http://issuu.com/world.bank.publications/docs/9780821376133.

15 Déclaration des Nations Unies, juin 1998 (cette définition de la pauvreté est également disponible à l'adresse suivante : http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf).

potable et aux installations sanitaires[16]. Cette approche se retrouve aussi dans les observations formulées en 2011 par M. Andrew Mitchell, Secrétaire d'État britannique au développement international. Évoquant les progrès accomplis dans la lutte contre la pauvreté dans le monde, celui-ci ne fait pas seulement référence à la croissance en termes de revenu par habitant, mais mentionne des facteurs non monétaires comme l'augmentation de l'espérance de vie et celle des taux de scolarisation dans le cycle secondaire.[17]

2.4 L'indicateur de la pauvreté humaine et l'indice de la pauvreté multidimensionnelle

L'indicateur de la pauvreté humaine (IPH) été mis au point par les Nations Unies pour mesurer le niveau de vie d'un pays. Selon l'ONU, la pauvreté équivaut à un déni des possibilités et des choix les plus indispensables au développement humain ; l'IPH est donc centré sur la privation de trois éléments essentiels de la vie humaine : la longévité, le savoir et un niveau de vie décent.[18] Comme la pauvreté peut avoir des significations très différentes dans les pays en développement et dans les pays développés, il existe deux méthodes de calcul distinctes de l'IPH.

L'indicateur des pays en développement tient compte de la probabilité à la naissance de ne pas vivre au-delà de 40 ans, du taux d'analphabétisme adulte, du pourcentage de la population n'ayant pas d'accès durable à une source d'eau potable, et du pourcentage d'enfants sous-alimentés. Celui des pays développés fixe l'espérance de vie à 60 ans et tient compte du pourcentage d'adultes ayant des difficultés à comprendre un texte de manière suivie, de la population vivant sous le seuil de pauvreté (50 % du revenu médian des ménages), et du taux de chômage de longue durée (12 mois au moins).

En 2010, les Nations Unies ont remplacé l'IPH par un indice de la pauvreté multidimensionnelle (IPM). Celui-ci conserve les trois éléments de base, mais utilise par ailleurs dix indicateurs de « privations » critiques comme l'éducation, la santé, l'assainissement, les biens et les services (électricité, eau potable). Ensemble, ces indicateurs dressent un tableau plus complet de la pauvreté aiguë que des mesures simples du revenu ou que l'IPH. Selon cette définition multidimensionnelle, un ménage est jugé pauvre s'il cumule plusieurs formes de privation, représentées par différents indicateurs dont la somme pondérée est supérieure à 30 % de l'ensemble des privations considérées.[19]

2.5 Une autre méthode de mesure de la pauvreté

Comme nous l'avons vu, il existe plusieurs façons de définir la pauvreté, mais une bonne définition doit également bien correspondre à la conception que la population s'en fait. Un terme plus récent, le « seuil de pauvreté subjective sociale »,[20] reconnaît qu'il existe un niveau de revenus au-dessus duquel les individus estiment ne plus être pauvres et en dessous duquel ils pensent généralement l'être.

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16 Amartya Sen, *Un nouveau modèle économique. Développement, justice, liberté* (Éditions Odile Jacob : 2000).

17 Ministère du développement international du Royaume-Uni, « The Engine of Development: The Private Sector and Prosperity for Poor People » 4 (2011).

18 Déclaration des Nations Unies, juin 1998 (cette définition de la pauvreté est également disponible à l'adresse suivante : www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf).

19 Sabina Alkire et Maria Emma Santos, Oxford Poverty and Human Development Initiative Multidimensional Poverty Index (juillet 2010). Disponible à l'adresse suivante : www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf

20 Martin Ravallion, Shaohua Chen et Prem Sangraula, « Dollar a Day Revisited », Banque mondiale, *World Bank Policy Research Working Paper,* n° 4620, 2008, p.4.

Les pauvres pensent parfois qu'ils ne peuvent échapper à la pauvreté parce que des facteurs sur lesquels ils n'exercent aucun contrôle contribuent au manque de perspectives dont ils souffrent. Avoir des parents pauvres ou pas, par exemple, est à l'évidence un choix qu'un enfant n'est pas en mesure d'exercer, mais s'il a effectivement des parents pauvres, cela aura sans doute une incidence sur les possibilités qui s'offrent à lui. Consciente de ce fait, la Banque mondiale a établi un autre indice pour mesurer en quoi les facteurs extérieurs influent sur les possibilités pour un individu de mener une vie acceptable. L'indice d'égalité des chances (IEC)[21] examine en quoi la situation personnelle (lieu de naissance, richesse, race ou sexe) influe sur la probabilité qu'un enfant ait accès aux biens et aux services essentiels. L'IEC mesure les possibilités (accès global à l'enseignement primaire, eau potable, etc.) que présentent un pays ou une région donnés, et l'équité de leur répartition entre les riches et les pauvres. Une fois l'écart des chances présenté sous forme chiffrée, on peut mesurer les progrès accomplis par une société en vue d'y assurer un accès universel.

3. Pourquoi la pauvreté persiste

Il est difficile de définir pourquoi la pauvreté est un problème persistant, notamment parce qu'elle est généralement perçue de manière différente dans les pays riches et dans les pays pauvres. Si certains pays développés la considèrent essentiellement comme un problème social, les pays en développement y voient souvent un problème économique. André Béteille décrit le problème de la façon suivante :

> *Indéniablement, la stagnation et le retard économiques rendent l'éradication de la pauvreté très difficile, ce qui se vérifie tout particulièrement lorsque cette stagnation s'accompagne d'un fort essor démographique. Mais la pauvreté, y compris la pauvreté absolue, persiste même dans des pays qui sont avancés sur le plan économique et affichent une faible croissance démographique, ce qui a conduit les sociologues à remettre en question l'hypothèse d'une relation simple entre pauvreté, inégalité et retard économique*[22].

Intuitivement, on peut penser que des taux stationnaires ou faibles de croissance économique contribuent à la pauvreté, et que cette croissance offre donc un moyen de sortir les pauvres de la misère. Cela peut certainement être le cas, comme le montre l'évolution récente de la Chine. Mais un taux élevé de croissance du PIB, à court terme notamment, peut aussi s'accompagner d'une hausse, et non d'une baisse, de la pauvreté. La répartition des revenus participe tout autant de la pauvreté que la croissance économique.

Il est possible d'agir sur certaines des causes fondamentales de la pauvreté, mais pas sur d'autres. On ne peut par exemple modifier la géographie et l'histoire d'un pays. Aucune politique gouvernementale ne peut les transformer. Les facteurs auxquels on peut au moins en partie remédier (et qui sont donc plus intéressants du point de vue de l'action publique) sont la surpopulation, la répartition inéquitable des ressources et des revenus, les perspectives insuffisantes en matière d'éducation et d'emploi et la dégradation de l'environnement.

On peut entre outre répartir les causes remédiables de la pauvreté en facteurs généraux/économiques, politiques/de gouvernance et psychologiques, catégories qui sont définies uniquement à des fins de

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21 José Molinas, Ricardo Paes de Barros, Jaime Saavedra et Marcelo Giugale, « Do our Children Have a Chance? The 2010 Human Opportunity Report for Latin America and the Caribbean », Banque internationale pour la reconstruction et le développement/Banque mondiale. Disponible à l'adresse suivante : http://siteresources.worldbank.org/INTLACREGTOPPOVANA/Resources/840442-1260809819258/6645553-1273515611898/Livro2010_final1.pdf.

22 Andre Béteille, « Poverty and Inequality » 38 *Economic and Political Weekly* 4457 (2003), Disponible à l'adresse suivante : www.jstor.org/stable/pdfplus/4414161.pdf

commodité. Comme le montre la brève analyse qui suit, ces facteurs n'interviennent pas isolément, mais sont plutôt étroitement liés.

3.1 Causes générales/économiques de la pauvreté

3.1.1 Malnutrition

Pauvreté rime pour ainsi dire avec faim. Le premier objectif du Millénaire pour le développement des Nations Unies établit pour l'essentiel qu'être pauvre consiste à ne pas avoir assez à manger.[23] Mais la faim se distingue de la malnutrition. Une personne mal nourrie ne souffre pas seulement d'inconfort, mais d'une altération de ses capacités physiques et mentales due à la maladie ou à l'épuisement.[24]

Le corps humain a besoin d'un certain nombre de calories pour survivre. Quand une personne est très pauvre, les aliments qu'elle a les moyens de se procurer lui permettent parfois à peine d'accomplir les gestes du quotidien, voire de gagner le maigre revenu nécessaire à l'achat de ces denrées. Si ses revenus augmentent, elle peut acheter davantage de nourriture, gagner des forces et travailler davantage. Cette simple donnée biologique peut être illustrée par une courbe en S représentant la relation entre les revenus actuels et les revenus futurs. Les très pauvres gagnent moins que ce dont ils ont besoin pour être en mesure de fournir une quantité substantielle de travail, ce qui crée l'engrenage de la pauvreté : les pauvres restent pauvres tandis que les autres s'enrichissent, améliorent leur alimentation, gagnent des forces et trouvent ensuite des emplois mieux rémunérés, de sorte que l'écart des revenus ne cesse de se creuser.[25]

3.1.2 Une éducation insuffisante

L'analphabétisme et le manque d'éducation sont des phénomènes généralisés parmi les pauvres de la planète. Si, grâce à de récents programmes mondiaux, quasiment tous les enfants ont accès à l'enseignement primaire, 68 millions d'entre eux ne fréquentent toujours pas l'école élémentaire.[26] D'aucuns estiment que cela tient surtout à ce que certains enfants doivent travailler pour aider leur famille et à ce que les parents voient peu de raison de les envoyer à l'école puisque les perspectives d'emploi sont dans tous les cas très limitées. Ce comportement est plus répandu en milieu rural. A. Banerjee et E. Duflo notent toutefois que l'absentéisme parmi les enfants pauvres scolarisés ne tiendrait pas essentiellement à ce que leurs parents ont besoin d'eux, mais plutôt à leur mauvaise santé ou à un simple manque d'inclination à aller à l'école associé à l'absence de pressions parentales en ce sens.[27]

Un autre problème tient à ce que certains pays n'ont pas les moyens de mettre en place un système éducatif de qualité, de sorte que l'éducation dispensée n'est pas toujours de très bon niveau.[28] Dans le même temps, dans les pays en développement comme dans les pays développés, ceux qui n'ont pas les moyens de suivre une formation universitaire risquent de se trouver dans une situation économique défavorisée,

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23 Voir les objectifs du Millénaire pour le développement des Nations Unies, Disponible à l'adresse suivante : http://www.un.org/fr/millenniumgoals/

24 Partha Dasgupta et Debraj Ray, « Inequality as a Determinant of Malnutrition and Unemployment: Theory » 96 *Economic Journal* 1011, 1013 (1986).

25 Abhijit Banerjee et Esther Duflo, *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty* 19, 21-22 (PublicAffairs: 2011).

26 Nations Unies, Objectifs du Millénaire pour le développement. Rapport 2010, New York (2010) p. 17.

27 Banerjee et Duflo, supra n. 25 p. 71-74.

28 Id. pp. 73-74.

d'autant que la structure de l'emploi continue d'évoluer dans de nombreux pays, les activités à forte intensité de main-d'œuvre cédant la place aux activités à forte intensité de savoir.

Certains ne sont pas convaincus que l'amélioration de l'enseignement scolaire amène forcément une réduction de la pauvreté. William Lewis, par exemple, soutient que cet enseignement peut s'avérer nécessaire à des fins de développement social, politique et philosophique, mais que la productivité de la main-d'œuvre peut-être améliorée par des formations sur le terrain. Il indique que malgré les investissements massifs de la Corée du Sud dans l'enseignement public, la productivité de sa main-d'œuvre ne représente que 35 % de celle des États-Unis.[29]

Ces chiffres remontent toutefois à 2004. En 2011, la productivité de la main-d'œuvre sud-coréenne atteignait près de 50 % de celle de la main-d'œuvre américaine, ce qui signifie qu'elle augmente plus rapidement qu'aux États-Unis.[30] Il est possible que l'enseignement n'y soit pour rien, mais il se peut également qu'un délai soit nécessaire pour que le rendement des investissements dans ce domaine se concrétise.

3.1.3 Chômage

La pénurie d'emplois influe à l'évidence sur la pauvreté. « Le lien entre chômage et pauvreté a de tous temps été avéré. »[31] Actuellement, les taux de chômage sont élevés (entre 5 % et 20 %) dans les pays développés.[32] Dans les pays en développement, la situation est généralement pire (de 10 % à 95 %, mais l'on dispose rarement de données précises).[33] Dans les pays fortement peuplés, quelques points de pourcentage en termes de chômage représentent des millions de personnes sans emploi.

Bien entendu, ce n'est pas parce qu'une personne trouve un emploi que sa situation financière atteint un niveau satisfaisant. Il arrive que les salaires soient si bas que même les employés demeurent pauvres. En fait, il y a six fois plus de travailleurs pauvres que de chômeurs pauvres dans le monde, ce qui a conduit Fields a observé que « le problème pour les pays en développement est davantage un problème d'emploi (autrement dit, de pauvreté des travailleurs) que de chômage ».[34]

3.1.4 Dégradation de l'environnement

L'exploitation et la dégradation de l'environnement (notamment les étendues d'eau, les forêts, l'air et les sols) peuvent conduire directement à la pauvreté. La surpopulation et la surexploitation des terres peuvent provoquer des pénuries de vivres, d'eau potable et de matériaux de construction pour les logements. Dans de nombreux pays en développement, un pourcentage substantiel de la population tire sa subsistance de l'agriculture ; ces peuples sont donc tributaires des terres et des forêts pour subvenir à leurs

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29 William Lewis, *The Power of Productivity: Wealth, Poverty and the Threat to Global Stability* pp. 243-46 (University of Chicago Press: 2004).

30 OCDE, StatExtracts, Disponible à l'adresse suivante : http://stats.oecd.org/Index.aspx?DatasetCode=LEVEL.

31 Christopher Johnson et Patrick Mason, « Theories of Poverty: Traditional Explanations and New Directions », *in* Philip Jefferson (dir. pub.), Oxford Handbook of the Economics of Poverty 111 (Oxford University Press: 2012).

32 Nations Unies, *World Economic Situation and Prospects 2012 – Global Economic Outlook*, New York, 2011, p. 9.

33 US Central Intelligence Agency: *The World Factbook*, Disponible à l'adresse suivante : https://www.cia.gov/library/publications/the-world-factbook/fields/2129.html.

34 Fields, *supra* n.2 p. 253.

besoins. Le déboisement et la surexploitation des terres restreignent leurs possibilités de se nourrir correctement. La pollution atmosphérique et celle de l'eau provoquent également des problèmes de santé susceptibles de limiter l'aptitude d'un individu à travailler et à gagner sa vie.

3.1.5 Évolutions économiques

L'inflation et certaines évolutions du marché du travail aggravent également la pauvreté. Une inflation galopante s'apparente à un prélèvement extrêmement lourd qui vient ponctionner les revenus et l'épargne réels des pauvres [35]. Ceux-ci ne possèdent généralement pas de comptes d'épargne qui leur verseraient (ou devraient leur verser) des intérêts indexés sur l'inflation, alors que les taux d'intérêt dont leurs emprunts sont assortis augmentent bel et bien. Les plus démunis sont assujettis à des taux d'intérêt assez élevés car les banques commerciales ordinaires ne leur accordent généralement pas de prêts. À terme, ils sont plus susceptibles de perdre que de gagner d'un emprunt contracté au moment où l'inflation augmente. Le surendettement (situation en vertu de laquelle une entreprise, une administration ou une famille est tellement endettée qu'il ne lui est plus possible de contracter facilement un emprunt, même si de nouveaux prêts pourraient constituer de bons investissements très rentables) est un autre facteur d'appauvrissement et de pérennisation de la pauvreté.

Même quand une famille n'est pas lourdement endettée, les évolutions économiques peuvent la faire basculer dans la pauvreté. Par exemple, des salariés âgés qui ont presque toujours travaillé dans des secteurs à forte intensité de main d'œuvre risquent de perdre leur emploi quand les processus de fabrication sont délocalisés vers les pays en développement où la main d'œuvre est meilleur marché. Cette mutation permet certes aux populations de ces pays de sortir de la pauvreté, mais les salariés vieillissants des pays développés ne peuvent être reclassés et risquent le chômage et la pauvreté.

3.1.6 Ménages monoparentaux

Les familles monoparentales, le plus souvent des mères célibataires, ont généralement plus de mal à échapper à la pauvreté que les familles traditionnelles. Quand les deux parents vivent avec leurs enfants, ils peuvent se répartir et partager les tâches éducatives et le travail. Les chefs de famille monoparentale, en revanche, doivent tout faire eux-mêmes, à moins qu'un autre parent ne puisse les aider, et ils n'ont pas de conjoint sur qui s'appuyer s'ils perdent leur emploi. Le taux de pauvreté (absolu) des familles monoparentales aux États-Unis illustre cette vulnérabilité puisqu'il s'élevait à 43 % en 2010, contre 13 % pour les familles biparentales.[36]

Ces dernières décennies, le pourcentage de ménages biparentaux a sensiblement reculé dans certains pays développés. Entre 1970 et 2008, le taux de divorce a augmenté dans la plupart des pays de l'OCDE.[37] Aux États-Unis, par exemple, 87 % des enfants environ vivaient avec leurs deux parents en 1970. En 2000, ce chiffre n'était plus que de 69 %. Ce recul s'explique en partie par la hausse du taux de divorce, qui a plus que doublé entre 1960 et 1980. Il s'est stabilisé dans les années 80 avant de fléchir légèrement dans

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35 Lignes directrices du CAD pour la réduction de la pauvreté (2001), p. 49

36 Christopher Johnson et Patrick Mason, « Theories of Poverty: Traditional Explanations and New Directions », *in* The Oxford Handbook of The Economics of Poverty 105, 117 (Philip Jefferson, dir. pub.) (Oxford University Press: 2012).

37 La base de données de l'OCDE sur la famille - SF3.1 : Mariage et taux de divortialité, Disponible à l'adresse suivante : www.oecd.org/els/familiesandchildren/SF3.1%20Marriage%20and%20divorce%20rate%20-%20updated%20240212.pdf.

les années 90, mais le pourcentage d'enfants nés hors mariage a dans le même temps progressé, passant de 5 % au début des années 60 à plus de 33 % en 2000.[38]

Dans l'ensemble des pays de l'OCDE, 9.1 % des ménages sont monoparentaux, dont près de 85 % se composent de mères célibataires avec enfants.[39] Ces familles sont trois fois plus susceptibles d'être pauvres. Dans les pays de l'OCDE, leur taux de pauvreté moyen s'établissait à 31 % aux environs de 2005, contre 9 % pour les familles biparentales.[40]

3.1.7 Maladies

Le VIH/Sida et d'autres maladies épidémiques ne provoquent pas seulement la pauvreté ; ils la propagent, créant ainsi un vaste cercle vicieux. Même quand il s'agit de maladies moins graves, une famille pauvre, si elle doit emprunter pour se procurer les médicaments ou simplement les articles de la vie courante pendant que le père ou la mère est incapable de travailler, risque de ne jamais pouvoir régler les dettes dues à ces dépenses supplémentaires et à l'interruption des entrées d'argent. Pour couronner le tout, les pays et les populations pauvres disposent rarement des moyens financiers nécessaires pour les mesures de prévention comme la vaccination, les produits antiseptiques et les programmes de sensibilisation.

3.2 Aspects politiques/liés à la gouvernance

Divers facteurs, comme la corruption, la recherche de rentes des élites et le mépris des droits de l'homme, contribuent également à créer et à pérenniser la pauvreté. La médiocrité des institutions, des lois et des tribunaux, l'inefficacité des services administratifs, l'absence de cohésion sociale et le manque de volonté politique pour engager des réformes, éléments communs à une mauvaise gouvernance, sont peu propices à un développement durable et à la résorption de la pauvreté. Par ailleurs, l'instabilité politique et l'inconstance des institutions, outre qu'elles découragent l'investissement étranger, empêchent les éventuels entrepreneurs de créer des petites et moyennes entreprises.

La violence politique exercée par les groupes de guérilleros peut également favoriser la pauvreté. Dans les régions où ces groupes constituent une menace sérieuse, le risque constant d'une expropriation brutale décourage l'investissement et contraint parfois les populations à exercer des activités à faible productivité. La violence politique peut également entraîner des déplacements massifs de populations, les habitants étant obligés d'abandonner leurs terres et leur emploi pour se mettre à l'abri du danger. Des ruraux se retrouvent parfois en ville, où leurs compétences et leur formation ne correspondent pas toujours aux qualifications demandées, et ont donc du mal à gagner de quoi vivre.[41] Durant la flambée de violence

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38 Morley Glicken, *Social Work in the 21st Century: An Introduction to Social Welfare, Social Issues and the Profession* (SAGE Publications: 2011) 114.

39 La base de données de l'OCDE sur la famille : SF1.1: Taille et composition des familles, disponible à l'adresse suivante : www.oecd.org/els/familiesandchildren/41919509.pdf.

40 Tous les taux de pauvreté des familles monoparentales dans les pays de l'OCDE figurent dans le Panorama des statistiques de l'OCDE 2009, disponible à l'adresse suivante : www.oecd-ilibrary.org/docserver/download/3009011ec101.pdf?expires=1360225789&id=id&accname=guest&checksum=8B3638DC0C55FF5CD1FC5BC69BF6D8B3.

41 Ana María Ibáñez et Andrés Moya, « Vulnerability of Victims of Civil Conflicts: Empirical Evidence for the Displaced Population in Colombia », 38 World Development 647 (2009); Ana María Ibáñez et Andrés Moya, « Do Conflicts Create Poverty Traps? Asset Losses and Recovery for Displaced Households in Colombia » *in* The Economics of Crime (Rafael Di Tella, Sebastián Edwards et Ernesto Schargrodsky, dir. pub.) (University of Chicago Press: 2009).

qu'a connue la Colombie, par exemple, l'immense majorité des personnes déplacées ont souffert de la pauvreté.[42]

L'ancien président de la Banque mondiale, Paul Wolfowitz, a indiqué dans un texte récent que « partout dans le monde, les pays bien gouvernés, comme le Brésil et le Ghana, progressent dans la lutte contre la pauvreté. Les pays mal gouvernés ne la font pas reculer ».[43] Selon P. Wolfowitz et ses coauteurs, la bonne gouvernance consiste à rédiger des constitutions et des lois, à organiser des élections libres et à accorder le droit de vote universel, à garantir le droit à la liberté d'expression et d'association, à sauvegarder l'indépendance du judiciaire, et à obliger les responsables publics à rendre compte de leur action. Les auteurs notent en outre que les sociétés démocratiques se sont généralement avérées plus efficaces dans la lutte contre la pauvreté que les sociétés politiquement fermées. Cela tient en partie à la concentration du pouvoir politique dans trop peu de mains, qui amène les citoyens à penser que le jeu économique a été faussé au profit de l'élite de la société : « Là où le pouvoir politique est concentré, le pouvoir économique l'est généralement aussi, ce qui a pour effet d'étouffer l'esprit d'entreprise et d'initiative qui est essentiel à la croissance économique et à la création d'emplois. »[44]

Dans un ouvrage récemment paru, deux professeurs, D. Acemoglu et J. Robinson, imputent directement la responsabilité de la pauvreté aux institutions politiques. Le manque de ressources naturelles, les rigueurs climatiques, une culture particulière – pour les auteurs, aucun de ces facteurs ne constitue une excuse valable. Ils affirment qu'un pays ne peut se développer avant d'avoir établi des institutions politiques solides car les institutions économiques dépendent de ces dernières. Si les nations périclitent aujourd'hui, c'est essentiellement parce qu'elles sont dotés d'institutions « extractives » – ce qui conforte le pouvoir de ceux qui tirent profit de l'extraction – plutôt que représentatives. [45]

> *Les institutions politiques extractives concentrent le pouvoir dans les mains d'une élite restreinte et n'imposent guère de limites à l'exercice de ce pouvoir,*[46] *[tandis que] les institutions politiques représentatives […] sont celles qui autorisent et encouragent la participation de la majorité de la population à des activités économiques qui exploitent au mieux ses aptitudes et ses compétences et qui permettent aux individus d'exercer librement leurs choix.*[47]

D. Acemoglu et J. Robinson se fondent sur une analyse historique des empires et des pays pour conclure qu'il ne peut y avoir de développement et de prospérité que si les peuples savent qu'en travaillant dur, ils pourront gagner de l'argent et le garder.

Des institutions politiques solides qui partagent le pouvoir (comme les institutions démocratiques) sont indispensables au développement et à la prospérité. Elles permettent aux entrepreneurs de créer leur propre activité et d'établir des stratégies à long terme pour planifier leur croissance et leur productivité de

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42 Manuel Fernandez, Ana María Ibáñez et Ximena Peña, « Adjusting the Labor Supply to Mitigate Violent Shocks : Evidence from Rural Colombia, » *World Bank Working Paper Series* n° 5684 (2011).

43 Mark Palmer, Patrick Glen et Paul Wolfowitz, « How About Some World Governance Goals? » *Wall Street Journal* (1er avril 2012), Disponible à l'adresse suivante : http://online.wsj.com/article/SB10001424052702303816504577312104045133344.html.

44 Id.

45 Daron Acemoglu et James A. Robinson, « Why Nations Fail: The Origins of Power, Prosperity and Poverty », Profile Books Ltd, London (2012) p. 369.

46 Id. p. 81.

47 Id. p. 75.

manière à dégager encore plus de bénéfices. L'analyse de D. Acemoglu et J. Robinson montre au passage que les pays productifs affichent des taux de chômage inférieurs et, partant, des taux de pauvreté plus bas.

Les institutions représentatives favorisent en outre l'innovation, qui est indispensable à la croissance et à la réduction de la pauvreté. Les auteurs soutiennent qu'il ne faut pas brider l'innovation pour préserver des intérêts spéciaux ou par protectionnisme. D'un point de vue historique, les pays qui ont encouragé la mécanisation de secteurs comme l'agriculture et l'industrie manufacturière se sont développés plus vite que ceux qui y ont procédé plus lentement par crainte du chômage provoqué par l'industrialisation. Le chômage à court terme, s'il peut créer des situations très douloureuses, est donc un sacrifice utile. La croissance économique et l'évolution technique s'accompagnent toujours d'une destruction créative. Avec l'arrivée de nouvelles technologies, les compétences et les machines existantes deviennent obsolètes ; à l'évidence, ce processus crée pendant un certain temps des perdants et des gagnants, en termes économiques et politiques, sur le marché.[48] Souvent, les élites politiques font néanmoins obstacle au développement parce qu'elles veulent préserver leur pouvoir et leurs revenus. C'est pourquoi D. Acemoglu et J. Robinson aboutissent à la conclusion que les pays égalitaires se développent plus rapidement que les pays élitistes.

Nous examinons de plus près en quoi une gouvernance biaisée et inepte peut contribuer à la pauvreté (notamment en bridant la concurrence) aux parties 4.2.5, 5 et 6.

3.3 Aspects psychologiques – la culture de la pauvreté

La culture de la pauvreté est une notion relative à l'engrenage psychologique de la pauvreté. Cette théorie part du principe que les individus qui grandissent dans une famille pauvre sont socialisés en tant que pauvres et qu'ils ne voient pas dans la planification à long terme ou dans l'épargne des moyens réalistes d'échapper à la pauvreté. Selon Oscar Lewis, ils sont déconnectés du reste de la société :

> *Les personnes qui vivent dans la culture de la pauvreté ont un sentiment prononcé de marginalité, d'abandon, de dépendance, de non-appartenance. Ils sont comme étrangers dans leur propre pays, convaincus que les institutions en place ne servent ni leurs intérêts, ni leurs besoins. À cela s'ajoute un sentiment largement répandu d'infériorité, de démérite personnel… Habituellement, ils ne disposent ni du savoir, ni de la perspicacité, ni de la réflexion qui leur permettraient de voir les similitudes entre leurs problèmes et ceux d'individus se trouvant dans la même situation ailleurs dans le monde. En d'autres termes, ils n'ont pas de conscience de classe, bien qu'ils soient extrêmement sensibles aux différences de statut. Lorsque les pauvres acquièrent une conscience de classe ou adhèrent à des organisations syndicales, ou qu'ils adoptent un point de vue internationaliste du monde dans lequel ils vivent, ils ne font plus partie, selon moi, de la culture de la pauvreté, même s'ils demeurent extrêmement pauvres ».*[49]

La pauvreté a des origines nombreuses et variées. Même si les pouvoirs publics pouvaient toutes les éliminer, il leur faudrait encore lutter contre la mentalité de la pauvreté et convaincre les pauvres qu'il est utile d'épargner et de dépenser judicieusement cette épargne.

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48 Id. pp. 83-87.

49 Oscar Lewis, « The Culture of Poverty », 35 Society 7, pp. 7-9 (1998).

4. Les effets théoriques et réels de la concurrence sur les consommateurs pauvres de produits de première nécessité



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4.1 Les effets théoriques

Du point de vue de la théorie microéconomique classique, les effets de la concurrence sur les consommateurs pauvres sont simples : la concurrence oriente les marchés vers l'équilibre de l'offre et de la demande, elle élimine l'inefficacité et, à terme, elle aboutit à des prix qui correspondent au coût marginal des entreprises les plus performantes. Si un marché n'est pas parfaitement concurrentiel dès le départ, une concurrence plus grande devrait alors entraîner une baisse des prix, une augmentation de la production, une amélioration de la qualité et, le cas échéant, une plus grande innovation. Ces résultats sont généralement attendus sur tous les marchés, et pas uniquement sur les marchés de biens et de services de première nécessité, et ils profitent à tous les consommateurs, y compris aux plus pauvres.

À titre d'exemple, si une entente sur les prix du riz est démantelée suite à l'intervention d'une autorité de la concurrence, on peut s'attendre à ce que les consommateurs pauvres profitent de prix moins élevés et de quantités plus importantes sur le marché du riz du fait que les membres de l'entente ne se concertent plus pour limiter leur production et maintenir des prix artificiellement élevés. De la même façon, en cas d'échec d'un projet de concentration faisant passer le nombre d'entreprises concurrentes de 3 à 2 ou de 2 à 1 entre deux opérateurs de téléphonie mobile, on pourrait s'attendre à ce que les prix des appels mobiles et des SMS restent inférieurs à ce qu'ils auraient été si la concentration avait été autorisée, du fait que les deux entreprises concernées devront continuer à se faire concurrence. À long terme, la concurrence ainsi maintenue peut également aboutir à une plus grande croissance de la productivité – et par là même à une baisse relative des prix – dans la mesure où les entreprises rivalisent entre elles en faisant preuve d'innovation pour réduire leurs frais et améliorer la qualité et le service.

De la même façon, les pauvres peuvent bénéficier indirectement d'une plus grande concurrence. Supposons qu'un pays dont les opérations de passation des marchés font fréquemment l'objet de soumissions concertées soit doté d'un programme de lutte contre la pauvreté. Les contractants détourneraient l'argent normalement destiné à financer le programme. Les majorations artificiellement élevées pratiquées par les soumissionnaires truquant les offres pourraient entraîner, par exemple, la suppression par manque de fonds d'un programme nutritionnel complémentaire en faveur des enfants pauvres, ou la construction de seulement deux nouveaux centres de formation professionnelle au lieu de trois. Mettre un terme aux ententes et forcer les contractants à être à nouveau en concurrence ferait baisser les coûts et permettrait de réinvestir les économies dans le budget de l'État.

Pour cela, il n'est bien entendu pas nécessaire qu'un programme gouvernemental soit spécifiquement consacré à la lutte contre la pauvreté. Par exemple, des routes en bon état peuvent aider de nombreux groupes socioéconomiques, comme les agriculteurs qui ont besoin de se faire livrer des outils agricoles et de transporter leurs produits sur le marché. Mais si la construction de route fait l'objet de soumissions concertées, moins de routes seront construites ou réparées. Maintenir une procédure d'appel d'offres réellement concurrentielle sera très avantageux pour les agriculteurs, et pour tous ceux qui sont tributaires des routes.

Par ailleurs, la concurrence peut en quelque sorte avoir une action purificatrice qui élimine l'effet préjudiciable des pratiques frauduleuses et inefficaces, comme le népotisme ou d'autres formes de favoritisme non fondé sur le mérite. Les entreprises qui subissent des contraintes concurrentielles peuvent moins se permettre de recruter des membres de la famille peu qualifiés ou des clients influents à des postes bien rémunérés de dirigeants. De même, dans une situation de concurrence, les entreprises performantes sont celles qui disposent des meilleurs produits aux meilleurs prix, et non celles qui paient le plus de pots-de-vin ou qui sont gérées par des personnes issues de groupes ethniques favorisés, etc.

Un cas particulier se pose lorsque des problèmes de concurrence surviennent à plusieurs niveaux de la chaîne de production. Supposons, par exemple, que coexistent dans un pays donné deux transformateurs de blé, qui sont protégés de toute concurrence à l'importation par des obstacles au commerce et qui soi-disant s'entendent en fixant les prix de vente de la farine de froment aux entreprises agroalimentaires. Ces entreprises, à leur tour, vendent à deux grandes chaînes de supermarchés qui se partagent un duopole. Supposons en outre que les deux chaînes de supermarchés fixent soi-disant le prix du pain de blé qu'elles vendent aux consommateurs. L'autorité nationale de la concurrence reçoit alors des plaintes concernant les deux accords de fixation de prix, mais n'a pas les ressources suffisantes pour poursuivre l'examen des deux affaires en même temps. Si l'objectif de l'autorité est d'obtenir les meilleurs résultats pour les consommateurs, quelle affaire convient-il d'examiner en premier lieu ? L'ordre importe-t-il ?

Certains diront que l'autorité devrait d'abord poursuivre les supermarchés du fait que le marché de détail du pain est, d'un point de vue logistique, plus proche des consommateurs que le marché de gros de la farine. En particulier, une hypothèse serait que, les taux de répercussion des prix supérieurs au niveau de concurrence étant inférieurs à 100 pour cent, une réduction du prix en amont diminuerait davantage les bénéfices pour les consommateurs qu'une réduction du prix en aval. Mais la notion de « proximité » avec le marché de la consommation est-elle vraiment importante ? En d'autres termes, si l'autorité de la concurrence parvient à établir la preuve de la fixation des prix et si les supermarchés cessent de s'entendre, la réduction du prix du pain pour les consommateurs sera-t-elle plus importante que si l'autorité avait d'abord poursuivi avec succès les transformateurs de blé pour collusion ?

Pour déterminer quelle intervention permettra de réaliser le plus d'économies sur le prix du pain au blé pour les consommateurs, on s'appuie principalement sur deux considérations : l'étape de la chaîne de production qui applique la marge la plus élevée sur les prix supérieurs au niveau de concurrence, et l'affaire qui est la plus facile à prouver. Les marges dépendent de l'élasticité des courbes de coût et de

demande auxquelles font face les participants à une entente sur leurs marchés respectifs. Il n'existe tout simplement aucun moyen de savoir à l'avance, d'un point de vue purement théorique, quelle intervention de l'autorité de la concurrence sera la plus bénéfique pour les consommateurs. Si les marges supérieures au niveau de concurrence applicables sur les marchés de la farine et du pain sont identiques, et si les deux affaires d'entente sont vraiment aussi faciles à prouver l'une que l'autre, alors une intervention sur le marché de détail sera sans doute plus bénéfique pour les consommateurs, ce qui ne serait pas forcément vrai en d'autres circonstances.[50]

En tout état de cause, il apparaît clairement que lorsque des problèmes de concurrence se posent à plusieurs étapes de la chaîne de production, la résolution d'un seul d'entre eux ne suffira probablement pas à ramener le prix de détail au niveau concurrentiel. Cela peut causer des problèmes épineux de relations publiques aux autorités de la concurrence, en particulier dans les pays de petite taille ou dans les pays en développement où la chaîne de production des biens de première nécessité est souvent le théâtre de comportements anticoncurrentiels et/ou de rapports de forces en cascade sur le marché. Dans ces circonstances, il se peut que les consommateurs ne voient pas de grande différence dans les prix tant que les problèmes de concurrence ne sont pas réglés à tous les niveaux ou presque. Mais l'autorité de la concurrence peut n'être en mesure de traiter qu'un seul problème à la fois. Cela peut l'exposer à une situation pénible et sans issue. Soit elle ne parvient pas à prouver la première affaire, et elle portera ainsi naturellement un coup à sa réputation ; soit elle obtient gain de cause, mais les consommateurs ne verront pas de différence notable dans les prix de détail, du fait qu'il reste des problèmes de concurrence à d'autres niveaux de la chaîne de production. Ainsi, du point de vue des consommateurs – et peut-être du point de vue du politicien moyen – l'autorité aura échoué à faire la différence.

Dans de telles situations, la meilleure approche consiste pour les autorités à choisir la première étape de la production à examiner en fonction a) du lieu d'application de la marge la plus élevée sur les prix supérieurs au niveau de concurrence ; b) de l'affaire la plus facile à prouver ; et c) du fait de savoir si l'autorité serait en mesure de résoudre les problèmes de concurrence sur plusieurs marchés géographiques ou de produits simultanément en intervenant contre certaines entreprises, dans le cas par exemple où des entreprises accusées d'entente à un certain maillon de la chaîne de production se concerteraient également sur d'autres marchés, ce qui ne serait pas le cas des entreprises accusées d'entente à un autre maillon de la chaîne.

Mais, toute théorie mise à part, que sait-on des effets réels de la concurrence sur les consommateurs pauvres ? Cette question est examinée dans la section suivante.

[50] Un autre moyen de faire valoir la priorité des interventions en aval consisterait à affirmer que les gains d'une intervention en amont seraient tous engloutis par l'entente en aval, de sorte que les actions menées en amont seront vaines tant que le problème ne sera pas résolu en aval. Mais cela ne serait pas juste non plus, dans le sens où la baisse des coût marginaux des détaillants entraînera, dans une certaine mesure, une baisse de leurs prix, indépendamment de la structure du marché. Là encore, *tous* les gains tirés d'une intervention en amont ne seront pas répercutés, il se peut donc que même si les marges sont plus élevées en amont qu'en aval, une intervention en aval soit plus bénéfique pour les consommateurs, toutes choses étant par ailleurs égales. Mais, en réalité, toutes choses ne seront pas égales, et la réponse à la question de savoir sur quel marché agir en premier lieu dépendra principalement du marché sur lequel on trouve les marges les plus élevées et de l'affaire la plus facile à prouver.

4.2 Les effets réels

4.2.1 Les problèmes de concurrence affectent autant les consommateurs des pays développés que ceux des pays en développement

Un moyen d'établir que la concurrence a réellement aidé les consommateurs pauvres est de mettre en évidence que l'absence de concurrence leur a nuit. Les spécialistes de la concurrence reconnaissent en général comme vérité fondamentale l'idée que partout où il existe des marchés, des problèmes de concurrence pourront toujours survenir, que ces problèmes peuvent en fait être présents dans pratiquement toutes les économies de marché, et qu'ils causent des dommages substantiels aux consommateurs. Il est cependant arrivé aux autorités d'autres domaines d'action et disciplines, notamment dans les pays en développement, d'exprimer leur scepticisme quant au fait de savoir si cette idée valait aussi dans leurs pays.[51]

Pour changer cette façon de penser, Simon Evenett, Julian Clark et Frédéric Jenny ont rassemblé des bases de données sur les comportements anticoncurrentiels réels et supposés dans les pays en développement à travers le monde.[52] Les données qu'ils ont recueillies indiquent que non seulement il existe de nombreux comportements anticoncurrentiels dans les pays en développement, mais que la majeure partie d'entre eux affecte les marchés des biens et services de première nécessité. Ainsi, des exploitants avicoles péruviens et leurs associations professionnelles ont conspiré pour empêcher l'accès des concurrents sur le marché et les faire disparaître. De même, 11 producteurs de farine de froment péruviens et leurs associations professionnelles ont formé une entente pour mettre fin à une guerre des prix. Des exploitants avicoles zambiens ont exigé que leur principal client restent à l'écart du marché de production – et le client a accédé à cette demande.[53] Des ententes et des accords de boycott ont été découverts et ont fait l'objet de poursuites dans les secteurs de la boulangerie, de la minoterie, du sucre et du lait dans des pays en développement. Les pratiques anticoncurrentielles sont endémiques sur les marchés des transports publics, comme les services d'autobus et de taxis, dont de nombreux consommateurs pauvres sont tributaires. L'industrie du ciment, dont tant d'infrastructures publiques dépendent – comme les logements sociaux –, est saturée d'ententes et d'abus de position dominante.[54] Ces problèmes ne sont pas propres à un petit groupe de pays et sont plutôt monnaie courante dans les pays en développement. (À vrai dire, un secteur étroitement associé, celui de la construction, compte régulièrement parmi les secteurs qui regorgent le plus d'ententes, dans les pays développés aussi.[55])

Il y a quelques années, la Banque mondiale a dressé la liste des poursuites relatives aux ententes menées dans les pays en développement. Les ententes en cause portaient sur plusieurs types de biens et de

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51 Voir Frédéric Jenny, « Cartels and Collusion in Developing Countries: Lessons from Empirical Evidence », 29 World Competition 109, 109 (2006) (rapporte comment les problèmes de concurrence ont été exclus des discussions de l'OMC sur le Cycle de Doha en partie du fait qu'un certain nombre de représentants des gouvernements étaient convaincus que les pratiques anticoncurrentielles n'étaient pas répandues dans leurs pays, ou qu'elles n'imposaient pas un coût important à leurs économies).

52 Id. Voir aussi Eleanor Fox, « Economic Development, Poverty and Antitrust: The Other Path », 13 Southwestern Journal of Law and Trade Policy in the Americas 211, 224 (2007) (examen des travaux de Jenny et Evenett).

53 Cette affaire est examinée plus en détail dans la section 5.2.2.2.

54 Jenny, supra n. 51 ; voir aussi Eleanor Fox « Economic Development, Poverty and Antitrust: The Other Path », 13 Southwestern Journal of Law and Trade Policy in the Americas 211, 224 (2007) (examen des travaux de Jenny et Evenett).

55 OCDE, Concurrence dans le secteur de la construction, DAF/COMP(2008)36. Consultable à l'adresse www.oecd.org/daf/competition/liberalisationandcompetitioninterventioninregulatedsectors/41765075.pdf .

services de première nécessité, comme les cartes de téléphone en Bulgarie, les produits laitiers en Estonie, les agrumes en Afrique du Sud, et le blé au Taipei Chinois.[56]

De manière plus détaillée, les examens par les pairs des pays en développement, conduits par l'OCDE, font apparaître de nombreux cas de comportements anticoncurrentiels sur les marchés de biens et de services de première nécessité. En Argentine, par exemple, six sociétés cimentières ont été accusées d'avoir pris part à un système de répartition du marché sur l'ensemble du pays pendant presque 20 ans. En 1999, un article de presse qui décrivait l'entente dans le secteur a été à l'origine d'une enquête, qui a permis à terme de réunir suffisamment de preuves du comportement. L'accord était coordonné par les associations professionnelles des producteurs de ciment. Ses membres échangeaient des informations détaillées, à jour, et propres à chaque entreprise sur la production, les expéditions et les ventes. Cinq des six producteurs ont été condamnés à une amende d'un montant total de 106 millions USD.[57]

En 2008, l'autorité de la concurrence du Honduras a ouvert une enquête sur le marché du ciment pour déterminer s'il existait un accord de fixation des prix et de répartition du marché entre les deux producteurs de ciment du pays. L'autorité a constaté que les entreprises s'étaient concertées, compte tenu des communications régulières qu'elles avaient entretenues dans le cadre de la Fondation de l'Institut du ciment (Fundación Instituto del Cemento), de leurs comportements parallèles consistant à fixer et à modifier les prix, du fait qu'il n'existait que deux concurrents sur le marché, et compte tenu de l'absence de toute explication rationnelle de la part de la plus grande entreprise quant au fait qu'elle ait fait payer les mêmes prix que son concurrent en dépit de moindres coûts de production. La Commission a infligé une amende de 51 896 000 HNL (environ 2 730 000 USD) à une entreprise et 35 515 000 HNL (environ 1 869 000 USD) à l'autre.[58]

Le Honduras a connu un autre cas en 2008 impliquant l'industrie sucrière. L'autorité de la concurrence a cherché à savoir si les six principales entreprises du secteur étaient de connivence. Parmi les éléments de preuve figurait l'uniformité des niveaux de prix et des cours, malgré une variation des coûts des entreprises. Plusieurs caractéristiques du marché ont encouragé l'entente, notamment le manque de substituts, l'homogénéité du produit, et le manque d'élasticité de la demande. À leur décharge, les entreprises objet de l'enquête ont affirmé que le Ministère de l'industrie et du commerce les avait invitées à ajuster et à approuver les prix de vente consentis au grossiste Central de Ingenios S.A. Malgré cela, outre l'imposition d'une amende à chacune des entreprises allant de 6 514 306 HNL (324 000 USD) à 20 204 899 HNL (1 095 000 USD), la Commission leur a interdit de participer aux réunions du Ministère de l'industrie et du commerce aux fins de régulation des prix du marché.[59]

Joseph Wilson, de la Commission de la concurrence du Pakistan, fait état dans un rapport de plusieurs affaires de comportements anticoncurrentiels qui ont tout particulièrement lésé les consommateurs à faible revenu. L'une d'elles concernait un programme d'épargne, destiné uniquement aux titulaires de petits comptes, et qui avait été annoncé par une association professionnelle du secteur bancaire. L'annonce

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56 Banque mondiale, Global Economic Prospects and the Developing Countries, p. 101 (2003), consultable à l'adresse http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf

57 OCDE, Competition Law and Policy in Argentina: A Peer Review (2006). Consultable à l'adresse www.oecd.org/daf/competition/prosecutionandlawenforcement/37970045.pdf.

58 OCDE, Competition Law and Policy in Honduras: A Peer Review (2011). Consultable à l'adresse www.oecd.org/daf/competition/liberalisationandcompetitioninterventioninregulatedsectors/competitionlawandpolicyinhonduras-2011.htm.

59 Id. Voir Nations Unies, « Implementing Competition-Related Provisions in Regional Trade Agreements: Is It Possible to Obtain Development Gains » (2007) pour plus d'exemples.

mentionnait qu'un taux d'intérêt particulier serait payé par chaque banque offrant ce type de compte. Wilson précise que le secteur bancaire au Pakistan est très concentré, les cinq principales banques contrôlant 80 pour cent du marché. L'écart entre les taux d'intérêt pour l'emprunt et pour l'épargne au Pakistan est l'un des plus élevés au monde, et les banques pakistanaises sont les plus rentables de la région Asie-Pacifique. Fixer conjointement le taux d'intérêt versé aux épargnants à faible revenu revient de toute évidence à les priver de la possibilité de profiter de la concurrence, et rendre l'épargne moins attractive revient à entraver les efforts déployés pour réduire la pauvreté.[60]

4.2.2 L'absence de concurrence nuit aux consommateurs pauvres – et de manière disproportionnée

Dès lors que nous reconnaissons que des comportements anticoncurrentiels significatifs existent dans les pays développés et les pays en développement, nous pouvons implicitement affirmer que la concurrence aide les consommateurs pauvres du monde entier en mettant en évidence que l'absence de concurrence leur est néfaste. Des éléments de preuve viennent soutenir cette proposition. Comme Eleanor Fox le fait observer, les données compilées par Evenett et Jenny montrent de façon incontestable que les consommateurs dans les pays en développement sont affectés par les prix élevés générés par les ententes, les concentrations et les pratiques monopolistiques,[61] et parce que certains comportements anticoncurrentiels touchent les biens et services de première nécessité, les consommateurs pauvres en pâtissent également. Jenny qualifie les informations de la base de données de « stupéfiantes quant à l'étendue et l'importance des pratiques anticoncurrentielles mises en lumière dans les pays en développement ».[62] Faisant le lien entre cette constatation et la pauvreté, et tenant pour acquis qu'une plus grande concurrence pourrait réduire cette dernière, il observe :

> *[D]es pratiques anticoncurrentielles telles que la fixation de prix dans le secteur du commerce de détail ou dans le secteur des biens de consommation font à l'évidence peser un coût important sur les consommateurs, et en particulier sur les consommateurs les plus pauvres, en augmentant de façon artificielle le prix des biens et services essentiels[.] Si une part importante de ces biens [pose] des problèmes de concurrence et se trouve exposée à des surcoûts de 10 à 15 pour cent, les problèmes des pauvres seront empirés et leurs conditions de vie aggravées. Dès lors, la lutte contre les stratégies anticoncurrentielles d'extorsion devrait légitimement faire partie intégrante des réformes en faveur des groupes démunis.*[63]

À titre distinct, des universitaires comme John Connor ont étudié l'impact des ententes sur les consommateurs. Dans une étude, celui-ci a relevé qu'au cours de la période allant de 1990 à 2007, les consommateurs latino-américains avaient payé au moins 35 milliards USD de surcoûts liés à la fixation de prix résultant d'ententes internationales.[64] Bien sûr, ce montant a été acquitté par l'ensemble des consommateurs, et non par les seuls consommateurs pauvres. Ici encore, le chiffre ne représente que le préjudice lié aux ententes qui ont effectivement été décelées, et ne tient pas compte des ententes nationales ni de leur incidence dans d'autres parties du monde.

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60 Joseph Wilson, « Competition Policy and Poverty Alleviation: The Case of Pakistan » in « The Effects of Anti-Competitive Business Practices on Developing Countries and Their Prospects » (Hassan Qaqaya et George Lipimile, editeurs). pages 222 et 223, CNUCED (2008), consultable à l'adresse http://unctad.org/en/Docs/ditcclp20082_en.pdf. Wilson signale également une entente dans l'industrie du ciment. Id., pages 225 et 226.

61 Fox, supra n. 54, page 226.

62 Jenny, supra n. 51, page 113 (2006).

63 Id., page 134 (2006).

64 John Connor, « Latin America Cartel Control » (2008). Consultable à l'adresse http://ssrn.com/abstract=1156401.

Par ailleurs, certaines études révèlent que les faibles niveaux de concurrence ont tendance à léser les consommateurs pauvres de manière disproportionnée. Creedy et Dixon, par exemple, ont étudié, pour les ménages australiens issus de divers groupes de revenus, le poids relatif des monopoles exercés sur certains marchés de produits de base. Les auteurs ont étudié les données de l'Enquête australienne sur les dépenses des ménages pour voir quelle part de leurs revenus les ménages consacraient à certains produits, répartis en 14 groupes, comme les produits alimentaires, les boissons non alcoolisées, ou les frais de logement. Creedy et Dixon ont pu calculer la perte statique du surplus du consommateur due au monopole à travers les groupes de produits et les groupes de revenus. Ils ont non seulement constaté des pertes de bien-être associées au pouvoir de monopole dans l'ensemble des groupes de revenus, mais également que les pertes, correspondant à un pourcentage relatif du surplus du consommateur, étaient plus élevées pour les ménages à faible revenu que pour les ménages à revenu élevé.[65] En d'autres termes, l'étude a démontré que les monopoles augmentaient les inégalités entre les consommateurs. Concrètement, les données ont montré que le poids pesant sur les dix pour cent de ménages les plus pauvres était 46 pour cent plus élevé que le poids pesant sur les dix pour cent de ménages les plus riches. Cette constatation étant la même d'un marché à l'autre, Creedy et Dixon ont été amenés à conclure que, indépendamment de l'importance en valeur absolue des pertes de bien-être dues au monopole, leur impact sur les consommateurs les plus pauvres pouvait être disproportionné.[66]

Carlos Urzúa est parvenu à des résultats similaires dans une étude réalisée pour l'OCDE en 2008.[67] Sur la base des données tirées de l'Enquête mexicaine sur les revenus et les dépenses des ménages, il a étudié l'impact des rapports de force sur le marché sur les niveaux de dépenses des ménages en produits de base comme les tortillas, le poulet et le lait. Les données ont mis en évidence, comme en Australie, que l'impact préjudiciable relatif du pouvoir de monopole était plus grand parmi les dix pour cent de ménages les plus pauvres. Dans les zones urbaines, ces ménages souffrent d'une perte relative de bien-être qui est à peu près 20 pour cent plus élevée que la perte subie par les dix pour cent de ménages les plus riches. Cette disparité est encore plus prononcée dans les zones rurales, où elle atteint près de 23 pour cent.

Urzúa a par ailleurs créé une carte, reproduite ci-après au Graphique 2, qui compare les pertes de bien-être dans chaque état du Mexique par rapport à la Basse Californie, État ayant enregistré la perte la plus importante (angle nord-ouest de la carte). Sur la carte, les États en rouge (qui apparaissent en gris foncé dans la version noir et blanc du présent rapport) accusent des pertes plus de 2,5 fois plus élevées que les pertes de la Basse Californie, les États en orange (gris moyen) accusent des pertes 2 à 2,5 fois plus élevées, et les États en jaune (gris clair) accusent des pertes moins de deux fois plus élevées que celles de la Basse Californie. On voit clairement que les États du Sud – dont certains comptent parmi les plus pauvres du Mexique – accusent les pertes relatives de bien-être les plus importantes.

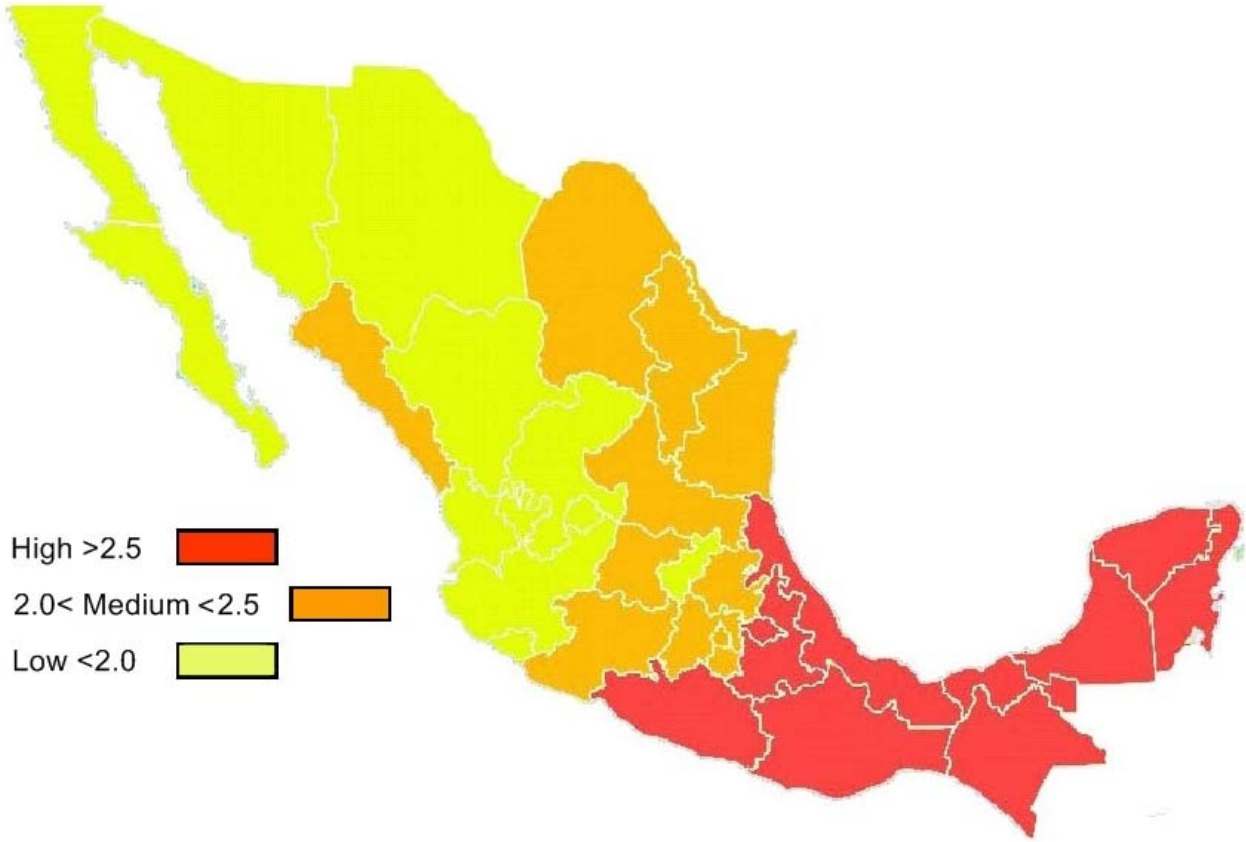
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65 John Creedy et Robert Dixon, « The Relative Burden of Monopoly on Households with Different Incomes », 65 Economica, page 285 (1998).

66 L'année suivante, Creedy et Dixon ont mené une nouvelle étude sur la même question, en utilisant cette fois une meilleure méthode pour mesurer le bien-être et une notion d'absence de concurrence plus large que le cas extrême d'un vendeur unique. Les principaux résultats et les conclusions des auteurs ont toutefois été les mêmes que dans l'étude précédente. John Creedy et Robert Dixon, « The Distributional Effects of Monopoly », 38 Australian Economic Papers 223 (1999).

67 Carlos Urzúa « Évaluation des effets redistributifs et spatiaux des entreprises dotées d'un pouvoir de marché au Mexique ». Consultable à l'adresse www.oecd.org/dataoecd/43/20/45047597.pdf.

Graphique 2. Perte relative de bien-être social attribuable au pouvoir de monopole au Mexique, par État



Source : Carlos Urzúa, « Évaluation des effets redistributifs et spatiaux des entreprises dotées d'un pouvoir de marché au Mexique ».

Ces constatations semblent constantes d'un pays à l'autre ainsi que d'un marché à l'autre. Hausman et Sidak ont obtenu des résultats identiques dans le cadre de leur étude du poids relatif sur les consommateurs pauvres du faible niveau de concurrence sur le marché américain des télécommunications résidentielles. Ils ont constaté que les consommateurs les plus pauvres et les moins instruits payaient plus cher pour des appels longue distance que les consommateurs plus riches et plus instruits, même en tenant compte des différences de niveau d'utilisation. Même si les données disponibles à cette époque n'ont pas suffit à l'établir, les auteurs supposent que l'écart des coûts entre les deux ensembles de consommateurs se résorberait avec l'entrée de nouvelles entreprises dans ce secteur.[68]

Compte tenu de l'effet très lourdement négatif du pouvoir de marché sur les consommateurs pauvres, ces études laissent penser que non seulement la lutte contre les ententes, les abus de position dominante et les concentrations anticoncurrentielles sur des marchés de biens de première nécessité serait bénéfique pour les consommateurs pauvres, mais que ces bénéfices seraient relativement importants.

68 Jerry Hausman et Gregory Sidak, « Why Do the Poor and the Less-Educated Pay More for Long-Distance Phone Calls? », 3 Contributions in Economic and Policy Research 1 (2004).

4.2.3 Exemples de cas montrant que la concurrence bénéficie aux consommateurs pauvres

Il existe aujourd'hui peu de données publiques concernant l'effet direct pour les consommateurs pauvres de la concurrence sur les marchés de biens et de services de première nécessité. Ce domaine d'étude pourrait s'avérer fructueux pour les autorités de la concurrence, qui peuvent être les mieux placées pour examiner les effets de leurs interventions passées sur les consommateurs. Quelques informations utiles sont tout de même disponibles. La présente section du rapport s'intéresse principalement à deux marchés, celui des services bancaires et celui des services de télécommunications, qui illustrent de façon claire les bénéfices que la concurrence peut apporter aux consommateurs pauvres. Nous examinerons ensuite comment la concurrence dans ces deux secteurs a également aidé les entrepreneurs pauvres.

4.2.3.1 Services bancaires

À l'époque où il occupait les fonctions de Secrétaire général des Nations Unies, Kofi Annan a fait observer que

> *[r]endre les secteurs financiers accessibles à tous a le pouvoir d'améliorer les conditions de vie des populations, en particulier des pauvres. Un petit prêt, un compte d'épargne ou une assurance peuvent faire une grande différence pour une famille à bas revenus. Ils permettent à ces gens d'investir dans une meilleure alimentation, dans leur logement, leur santé et l'éducation de leurs enfants. Ils permettent de mieux réagir lors de périodes difficiles dues à de mauvaises récoltes, à la maladie ou à un décès. Ils aident à planifier l'avenir.*[69]

Pourtant, le nombre de ménages pauvres ayant accès à des services bancaires formels (c'est-à-dire des services fournis par des institutions financières réglementées) est relativement faible à l'échelle mondiale. Une étude de Banerjee et Duflo, par exemple, a conclu qu'au Panama et au Pérou, moins d'un pour cent des ménages pauvres (définis comme ceux vivant avec moins de 2 USD par jour) possédait un compte d'épargne. À l'échelle mondiale, plus de 2,5 milliards de personnes ne possèdent pas de compte bancaire formel.[70] Mais les personnes pauvres parviennent en général à économiser de l'argent et, qui plus est, beaucoup d'entre elles *souhaitent* économiser de l'argent. Une étude menée auprès d'adultes vivant en milieu urbain au Brésil, par exemple, a révélé que 64 pour cent des personnes interrogées qui ne possédaient pas de compte bancaire étaient désireuses d'en avoir un. Néanmoins, les populations pauvres, qu'elles vivent ou non dans les pays en développement, ont tendance à conserver leur argent liquide dans des endroits non sécurisés du fait que les comptes d'épargne formels sont, soit trop coûteux, soit indisponibles dans leurs zones géographiques.[71]

Considérez, par exemple, que les frais de tenue de compte bancaire coûtent aux employés du secteur formel rwandais trois pour cent de leur salaire mensuel moyen. À Singapour, ces frais ne représentent que 0,05 pour cent du salaire mensuel moyen. En fait, non seulement le montant relatif est plus élevé, mais le montant absolu aussi, et même beaucoup plus élevé (4 USD par mois en Afrique, en moyenne, contre 0,50 USD par mois en Asie du Sud). La concentration d'actifs parmi les établissements bancaires est plus forte en Afrique que dans toute autre région. Cela peut s'expliquer par le niveau relativement élevé des frais.[72]

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69 Nations Unies, « Construire des secteurs financiers accessibles à tous » (2006), page iii. Consultable à l'adresse: http://www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

70 Département du développement international, supra n.17, page 13.

71 Nations Unies, supra n. 69, page 36, consultable à l'adresse: www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

72 Banque mondiale, « Banking the Poor », pages 10 et 29.

Quoi qu'il en soit, les institutions financières formelles ne se donnent généralement pas beaucoup de mal pour servir les pauvres. C'est une ironie cruelle de constater que le coût relatif induit par la fourniture de services bancaires aux pauvres est élevé en grande partie parce que les pauvres ont si peu d'argent. Avec de très faibles montants en jeu sur chaque compte, les profits que peuvent espérer les banques pour la fourniture aux pauvres de comptes d'épargne et de prêts traditionnels sont vite engloutis par les coûts de transaction. Un autre problème tient à ce que de nombreux pauvres vivent dans des zones rurales faiblement peuplées. Les banques, qui cherchent à optimiser les profits, veulent réaliser des économies d'échelle et sont donc surtout désireuses de servir une clientèle riche, vivant dans de vastes zones urbaines où la densité de population est élevée. Ainsi, la distance géographique, des conditions générales inadaptées, et des exigences peu réalistes pour les dépôts et les soldes minimums, ont concouru à empêcher les pauvres d'accéder au secteur bancaire formel même lorsque cela leur était techniquement possible.

Malgré cela, et même si la participation au secteur bancaire formel reste exceptionnelle parmi les clients pauvres, les choses vont en s'améliorant et la concurrence est l'une des raisons principales de cette amélioration. Par exemple, de nombreux marchés financiers latino-américains ont été libéralisés dans les années 1990, ce qui a permis l'installation de banques étrangères dans la région. L'augmentation de la concurrence qui a suivi a incité les banques à chercher progressivement des clients de plus petite envergure, ce qui a aidé certaines familles à faible revenu.[73]

Il serait probablement utile de renforcer encore la concurrence, ce qui, par chance rendu, est possible par les progrès de la technologie. Plus d'un milliard de personnes ont un téléphone portable, mais ne possèdent pas de compte bancaire.[74] Cette réalité a donné une formidable occasion aux nouvelles entreprises de technologie mobile d'entrer en concurrence avec les banques formelles dans le domaine de l'activité bancaire au service des pauvres. Non seulement ces nouveaux concurrents y sont parvenus, mais qui plus est, ils ont réalisé des profits.

Les SMS envoyés et reçus depuis des téléphones portables prépayés sont aujourd'hui devenus un moyen pour les consommateurs pauvres de réaliser des opérations financières tout en contournant l'infrastructure bancaire formelle. Par exemple, si le bénéficiaire d'un transfert d'argent par SMS ne possède pas de compte bancaire, la somme remise peut être convertie en carte de débit prépayée, qui peut alors servir pour effectuer des achats. Ou une ligne de crédit à la consommation peut être ouverte dans un point de vente local, protégée par un mot de passe fonctionnant par SMS. Plusieurs États, comme l'Afrique du Sud, ont préconisé ces systèmes et les utilisent pour de nombreux types de paiements, y compris pour les transferts conditionnels au profit de bénéficiaires à faible revenu. Les SMS ne sont pas seulement plus rapides que les moyens de transaction financière classiques, comme le chèque, ils sont aussi moins coûteux et plus sûrs, tant pour l'expéditeur que pour le destinataire.[75]

M-PESA, qui a démarré au Kenya, est sans doute le meilleur exemple du succès que peuvent avoir les systèmes mobiles de paiement pour les pauvres – à la fois pour les opérateurs des systèmes et pour les pauvres eux-mêmes. Safaricom Limited, un opérateur privé de télécommunications soutenu par Vodafone, a mis en œuvre en 2007 un système mobile de paiement appelé M-PESA. M-PESA est un service bon marché de transfert de fonds, de personne à personne et fondé sur les SMS, qui ne requiert pas de

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73 Luis Moreno, « Extending Financial Services to Latin America's Poor », McKinsey Quarterly 83, 90 (2007).

74 Département du développement international, supra n.17, page 14.

75 Moreno, supra n.73, pages 88 et 89; **Sahba Sobhani & Subathirai Sivakumaran,** « Beyond Microfinance: Can Government Cash Transfers Scale Up Financial Access for the Poorest? », Business Fights Poverty (26 mars 2012). Consultable à l'adresse : www.businessfightspoverty.org/profiles/blogs/beyond-microfinance-can-government-cash-transfers-scale-up.

l'expéditeur ni du bénéficiaire qu'ils possèdent un compte bancaire. Les expéditeurs peuvent acheter des fonds numériques auprès de tout agent M-PESA et envoyer de l'argent électronique à un autre utilisateur de téléphone mobile au Kenya. Les bénéficiaires échangent le SMS contre de l'argent liquide ou bien utilisent leur téléphone M-PESA comme portefeuille électronique. Les téléphones sont autorisés à détenir jusqu'à 100 000 shillings kenyans (environ 847 euros au taux de change actuel). Deux ans après son lancement, le parc d'abonnés de M-PESA a explosé, passant d'environ 100 000 à plus de 7 millions, et les transferts de fonds reçus pendant cette période ont avoisiné les 130 milliards de shillings kenyans (près de 1,5 milliard USD). Il existe aujourd'hui pas moins de 17 millions de comptes M-PESA enregistrés au Kenya et plus de 18 000 agents M-PESA.[76] En revanche, le Kenya ne compte que 750 succursales bancaires traditionnelles et trois millions de comptes bancaires formels.

M-PESA est également une expérience rentable. Au cours des deux premières années, M-PESA a généré 50 millions GBP sur les 150 millions GBP de bénéfices de Safaricom.[77]

Les bonnes idées sont souvent copiées, ce qu'ont fait les services bancaires mobiles. Après le succès rencontré au Kenya, M-PESA a été mis en œuvre en Afghanistan, en Tanzanie, et en Afrique du Sud. Au Pakistan, un service de paiement mobile appelé easypaisa a connu une croissance si rapide qu'en deux ans, il a attiré plus de clients que toutes les banques du Pakistan réunies.[78]

La technologie utilisée pour le paiement mobile a également créé pour les consommateurs pauvres une alternative rapide et sûre aux services classiques et considérablement plus coûteux d'envois de fonds internationaux, comme ceux de Western Union. Les envois de fonds – définis sommairement comme les paiements envoyés dans son pays par le membre d'une famille qui travaille à l'étranger – ont connu une croissance exceptionnelle au cours des années. La BID a estimé qu'en 2006, les flux de capitaux à destination de l'Amérique latine et des Caraïbes provenant des envois de fonds se sont élevés à plus de 60 milliards USD, ce qui représentait plus de trois pour cent du PIB de la région à l'époque.[79] Les envois de fonds sont généralement adressés à des bénéficiaires à faible revenu et sont essentiellement utilisés pour financer la consommation, et à ce titre, ils constituent en effet un service essentiel pour bon nombre de personnes pauvres. Comme relativement peu d'expéditeurs ou de bénéficiaires d'envois de fonds possèdent des comptes bancaires formels, ils ont longtemps largement fait appel aux services de transfert de fonds comme ceux de Western Union, qui est représentée dans bon nombre d'endroits à travers le monde mais dont les services sont très onéreux, les commissions représentant pas moins de 20 pour cent des montants transférés à la fin des années 1990. [80] La possibilité d'envoyer et de recevoir des paiements par SMS sur un téléphone mobile prépayé bon marché réduit à néant l'avantage propre à l'économie classique qu'avait Western Union d'être présente dans de nombreux endroits, tout en pratiquant la sous-cotation de ses prix. Une nouvelle fois, la concurrence suscitée par la technologie a été la condition pour ouvrir le marché et réduire les prix.

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76 « CCK Releases 2nd Quarter ICT Sector Statistics for 2011/2012 », Communications Commission of Kenya, (17 avril 2012). Consultable à l'adresse : http://www.cck.go.ke/news/2012/sector_statistics.html.

77 « Private Sector Has Potential to Aid Development, but Beware the Pitfalls », The Guardian (UK) Poverty Matters Blog (11 juillet 2011), consultable à l'adresse : www.guardian.co.uk/global-development/poverty-matters/2011/jul/11/private-sector-aid-potential-and-pitfalls.

78 Département du développement international, supra n.17 page 14.

79 Luis Tejerina, César Bouillón et Edgardo Demaestri (éditeurs), Financial Services and Poverty Reduction in Latin America and the Caribbean, Banque interaméricaine de développement (2006), page vii.

80 Nations Unies, supra n. 69, page 39, consultable à l'adresse : www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

Le succès de ces systèmes de paiement originaux montre qu'une plus grande concurrence peut permettre d'étendre les services financiers aux plus pauvres et que, grâce à une technologie plus perfectionnée, elle peut aussi être rentable. Se saisissant de ce thème dans un article de 2007, le Président de la BID, Luis Alberto Moreno, a exhorté les institutions financières à ne pas rester en marge et à prendre part au développement de moyens novateurs et rentables au service de la clientèle pauvre :

> *Il est temps que les institutions financières accélèrent la mise en œuvre de mécanismes innovants et de nouveaux programmes pour développer la microfinance, l'envoi de fonds, et d'autres marchés mal desservis. Si […] les institutions financières tirent parti de cette opportunité, nous aurons fait un pas important vers une amélioration des perspectives et des conditions de vie de la majorité des habitants de la région. Du point de vue des institutions financières, de telles initiatives sont une occasion d'ouvrir un marché potentiellement énorme et rentable.*[81]

4.2.3.2 Services de télécommunications mobiles

Nous venons d'examiner la façon dont la concurrence entre les entreprises de télécommunications mobiles a aidé les consommateurs pauvres s'agissant des services bancaires et des paiements. Mais comme chacun sait, les téléphones portables offrent également un moyen de communiquer par le biais de messages vocaux et textuels et les téléphones intelligents peuvent offrir un accès à l'internet. Ces éléments ont été très utiles aux consommateurs pauvres, et la concurrence les a rendus plus accessibles.

À la différence des services bancaires formels, l'accès aux services de télécommunications mobiles s'est très vite étendu aux populations pauvres à travers le monde. Le nombre d'abonnements aux réseaux mobiles en Afrique est passé de moins de 25 millions en 2001 à près de 650 millions en 2012, ce qui fait de l'Afrique la région du monde à connaître le développement des services de téléphonie mobile le plus rapide. En Afrique, les deux tiers des adultes ont désormais accès aux technologies de l'information et de la communication, et l'Afrique compte aujourd'hui plus d'abonnés aux services mobiles que les États-Unis ou l'Union européenne.[82] Même si le parc d'abonnés aux services mobiles est déjà important en Asie, il ne se développe pas moins à un rythme spectaculaire. Un rapport des Nations Unies de 2011 relève que le nombre d'abonnements à la téléphonie mobile dans la région Asie-Pacifique avait plus que doublé au cours des cinq années précédentes, pour passer de près d'un milliard à 2,5 milliards. Même dans les zones rurales de l'Asie de l'Est, 83 pour cent des personnes possèdent aujourd'hui un téléphone portable.[83] Dans le même temps, en Amérique latine, la téléphonie mobile devançait la téléphonie fixe en terme d'abonnements et devenait ainsi la méthode préférée de communication. En 2009, plus de 88 pour cent de la population latino-américaine possédaient un abonnement mobile, quand le taux de pénétration de la téléphonie fixe restait inférieur à 20 pour cent.[84]

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81 Moreno, supra n.73, pages 89 et 89.

82 La Banque mondiale et la Banque africaine de développement (avec le soutien de l'Union africaine), The Transformational Use of Information and Communication Technologies in Africa, (Enock Yonazi, Tim Kelly, Naomi Halewood et Colin Blackman, éditeurs) (2012), pages 6 et 13. Consultable à l'adresse : http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/282822-1346223280837/MainReport.pdf.

83 Noeleen Heyzer, « Le numérique en Asie-Pacifique au XXIe siècle : Promesses et dangers dans la création d'une sociéte du savoir inclusive », Chronique ONU (2001), consultable à l'adresse : www.un.org/wcm/content/site/chronicle/lang/fr/home/archive/issues2011/thedigitaldividend/digitalasiapacificinthe21stcentury.

84 « Latin America Enjoys Mobile Telephone Boom », Euromonitor International (28 mai 2010). Consultable à l'adresse : http://blog.euromonitor.com/2010/05/regional-focus-latin-america-enjoys-mobile-telephone-boom.html.

Le développement des abonnements à la téléphonie mobile auprès des consommateurs pauvres résulte en grande partie des offres concurrentielles orientées vers les consommateurs à faible revenu. Les offres prépayées sont souvent moins chères que l'installation d'une ligne fixe, en particulier dans les zones rurales où les services de téléphonie fixe peuvent même ne pas être proposés du tout. Avant l'apparition des téléphones portables, les services téléphoniques étaient tout simplement inaccessibles à de nombreux pauvres – et représentaient un luxe indisponible ou inabordable. Mais les téléphones portables sont devenus des biens de première nécessité, même pour de nombreux pauvres. De plus, les services de téléphonie mobile ont rendu possible l'accès à l'internet à large bande pour beaucoup de pauvres à travers le monde, en particulier dans les régions difficiles d'accès où la couverture par DSL ou par câble n'existe pas. Il est donc difficile de contester que, dans ce cas au moins, la concurrence a bénéficié aux pauvres, et qu'une nouvelle fois, le développement technologique en a été le catalyseur.

De nombreuses études empiriques menées par la Banque mondiale sur l'entrée sur le marché de fournisseurs de services de téléphonie mobile laissent apparaître que plus les marchés sont compétitifs, plus ces fournisseurs parviennent à accéder à la clientèle potentielle. En d'autres termes, la concurrence a permis un accès plus large aux services téléphoniques que l'absence de concurrence ne l'aurait fait. [85]

Une analyse comparative de la concurrence sur le marché des télécommunications mobiles dans cinq pays a montré qu'une plus grande concurrence encourageait l'introduction de nouveaux services, faisait bénéficier ces services à davantage de personnes, et à des prix plus bas. Les conditions de concurrence renforcent aussi les incitations à offrir des services qui répondent aux besoins des consommateurs pauvres, comme des promotions sur les prix ou les produits, spécifiquement conçues pour eux. Certains des services que la concurrence contribue à délivrer ont aussi des avantages supplémentaires en matière de développement, comme les services de transfert d'argent. Un exemple intéressant de l'étude est celui du Kenya, qui jusqu'à une date récente avait un marché des télécommunications mobiles concentré, avec des prix relativement élevés. Or, lorsque deux nouveaux fournisseurs de services sont apparus en 2008 et 2009, la concurrence accrue qu'ils ont amenée a entraîné une chute des droits de douane de pas moins de 50 pour cent.[86]

4.2.4 Un exemple discutable de concurrence néfaste aux consommateurs pauvres

Bien que la concurrence ait certainement réduit la pauvreté sur de nombreux marchés de biens et de services de première nécessité, on ne peut pas raisonnablement prétendre que la concurrence a toujours bien servi les pauvres. Un exemple extrême est donné par le marché bolivien du microcrédit, décrit dans un rapport des Nations Unies.[87] Après la crise d'hyperinflation du milieu des années 1980 et les strictes mesures d'ajustement structurel qui ont suivi, les petites entreprises ont connu un essor spectaculaire à mesure que l'emploi diminuait dans le secteur traditionnel de l'extraction minière et dans les entreprises d'état. Cette nouvelle répartition a été une occasion en or pour la microfinance de servir ce marché émergent. Les premiers organismes de microcrédit ont travaillé conjointement avec les autorités bancaires et les bailleurs de fond pour se transformer en intermédiaires financiers bancaires et non bancaires.

Des problèmes ont toutefois commencé à se poser à la fin des années 1990, lorsque les sociétés boliviennes de crédit à la consommation ont elles aussi commencé à accéder au marché du microcrédit.

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85 Banque mondiale, Global Economic Prospects and the Developing Countries, p. consultable à l'adresse : http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf.

86 Karen Ellis et Rohit Singh, « Assessing the Economic Impact of Competition », Overseas Development Institute (juillet 2010), p. 56. Consultable à l'adresse : www.odi.org.uk/resources/docs/6056.pdf.

87 Nations Unies, supra n. 69, page 35, consultable à l'adresse : www.uncdf.org/sites/default/files/Download/bluebook_0.pdf.

Parce que ces sociétés de crédit ne savaient pas comment analyser la capacité de payer des clients, elles ont accepté comme preuve de solvabilité le seul fait qu'un emprunteur ait emprunté ou souscrit un contrat de prêt auprès d'un organisme de microfinance. Les clients ont alors profité du grand nombre de prêteurs pour gérer souvent plusieurs prêts à la fois et pour emprunter plus que ce qu'ils pouvaient rembourser. Certains d'entre eux ont accusé des retards de paiement ou ont plongé dans la spirale des crédits. En d'autres termes, ils souscrivaient un crédit pour en rembourser un autre.

L'accroissement des prêts à risques a coïncidé avec le début d'une importante récession et les emprunteurs se sont vite retrouvés confrontés à des taux d'endettement ingérables. L'agitation sociale s'est alors amplifiée en Bolivie, où d'importantes manifestations ont eu lieu sur le prix des services de base, comme l'eau et l'électricité. Les relations des organismes de microfinance avec leurs clients se sont également dégradées, à mesure qu'ils s'efforçaient d'obtenir leurs paiements.

C'est dans ce climat de tension que deux groupes d'emprunteurs sont nés, faisant écho au désespoir croissant de la population. Tous les deux fonctionnaient sur le même principe : moyennant une cotisation fixe d'à peu près 8,50 USD, ils promettaient un allègement de la dette en organisant la révolte des emprunteurs. Leur appel a été entendu et le nombre des membres a rapidement augmenté. À l'approche des élections municipales, les partis politiques ont été attirés par la cause qui bénéficiait d'un large soutien populaire.

Par la suite, les groupes d'emprunteurs ont envoyé leurs propres dirigeants en prison. Dans l'un d'eux, les dirigeants avaient illégalement collecté le paiement du service de la dette dû aux organismes de microcrédit pour rembourser leurs propres emprunts. Après quelques mois, les groupes ont réapparu, avec de nouveaux dirigeants et de nouvelles exigences. Outre la remise de la dette, ils revendiquaient l'interdiction de certaines procédures de collecte, l'extension des délais de remboursement, un allongement de la durée des prêts, et la fixation du taux d'intérêt annuel à deux pour cent. Leurs tactiques se sont également multipliées. Dans l'exemple le plus extrême, des manifestants qui transportaient sur eux de la dynamite ont envahi la Direction générale des banques en juillet 2001 et ont retenu les employés en otage en menaçant de faire exploser le bâtiment.

Mais, il n'est pourtant pas tout à fait juste de rendre la concurrence responsable de l'issue de cette affaire. La concurrence n'a pas incité les sociétés de crédit à mal jouer leur rôle d'analyse de la solvabilité; elle les a simplement encouragées à entrer sur le marché. Elles ont fait des choix d'emprunt peu judicieux et tous les acteurs du marché en ont pâti. On pourrait tout aussi bien rendre l'insuffisance de la réglementation bancaire responsable de la situation dans laquelle les emprunteurs se sont retrouvés, sachant que des politiques de prêt plus prudentes leur auraient évité de se couvrir de dettes.

4.2.5 D'autres conditions peuvent empêcher la concurrence d'aider les consommateurs pauvres

Même en supposant que l'autorité de la concurrence d'un pays dispose de suffisamment de ressources financières, d'expérience professionnelle et de pouvoirs d'investigation et de recours, un certain nombre d'autres conditions et mesures-cadres sont malgré tout nécessaires pour favoriser la concurrence et lui permettre de jouer normalement. Parmi ces conditions figurent un état de droit efficace, une gestion des affaires publiques raisonnablement transparente et exempte de corruption, des tribunaux et des services de police suffisamment dotés en personnel et financés, un régime commercial libéralisé, l'absence de réglementations anticoncurrentielles, et une certaine stabilité macro-économique. L'absence de l'une quelconque de ces conditions peut affaiblir la capacité de la concurrence à jouer pleinement – et ainsi affaiblir sa capacité à aider les consommateurs pauvres.

4.2.5.1 Influence indue : les liens étroits entre les entreprises et les pouvoirs publics

Les récents travaux de Karen Ellis et Rohit Singh mettent ce problème en lumière dans le contexte des pays en développement (même si, bien sûr, il peut aussi se poser dans les pays développés). Ellis note que l'une des vertus de la concurrence est qu'elle peut équilibrer les rapports de force entre les entreprises et les pouvoirs publics.[88] En revanche, lorsque la concurrence est faible, cet équilibre peut être modifié au profit d'une entreprise dominante, qui sera alors en mesure de tenter de convaincre les responsables politiques de l'aider à empêcher l'émergence de la concurrence sur un marché. Il en résultera généralement des prix maintenus à un niveau supérieur au niveau concurrentiel, la persistance d'une moins bonne qualité, et/ou une innovation étouffée, qui auront tous des effets néfastes sur les consommateurs, et notamment les pauvres.

Ellis note plus précisément que les grandes entreprises multinationales disposant d'un fort pouvoir de marché entretiennent souvent d'excellentes relations avec les pouvoirs publics, en particulier dans les pays sous-développés, et que ces entreprises peuvent avoir une grande influence sur les États pour diverses raisons. Une nation peut avoir cruellement besoin des produits d'une entreprise, de ses investissements et de son savoir-faire, par exemple. Mais une classe d'élites économiques peut émerger lorsque des responsables politiques et des gens d'affaires mettent leurs forces en commun pour extraire les rentes économiques sur un marché au détriment du reste de la société. Les projets de travaux publics peuvent être dirigés vers des contractants favorisés, même si d'autres entreprises soumettent des offres plus compétitives. À l'inverse, les éventuels nouveaux concurrents pourraient avoir envie de rivaliser sur un marché mais en être dissuadés par des outils comme des obstacles à l'importation ou à l'exportation, des réglementations qui rendent plus difficile et plus onéreuse l'obtention de l'autorisation d'exercer une activité commerciale, ou des taux d'imposition préférentiels en faveur des entreprises en place. Indépendamment de la stratégie particulière choisie, le but et l'effet recherchés sont d'empêcher la concurrence de jouer, et de permettre ainsi aux entreprises en place de maintenir leurs prix à la hausse et la qualité à la baisse. En outre, les agents publics participant à ces alliances d'extraction prendront, d'une manière ou d'une autre, une part des bénéfices. La relation peut impliquer la participation complète ou partielle de l'État dans les entreprises, ou un certain degré de participation des responsables politiques ou de leurs familles, par exemple.

De toute évidence, les grandes entreprises multinationales ne sont pas les seules à pouvoir affecter la concurrence en jouant de leur influence sur les pouvoirs publics. Khemani indique que dans de nombreux pays en développement, il est habituel que les grandes sociétés soient familiales ou contrôlées par un petit groupe de puissants investisseurs. Ces sociétés et ces familles peuvent contrôler plusieurs entreprises dans une structure de participation pyramidale ou de cumul de mandats d'administrateurs.[89] Ces groupes familiaux ou à participation restreinte peuvent avoir un fort impact non seulement sur certains marchés particuliers mais aussi sur l'économie générale, susceptible d'exercer une grande influence sur les pouvoirs publics. Fox reconnaît que les trop bonnes relations qui existent entre les gens d'affaires et les pouvoirs publics posent un problème grave dans les pays en développement, et observe que les marchés y « sont marqués par l'intervention et le contrôle de l'État. Que l'intervention prenne la forme de mesures prises par

88 Karen Ellis, « Making Markets Work: Can You Compete with the Elite? » ODI Opinion 123 (janvier 2009), consultable à l'adresse : www.odi.org.uk/opinion/details.asp?id=2778&title=business-competition-politics-elite-development.

89 R. Shyam Khemani, « Interplay and Implications of High Product, Ownership and Financial Market Concentration » in « Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries », Banque mondiale, ch. 2 (2007).

l'État, d'entreprises à capitaux publics, ou d'entreprises agréées ou privilégiées par l'État, ces entreprises seront sans doute gérées en vertu des principes de privilège, de préférence et de favoritisme ». [90]

Le travail d'Ellis et Singh sur le terrain met en évidence plusieurs exemples de ce type de relations étroites entre des entreprises puissantes et des gouvernements de pays en développement. En fait, la fortune de ces entreprises est souvent déterminée par l'importance de cette relation plutôt que par le creuset de la concurrence de marché. Certaines d'entre elles jouissent de la protection et des largesses de l'État pendant un temps, puis tombent en disgrâce et sont remplacées par de nouvelles favorites. Ainsi, Ellis mentionne une entreprise à laquelle un État avait demandé de fournir ses produits à une nouvelle entreprise étrangère dans un autre secteur à des taux réduits. L'État voulait aider cette entreprise à s'établir sur son territoire. La première entreprise a refusé et a prétendu que l'État l'avait sanctionnée en accordant une licence à un nouvel entrant pour rivaliser avec elle, érodant ainsi ce qui avait été une position de monopole sans risque, arrivé à maturité. « Ainsi, la concurrence elle-même devient un élément de négociation dans un jeu de pouvoir entre l'État et les entreprises[.] »[91]

4.2.5.2 Un exemple : le protectionnisme commercial sur le marché zambien du sucre

L'étude menée par Ellis et Singh sur l'industrie du sucre raffiné dans plusieurs pays nous offre de beaux exemples d'États cherchant à entraver la concurrence sur le marché des biens de première nécessité. Le sucre fait partie du régime de base dans la plupart des pays et il est également une source de revenus pour de nombreux habitants des zones rurales. Par conséquent, certains États sont très impliqués dans l'industrie sucrière, notamment au Bangladesh, au Kenya et au Viêt Nam. Dans leurs pays respectifs, ces États soutiennent, gèrent, protègent ou contrôlent l'industrie sucrière, sous diverses formes. Même si les raisons justifiant cette implication, comme la promotion du développement rural et la création d'emplois, ont pu être raisonnables, l'industrie sucrière gérée par l'État dans ces pays n'enregistre pas de très bons résultats. L'utilisation d'une technologie obsolète et de méthodes d'exploitation inefficaces se traduit par une baisse relative de la productivité. L'industrie sucrière dans ces trois pays lutte pour survivre à la concurrence du sucre importé ou produit par le secteur privé. L'approche d'intervention directe des États est proche de l'échec.[92] Mais cette conclusion n'est qu'un élément du contexte qui conduit à une observation encore plus surprenante.

Poursuivant l'examen de leur point essentiel, Ellis et Singh notent que, à la différence des trois premiers pays, l'industrie sucrière zambienne s'appuie sur le secteur privé. La Zambie est le premier producteur de sucre par hectare des cinq pays étudiés.[93] En fait, la production zambienne par hectare est trois fois plus élevée que celle du Viêt Nam, qui est le deuxième pays le plus performant du groupe, et son coût de production est l'un des plus faibles au monde (169 USD par tonne comparé à un coût mondial moyen de 263 USD par tonne). L'industrie sucrière zambienne est très rentable, concurrentielle sur le plan

90 Fox, supra n.54, pages 229 et 230 ; voir aussi Mark Dutz et R. Shyam Khemani, Competition Law & Policy: Challenges in South Asia 11 (2007) cité dans l'article de Fox, supra n.54, page 213 n.6 (résument le problème que posent de trop bonnes relations entre les gens d'affaires et les pouvoirs publics, qui s'accompagnent généralement de « structures rigides et inefficaces du marché industriel et financier [et qui] ont des effets négatifs […] sur l'incitation à une concurrence effective [...] et sur le maintien d'un lien anticoncurrentiel qui soutient mutuellement les intérêts acquis des entreprises en place et des pouvoirs publics, certaines des rentes obtenues servant à renforcer le pouvoir de marché en gagnant le favoritisme de l'État »).

91 Ellis, supra n.88 page 2.

92 Karen Ellis & Rohit Singh, « The Economic Impact of Competition », Overseas Development Institute Project Briefing Document d'information, Project Briefing n° 42 (juillet 2010); Ellis et Singh, supra n.86, page 88.

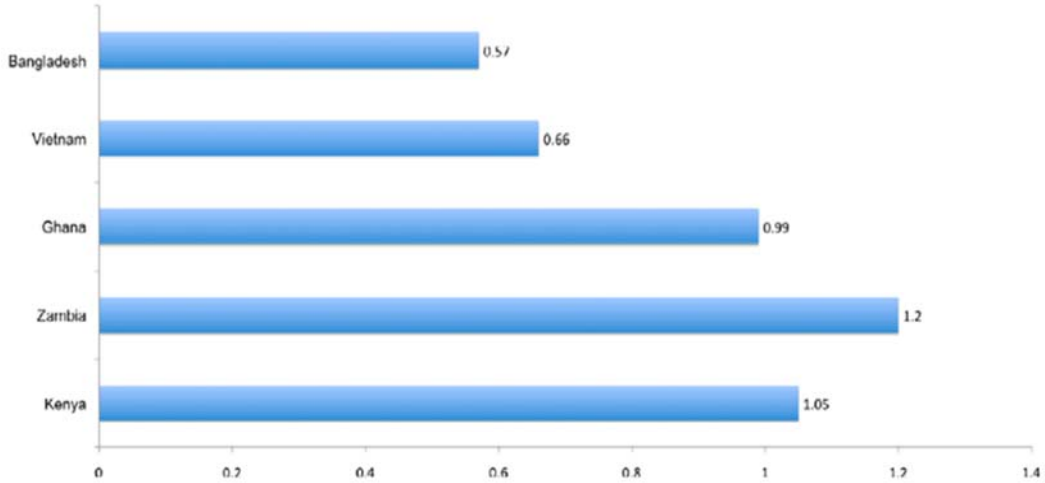
93 Le Ghana est le cinquième.

international, et elle s'étend pour profiter de nouvelles possibilités d'exportation. Ces résultats donnent à penser que les mesures incitatives du secteur privé et l'expertise en matière de gestion sont mieux adaptées que celles des États, au moins dans l'industrie sucrière.[94]

Des réformes importantes sont nécessaires pour améliorer les performances de l'industrie sucrière au Bangladesh, au Kenya et au Viêt Nam. Cependant, parce que des réformes pourraient mettre fin à l'activité de certaines sucreries existantes, des intérêts locaux les rendraient impopulaires sur le plan politique et par là même difficiles à exécuter quand bien même il en irait de l'intérêt des consommateurs et du pays dans son ensemble.

Mais qu'est-ce qui surprend le plus dans l'étude d'Ellis et Singh ? Étant donné la productivité nettement supérieure de la Zambie, on s'attendrait à ce que les consommateurs zambiens payent le sucre beaucoup moins cher que les consommateurs des pays moins performants. Or, les consommateurs zambiens payent le sucre beaucoup plus cher que les consommateurs des autres pays étudiés:

Graphique 3. Prix de détail au comptant sur le marché du sucre en 2008, en USD/kg



Source : Karen Ellis et Rohit Singh, « Assessing the Economic Impact of Competition », Overseas Development Institute (juillet 2010), p. 14. Consultable à l'adresse : www.odi.org.uk/resources/docs/6056.pdf.

Non seulement les prix du sucre sont plus élevés en Zambie que dans d'autres pays, mais ils sont également supérieurs aux prix auxquels le sucre zambien est vendu sur les marchés internationaux. Cela est au moins en partie dû à l'organisation monopolistique du secteur en Zambie, où une grande entreprise multinationale détient 93 pour cent du marché et est protégée de la concurrence étrangère par des obstacles non tarifaires à l'importation. Les importateurs de sucre qui souhaitent faire des affaires en Zambie doivent obtenir des autorisations en suivant une procédure qu'Ellis et Singh décrivent comme « bureaucratique et manquant de transparence […] auprès du Ministère de l'agriculture, du Ministère de la santé, et du Ministère du commerce qui doivent tous acquitter les droits à l'importation du sucre ». La Commission zambienne de la concurrence a mené une enquête mais n'a pas été en mesure de régler le problème. Ellis et Singh observent de façon laconique que « le gouvernement peut être directement intéressé par la rentabilité du secteur ».[95]

94 Ellis et Singh, supra n.92; Ellis et Singh, supra n.86, page 13.

95 Ellis et Singh, supra n.92; Ellis et Singh, supra n.86, page 14.

D'un autre côté, lorsqu'une véritable concurrence de marché parvient à s'enraciner malgré l'existence de relations privilégiées entre une entreprise en place et l'État – par exemple, en raison d'une percée novatrice qui permet à une nouvelle entreprise d'entrer sur le marché malgré les obstacles mis en œuvre pour protéger l'entreprise en place – cela peut aboutir à une amélioration des résultats de l'entreprise soutenue. Cela peut à son tour briser les alliances anticoncurrentielles formées par les élites économiques, lutter contre le favoritisme, et réduire la rentabilité de la corruption.[96] La concurrence peut faire de grandes choses – si on la laisse éclore.

4.2.5.3 Autre exemple : des règles de zonage anticoncurrentielles à Mexico

La contribution du Mexique au Forum latino-américain sur la concurrence de 2012 contient un autre bon exemple de la façon dont les politiques publiques peuvent empêcher la concurrence de réduire la pauvreté.[97] L'Assemblée des représentants de Mexico a approuvé une norme de zonage qui limite la possibilité pour les grands supermarchés de s'implanter dans les quartiers les plus pauvres de la ville. La Commission fédérale de la concurrence (CFC) estime que la norme a tout autant un objectif anticoncurrentiel que des effets néfastes sur les consommateurs. Plus précisément, la réglementation vise à protéger les propriétaires de petites supérettes bien établies, moins performantes et plus chères d'éventuels nouveaux concurrents. Elle nuit par ailleurs aux consommateurs pauvres qui auraient gagné du temps et de l'argent et auraient eu davantage de choix si des supermarchés plus grands et plus performants avaient été autorisés à s'implanter dans les quartiers où ils vivent.

La contribution du Mexique reconnaît que les règles de zonage peuvent avoir des objectifs légitimes, comme la protection des résidents contre les effets externes négatifs qui pourraient survenir si des entreprises étaient autorisées à s'implanter où elles voulaient. Mais lorsque des règles de zonage sont mises en œuvre pour protéger les entreprises d'une pression concurrentielle, elles manquent de légitimité. Mexico n'est pas le seul endroit où des règles de zonage sont mises en œuvre pour protéger les petits commerces locaux contre d'éventuels nouveaux concurrents plus performants. Brusick et Evenett font observer que le même type de problème existe aussi en Indonésie, par exemple.[98]

4.2.5.4 Les bonnes raisons d'entraver la concurrence

Le fait que l'implication des pouvoirs publics dans des « partenariats » avec des entreprises protégées ne s'explique pas toujours par la corruption complique encore la situation. Ces raisons peuvent être généreuses. En fait, leurs motivations peuvent précisément être de réduire la pauvreté. Ainsi, les pouvoirs publics pourraient exiger, en échange d'une aide pour entraver la concurrence, que l'entreprise en place protégée crée un certain nombre d'emplois ou fournisse des services de santé ou d'éducation à ses salariés et à leurs familles. L'objectif pourrait aussi être de diversifier l'économie, de favoriser l'intégration régionale, ou de mettre en œuvre certains autres objectifs légitimes, différents des objectifs traditionnels de politique de la concurrence dans les pays développés, en l'occurrence l'optimisation de l'efficacité et du bien-être des consommateurs. À l'inverse, les pouvoirs publics pourraient demander à une entreprise d'accorder à l'État une remise sur les projets de marchés publics. Ils pourraient aussi simplement avoir les

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96 Ellis, supra n.91. Nick Godfrey, « Why is Competition Important for Growth and Poverty Reduction? », rapport présenté lors du Forum mondial sur l'investissement international organisé par l'OCDE (2008), page 4, consultable à l'adresse : www.oecd.org/investment/globalforum/40315399.pdf.

97 OCDE, Contribution du Mexique au Forum latino-américain sur la concurrence, DAF/COMP/LACF(2012)12, consultable à l'adresse : www.oecd.org/competition/latinamerica/programmeanddocuments.htm#Session_I.

98 Philippe Brusick et Simon Evenett, « Should Developing Countries Worry about Abuse of Dominant Power? » 2008 Wisconsin Law Review 269, 291 et n.80.

yeux rivés sur les recettes fiscales grandement nécessaires qu'une entreprise génère, et qui seront d'autant plus importantes que les profits dus au faible niveau de concurrence sont élevés.

De la même façon, il n'est pas rare que les programmes de privatisation se soldent par la vente de monopoles publics au plus offrant, étant entendu qu'il n'y aura que peu ou pas de surveillance réglementaire réelle dans l'avenir, pour optimiser le produit de la vente pour l'État.[99] Mais cela signifie qu'un monopole public devient un monopole privé, avec des consommateurs qui au final payent la prime perçue par l'État au titre de la vente de l'entreprise. Même si la vente s'accompagne de la création d'un organisme de régulation chargé d'empêcher le monopole dorénavant privé d'abuser de sa position dominante, le problème bien connu des organismes de réglementation (que ce soit dans les pays développés ou les pays en développement) tient à ce qu'ils risquent de se trouver sous l'influence des entreprises qu'ils sont censés contrôler.[100]

L'un des principaux problèmes que posent ces types d'accords généreux est que les consommateurs payent pour les bénéfices qui encouragent l'opération, et sur les marchés des biens et des services de première nécessité, les plus durement touchés sont les consommateurs pauvres. Quoi qu'il en soit, certaines données présentées par Ellis et Singh laissent penser que le risque est grand de voir ce type de partenariat entre personnes influentes utilisé à mauvais escient, dans le but de rechercher des rentes.[101]

4.2.5.5 Le problème délicat des très petits monopoles locaux

Parfois, les conditions géographiques et démographiques ne permettent pas à la concurrence d'aider les consommateurs pauvres. Un village peut avoir une population si peu nombreuse qu'elle peut ne faire vivre qu'une seule entreprise – par exemple un seul épicier ou un seul magasin général dans le village. Si le village ou la ville les plus proches sont éloignés et si les habitants ne peuvent pas assumer les frais de transport, ils ne pourront pas faire leurs courses ailleurs. Dans ces circonstances, la concurrence est extrêmement limitée par les barrières géographiques ou d'échelle, de sorte que les magasins situés dans ces villages peuvent pratiquer des tarifs supérieurs au prix concurrentiel et les consommateurs en pâtir continuellement. Ensuite, si des comportements anticoncurrentiels sont adoptés dans ces petits villages reculés, les autorités de la concurrence n'auront sans doute pas les moyens d'examiner ces situations dont les enjeux sont faibles, compte tenu de leurs autres attributions. Cela signifie-t-il que les États ne peuvent rien faire pour encourager la concurrence dans les petites communautés isolées ?

Pas nécessairement. De nombreux villages n'ont tout simplement pas la taille suffisante pour faire vivre plusieurs concurrents locaux sur un marché de produits ou de services donné, et il peut s'avérer impossible de mener des enquêtes sur des comportements anticoncurrentiels dans des petites villes, mais les États peuvent tenter d'autres approches. Soutenir le développement de l'infrastructure de l'internet en est une. Le commerce électronique est idéal pour introduire de la concurrence dans les endroits où elle n'existait pas avant. Et bien qu'il puisse sembler peu réaliste de penser que le commerce électronique prospérera dans certaines régions pauvres, a) le commerce électronique a réussi à renforcer la concurrence dans de nombreux endroits où les citoyens avaient accès à l'internet, qu'ils vivent ou non dans des petites villes; et b) l'avènement des téléphones portables à des prix en plus en plus avantageux et permettant de se connecter à l'internet a rendu plus réaliste que jamais l'idée de voir une population pauvre issue de petites villes surfer sur la toile.

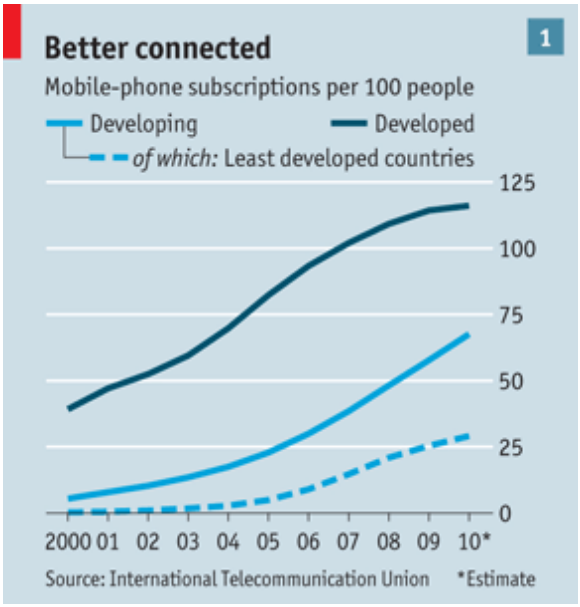
99 Brusick et Evenett, supra n.98 page 276.

100 Id., page 281.

101 Ellis, supra n.91.

« L'internet a fourni aux consommateurs un outil puissant de recherche et d'achat de biens et de services. Parmi ces avantages figuraient une concurrence accrue et une baisse des prix, un plus grand choix de produits et de services, et la commodité de faire des achats de biens et de services […] où que ce soit et à n'importe quel moment ».[102] Par ailleurs, même si sa publication date de plus de trois ans, un rapport conjoint pour l'OCDE et la Banque mondiale a déjà relevé que « plusieurs millions de pauvres s'engage[aie]nt dans des activités normalement associées à l'internet, comme la recherche documentaire, les paiements et le télétraitement, à l'aide de téléphones portables relativement faciles à utiliser ».[103] L'utilisation du téléphone portable a connu une expansion rapide dans le monde entier, et poursuit son essor dans les pays développés (voir Graphique 4).

Graphique 4. Pénétration du téléphone mobile dans les pays développés et les pays en développement (2000-2010)[104]



Mais, le développement des infrastructures de l'internet et l'utilisation accrue du téléphone portable ne stimuleront pas la concurrence du commerce électronique si les frais d'expédition sont prohibitifs ou si les consommateurs pensent que leurs commandes ne leur parviendront sans doute pas à bref délai, si tant est qu'elles leur parviennent. Pour que le commerce électronique devienne une solution réaliste dans les petits villages, les services postaux doivent y être régulièrement fournis. Et ces services doivent être abordables, raisonnablement rapides, et très fiables. Même si l'accès à l'internet se répand au Mexique, par exemple, le commerce électronique a du mal à se développer. La raison tient en partie à la mauvaise

102 Conférence de l'OCDE, « Des consommateurs plus autonomes et mieux protégés dans l'économie Internet » Rapport de synthèse, p. 6, DSTI/CP(2009)20/FINAL, consultable à l'adresse : www.oecd.org/ict/econsumerconference/44047583.pdf.

103 Rohan Samarajiva, « How the Developing World May Participate in the Global Internet Economy: Innovation Driven by Competition », Rapport pour un atelier commun de l'OCDE et de la Banque mondiale sur la cohérence de l'action publique dans l'application des technologies de l'information et de la communication au service du développement, page 2 (2009), consultable à l'adresse : www.oecd.org/ict/4d/43603296.pdf .

104 Ce graphique est tiré de l'article « Mobile Services in Poor Countries: Not Just Talk », The Economist (27 janvier 2011), consultable à l'adresse : www.economist.com/node/18008202.

qualité des services postaux.[105] Si les États souhaitent profiter de la concurrence et de la croissance formidables que le commerce électronique peut créer,[106] ils doivent prendre des mesures non seulement pour améliorer l'accès à l'internet, mais aussi rendre leurs services postaux abordables et fiables.

Pourtant, même avec un accès convenable à internet et des services postaux adéquats, le commerce électronique ne peut pas améliorer la concurrence sur tous les marchés de biens de première nécessité. On ne voudrait pas acheter du lait frais ou de la viande par le biais de l'internet et se faire livrer par la poste, par exemple. Des services de livraison privés existent pour les entreprises d'épicerie électronique qui desservent les régions très peuplées de nombreux pays de l'OCDE, mais la livraison vers les petits villages reculés serait très onéreuse. Malgré cela, les distributions postales conviennent mieux aux biens de première nécessité, comme les vêtements et les denrées alimentaires non périssables.

Une autre option, bien sûr, consiste à investir dans l'amélioration des routes et du transport public. S'il devient plus facile d'aller faire ses courses dans d'autres villes, les consommateurs pauvres pourront éviter de faire leurs achats dans les magasins monopolistiques de leur village. En ce qui concerne les très petites communautés reculées cependant, il peut s'avérer très coûteux pour les États d'améliorer les routes et le transport.

4.2.5.6 Certains des effets de la concurrence sur les consommateurs pauvres dépendent des pauvres eux-mêmes

Un autre type de problème concret susceptible d'empêcher la concurrence de réduire la pauvreté tient simplement à ce que les consommateurs pauvres pourraient ne pas profiter de ce que la concurrence a à leur apporter. Ce problème peut par exemple survenir si les pauvres sont moins informés ou plus facilement manipulés que d'autres consommateurs. À titre d'exemple, imaginons que l'étude du marché américain des télécommunications résidentielles, menée par Hausman et Sidak[107] et mentionnée précédemment, puisse aussi être interprétée différemment. Le fait que des consommateurs plus riches et plus instruits puissent obtenir des prix plus bas que les consommateurs pauvres pourrait laisser penser qu'il

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105 Voir par exemple, « On Mexican Time », The Economist (23 mars 2006) (observe que les Mexicains ont tendance à éviter d'utiliser Sepomex, le service postal public, pour le courrier important, préférant le remettre eux-mêmes en mains propres ou recourir à des opérateurs privés), consultable à l'adresse www.economist.com/node/5664823 ; « ¿Cuál Es el Destino del Correo en México? La Experiencia Internacional Sugiere Uno: Servir al Comercio Electrónico », Sin Embargo (9 octobre 2012) (recommande de transformer Sepomex en une plateforme de distribution fiable pour le commerce électronique, en notant que les services postaux aux États-Unis avaient formé des partenariats avec de grandes entreprises de commerce électronique comme eBay pour améliorer la rapidité et la fiabilité de leurs services), consultable à l'adresse www.sinembargo.mx/09-10-2012/391623 ; Noemi Luján Ponce, « El Tiempo Se Acabó: El Servicio Postal Mexicano en la Encrucijada de Su Modernización », Université de Princeton, Center for Migration and Development, Document de travail #08-05j (septembre 2008) (contexte de la proposition de réforme des services postaux au Mexique), consultable à l'adresse : www.princeton.edu/cmd/working-papers/idlac08/wp0805j.pdf.

106 D'après la société de conseil en gestion McKinsey, l'internet a généré autant de croissance économique ces 15 dernières années que la révolution industrielle en 50 ans. McKinsey a étudié la corrélation entre la maturité de l'internet et la croissance du PIB par habitant, et en a conclu qu'« une augmentation du niveau de maturité de l'internet similaire à celle enregistrée dans les pays arrivés à maturité ces 15 dernières années créait une augmentation du PIB réel par habitant de 500 [USD] en moyenne sur la même période. Il a fallu 50 ans à la révolution industrielle du 19è siècle pour parvenir aux mêmes résultats ». McKinsey Global Institute, « Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity » (mai 2011), Résumé, page 3.

107 Jerry Hausman et Gregory Sidak, « Why Do the Poor and the Less-Educated Pay More for Long-Distance Phone Calls? », 3 Contributions in Economic and Policy Research 1 (2004).

y a une certaine concurrence sur le marché. Cela implique dès lors que le problème pour les pauvres et les groupes peu instruits pourrait ne pas tant être l'absence de concurrence que l'incapacité ou la réticence à tirer parti de cette concurrence. Si cela est exact, c'est aussi une des raisons pour lesquelles il ne suffira pas nécessairement de rendre les marchés plus concurrentiels pour aider les pauvres. Ils peuvent avoir besoin d'aide pour apprendre à être de meilleurs acheteurs, à comparer des offres complexes, ou – s'ils sont intentionnellement induits en erreur – avoir besoin de l'aide d'un organisme de protection des consommateurs.

En effet, les problèmes associés à la tromperie ont occupé une place prédominante dans l'effondrement de la bulle immobilière aux États-Unis, à l'origine de la crise financière mondiale de 2008. Ce que l'on a coutume d'appeler les prêteurs prédateurs rivalisaient si vivement entre eux qu'ils ont commencé à proposer des prêts immobiliers aux pauvres présentant un profil de risque très élevé. Dans leur empressement à finaliser de plus en plus de prêts, les prêteurs se sont livrés à des pratiques de nature à induire en erreur, qui ont convaincu les clients pauvres d'accepter les prêts, quand bien même les prêteurs savaient que les conditions financières étaient si coûteuses et la capacité de remboursement des clients si faible que le risque de défaut de paiement était élevé. Lorsque par la suite, de nombreux emprunteurs se sont trouvés dans l'incapacité de payer leur hypothèque, ils ont perdu le peu d'épargne qu'ils avaient, s'enfonçant encore davantage dans la pauvreté ou se retrouvant en deçà du seuil de pauvreté pour la première fois.[108]

Le Professeur Aneel Karnani, de l'Université du Michigan réagit face à ce qu'il perçoit comme l'idée en vogue actuellement que les pauvres sont rationnels, bien informés et qu'ils participent volontiers aux économies de marché libre. Il affirme que cette romantisation des pauvres conduit à privilégier les approches sans retenue de la réduction de la pauvreté fondées sur le marché, qui à leur tour permettent aux États et aux sociétés de refuser aux populations pauvres les protections juridiques et réglementaires dont elles ont besoin.[109] Karnani, pour être parfaitement clair sur ce point, ne dit *pas* que les pauvres sont incapables de choix rationnels. Il ne défend pas non plus les interventions autoritaires de l'État, les marchés strictement réglementés, ou l'idée désuète que les pouvoirs publics devraient, d'une façon très paternaliste, écarter les pauvres des choix importants. Mais il croit que les États devraient imposer certaines limites sur les marchés libres en vue d'éviter l'exploitation des pauvres. Il indique également que même lorsque les pauvres parviennent à échapper aux vendeurs déloyaux et à profiter de la baisse des prix rendue possible par les marchés concurrentiels, ils décident souvent de dépenser l'argent qu'ils ont économisé pour des biens qui ne réduisent pas leur pauvreté à long terme.

À vrai dire, affirme-t-il, les consommateurs pauvres prennent souvent des décisions qui semblent aller à l'encontre de leur intérêt personnel. Par exemple, supposons que la concurrence favorise la baisse des prix sur certains marchés de biens de première nécessité. On pourrait supposer, à tort, que cet effet réduira la pauvreté au moins de façon marginale. Le fait de savoir si une baisse des prix réduira ou non effectivement la pauvreté dépend de ce que les consommateurs pauvres font de l'argent qu'ils ont économisé grâce à cette baisse des prix. Comme tout un chacun, les pauvres pourraient choisir de le dépenser pour un produit de « vice » comme l'alcool ou le tabac. Dans le cas des pauvres, pourtant, faire ce choix pourrait vouloir dire qu'eux-mêmes ou leurs enfants continueront de souffrir de malnutrition, que leur toit ne sera pas réparé, ou que leur bicyclette – qui pourrait être nécessaire pour se rendre au travail – continuera d'être hors service. En outre, l'excès d'alcool ou de tabac peut nuire à la santé et exclure les

108 Voir par exemple, James Pulliam, « Good Cop, Bad Cop: Market Competitors, UDAP Consumer Protection Laws, and the U.S. Mortgage Crisis », 43 Loyola of Los Angeles Law Review 1251 (2010) ; Timothy Johnston, « Mortgage Marketing Practices and the U.S. Credit Crisis », 13 Academy of Marketing Studies Journal (2009).

109 Aneel Karnani, « Romanticizing the Poor », 7 Stanford Social Innovation Review 38 (2009).

gens du marché du travail. Vu sous cet angle, il se peut qu'une plus grande concurrence nuise aux pauvres précisément parce qu'elle peut réduire le prix des biens de première nécessité.

Du point de vue des politiques publiques, ce constat est contrariant. La malnutrition, par exemple, peut enfermer la population dans la pauvreté. Mais s'il est vrai qu'en mangeant plus, les pauvres pourraient commencer à travailler davantage et par là même se sortir du piège de la pauvreté, ils devraient alors manger autant que possible. Pourtant, ce n'est pas nécessairement ce qu'ils font. Un ménage pauvre ordinaire pourrait dépenser jusqu'à 30 pour cent de plus en denrées alimentaires qu'il ne le fait réellement s'il abandonnait totalement les dépenses consacrées à l'alcool, aux tabacs et aux fêtes. De même, lorsque des personnes très pauvres ont l'occasion de dépenser un peu plus en denrées alimentaires, elles ne maximisent généralement pas leur apport calorique. Au lieu de cela, elles ont simplement tendance à acheter des calories plus chères, au goût meilleur.[110]

L'idée que défend Karnani est au fond que, si les gouvernants ont besoin d'adopter des mesures pour réduire la pauvreté, en favorisant notamment la concurrence, ils devraient également reconnaître que « les pauvres sont privés de l'instruction, des informations et du capital économique, culturel et social qui leur permettraient de profiter – et de se protéger eux-mêmes – des fluctuations du marché libre ».[111] Bien que cette description soit caricaturale (les pauvres ne sont certainement pas toujours privés d'information, par exemple), certains souscrivent à cette argumentation.

Il note également que les économistes Banerjee et Duflo concluent que parce que les pauvres ne possèdent le plus souvent pas de compte bancaire, ils ont plus de chances de dépenser leurs liquidités disponibles en achats d'impulsion.[112] Par ailleurs, les épreuves que les pauvres sont le plus susceptibles de subir, telles que la faim et la violence, les conduisent souvent à faire tout ce qu'ils peuvent pour atténuer leurs souffrances à court terme plutôt que de se concentrer sur la promotion de leurs perspectives économiques à long terme. Karnani fait état de recherches mettant en évidence que moins les gens ont de revenus, plus ils sont susceptibles de chercher du réconfort dans le tabac, la consommation excessive d'alcool, la mauvaise alimentation, et les dépenses de fêtes et cérémonies.[113] Il présente manifestement cet état de fait de manière bienveillante plutôt que moralisatrice, en citant Banerjee et Duflo qui observaient que « peut-être qu'à un certain niveau, cet [exutoire] est émotionnellement rationnel. Penser aux problèmes économiques de la vie au quotidien doit rendre encore plus difficile d'échapper à l'insuffisance même du niveau de vie ».[114]

En d'autres termes, nous ne devons pas placer de trop grandes espérances dans la seule concurrence. De nombreux autres facteurs peuvent constituer un obstacle à la réduction de la pauvreté. Mais la concurrence peut au moins permettre aux consommateurs pauvres d'avoir accès à davantage de ressources de manière à ce qu'ils aient de meilleures chances de s'en sortir par eux-mêmes.

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110 Banerjee et Duflo, supra n.25, pages 22 à 40.

111 Karnani, supra n.109, page 40.

112 Abhijit Banerjee & Esther Duflo, « The Economic Lives of the Poor », 21 Journal of Economic Perspectives 141 (2007).

113 Karnani, supra n.109, pages 40 et 41 (2009), citant John Lynch, George Kaplan et Jukka Salonen, « Why Do Poor People Behave Poorly? Variation in Adult Health Behaviours and Psychosocial Characteristics by Stages of the Socioeconomic Lifecourse », 44 Social Science & Medicine 809 (1997) ; Abhijit Banerjee, Angus Deaton & Esther Duflo, « Wealth, Health, and Health Services in Rural Rajasthan », 94 American Economic Review 326 (2004); Shubhashis Gangopadhyay & Wilima Wadhwa, Changing Pattern of Household Consumption Expenditure, New Delhi: Society for Economic Research & Financial Analysis (2004).

114 Karnani, supra n.109, page 41.

5. L'effet de la concurrence sur les petits entrepreneurs et salariés pauvres : théorie et pratique

5.1 Effets théoriques

En principe, la concurrence devrait également contribuer à améliorer la situation des pauvres en tant que petits entrepreneurs, salariés et demandeurs d'emploi. La concurrence n'est certes pas systématiquement bénéfique aux pauvres situés du côté de l'offre, mais elle peut l'être. Lorsqu'elles opèrent sur des marchés concurrentiels, les entreprises sont obligées à la longue d'affecter les ressources que leur procure la société aux activités où elles seront les plus productives et les plus rentables. Ce processus contraint certaines entreprises à disparaître mais rend celles qui survivent plus concurrentielles et, ce faisant, stimule la croissance macroéconomique.

L'accélération de la croissance macroéconomique peut à son tour favoriser la création d'emplois. La croissance qui résulte de l'intensification de la concurrence peut aussi entraîner une hausse des salaires à mesure que la production augmente. Des salaires réels plus élevés devraient contribuer à l'amélioration des niveaux de vie et donc au recul de la pauvreté. Par ailleurs, pour autant que la rivalité encourage l'innovation, la concurrence peut favoriser l'émergence de nouveaux marchés de produits et de nouvelles entreprises, qui offriront aux pauvres la possibilité de percevoir des revenus plus élevés. Par conséquent, si ces effets macroéconomiques se matérialisent, on devrait trouver des éléments empiriques attestant l'existence d'une chaîne causale qui mène du renforcement de la concurrence à l'essor de la croissance et de l'innovation puis à la hausse des revenus des pauvres.[115]

Au niveau microéconomique, l'application du droit de la concurrence peut aider les pauvres à améliorer leurs revenus en remplissant ses fonctions habituelles, qui sont d'empêcher les fusions anticoncurrentielles, de dissoudre les cartels et de mettre fin aux abus de position dominante. Prenons l'exemple d'un entrepreneur pauvre qui souhaiterait créer une entreprise faisant concurrence à une grande société solidement établie – et qui saurait même comment s'y prendre pour conduire son activité de façon plus efficiente. Si l'entreprise en place exerce une position dominante et bloque l'entrée des petits entrepreneurs en adoptant un comportement anticoncurrentiel, la mise en application du droit de la concurrence peut s'avérer utile. Un cartel peut avoir tout autant intérêt qu'une entreprise dominante unique à écarter les nouveaux venus et la menace qu'ils représentent. Dans les deux cas, une fois le problème de concurrence éliminé, la production industrielle devrait augmenter. Cela peut conduire à une hausse de la demande de main-d'œuvre et, partant, à la création d'emplois plus nombreux ou à une élévation des salaires.

Les fusions anticoncurrentielles entraînent également des abus de position de force sur le marché qui peuvent nuire aux entrepreneurs pauvres. L'une des critiques souvent formulées dans les pays développés comme dans les pays en développement, par exemple, est que le regroupement des grandes chaînes de supermarchés et de leurs systèmes de distribution internationaux leur confère un pouvoir monopsonistique qui est utilisé à l'encontre des petits exploitants, contraints de vendre leur production à des prix artificiellement bas.[116] Un mécanisme rigoureux d'examen des fusions permettrait de bloquer les transactions qui entraînent un déclin sensible de l'intensité de la concurrence.

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115 Néanmoins, il ne faut pas perdre de vue que lorsque la pauvreté est définie en termes de seuils relatifs, la croissance macroéconomique n'entraîne pas de réduction du nombre de personnes vivant officiellement dans la pauvreté, sauf si elle est biaisée en faveur des pauvres.

116 Cf. Brusick et Evenett, *supra* note 98, pp. 290-91 (les auteurs relèvent des plaintes de cette nature en Thaïlande, au Pérou, en France et en Indonésie). Il est à noter que les fusions anticoncurrentielles entre chaînes de supermarchés peuvent également pénaliser les consommateurs pauvres dans la mesure où le renforcement du pouvoir de marché qui en résulte pousse les prix de détail à la hausse.

D'autres facteurs tels que des réglementations excessivement restrictives compliquent inutilement la tâche des entrepreneurs désireux d'entrer sur le marché, privant les pauvres d'autant d'occasions de trouver du travail et d'améliorer leur situation financière. Stimuler la concurrence en promouvant la révision de ces réglementations permettrait de récupérer ces occasions perdues.

Étant donné que les pauvres disposent *grosso modo* de deux moyens de gagner leur vie – travailler à leur compte en tant que petits propriétaires d'entreprise ou travailler pour quelqu'un d'autre comme salariés – laquelle de ces deux catégories est la plus susceptible de profiter du renforcement de la concurrence ? En d'autres termes, si les autorités en charge de la concurrence choisissaient de faire de la réduction de la pauvreté une priorité, vaudrait-il mieux qu'elles mettent l'accent sur la création et le maintien de débouchés pour les petits entrepreneurs ou sur la protection de la concurrence dans les secteurs qui abritent des entreprises pourvoyeuses de nombreux emplois ? Cette question est de celles qui peuvent occuper un économétricien pendant un long moment.

Les proportions de personnes pauvres qui occupent un emploi salarié d'une part et qui dirigent leur propre entreprise d'autre part varient entre les pays et entre les secteurs. Au Pérou, par exemple, 69 % des ménages urbains pauvres (percevant moins de 2 USD par jour) dirigent une entreprise non agricole. En Indonésie, au Nicaragua et au Pakistan, les proportions oscillent entre 47 et 52 %. Dans les pays développés, le chiffre est nettement plus bas, même si l'on se réfère au seuil de pauvreté national officiel et non à un revenu inférieur à 2 USD par jour. Dans les zones rurales de la planète, la part des ménages pauvres (vivant avec moins de 1 USD par jour) qui travaillent à leur compte dans l'agriculture est aussi très variable, s'échelonnant entre 25 et 98 %. Toutefois, au Mexique et en Afrique du Sud, le secteur agricole compte très peu de travailleurs établis à leur compte. Pour compliquer les choses, de nombreux ménages pauvres tirent leur revenu de sources multiples. Il arrive aussi que les propriétaires d'entreprise, en plus de leur activité indépendante, travaillent pour le compte d'un tiers pour obtenir un revenu complémentaire. Par exemple, 47 % des ménages urbains pauvres (moins de 2 USD par jour) en Côte d'Ivoire et en Indonésie ont plus d'une source de revenus. Les proportions correspondantes sont de 24 % au Mexique, 36 % au Pakistan et 20.5 % au Pérou.[117]

Par ailleurs, il est difficile d'estimer les effets de la concurrence sur des paramètres tels que l'innovation et la croissance du PIB par habitant[118] , la mesure dans laquelle l'amélioration de ces dernières se répercute sur les personnes pauvres et accroît leur niveau de vie et les avantages comparés que retirent de la concurrence les entrepreneurs pauvres et les salariés pauvres. Un facteur de complexité supplémentaire réside dans la nécessité d'obtenir des données sur les retombées microéconomiques des mesures adoptées par les autorités de la concurrence sur les pauvres, en dissociant encore une fois les effets bénéfiques aux petits entrepreneurs et ceux qui profitent aux salariés.

Cependant, une personne au moins apporte une réponse intuitive à cette question : d'après Arneel Karnani, les personnes de l'extérieur idéalisent leur vision des entrepreneurs pauvres, tout comme ils idéalisent leur vision des consommateurs pauvres. Selon lui, les autorités publiques et les organismes d'aide sont enclins à percevoir les pauvres dans leur ensemble comme des entrepreneurs créatifs et talentueux, qui ont seulement besoin d'un petit coup de pouce – un prêt ou une formation – pour être capables d'amener adroitement leur entreprise jusqu'à la rentabilité. Karnani veut combattre cette illusion. Il fait remarquer que la plupart des candidats au microcrédit ne sont pas entrepreneurs par choix : s'ils pouvaient trouver un emploi correctement payé, ils le prendraient volontiers. En outre, peu de données indiquent que les pauvres sont de remarquables entrepreneurs. Cela, affirme l'auteur, n'a rien de surprenant

117 Toutes les statistiques citées dans ce paragraphe sont tirées de Banerjee et Duflo, *supra* note 112, pp. 151-52.

118 Le Comité de la concurrence mène actuellement des travaux visant à évaluer l'effet des activités de mise en application du droit de la concurrence sur le PIB et l'emploi.

dans la mesure où « la plupart des gens n'ont pas les compétences, l'ambition, la créativité et la persévérance nécessaires pour être entrepreneurs. Même dans les pays développés où les niveaux d'études sont élevés et l'accès aux services financiers aisé, environ 90 % de la population active sont constitués de salariés et non d'entrepreneurs. »[119]

Banerjee et Duflo partagent entièrement ce point de vue. Si tant de personnes pauvres travaillent à leur compte, c'est parce qu'il leur est souvent plus facile de devenir entrepreneurs que de trouver un emploi :

> *Vous achetez quelques fruits et légumes ou des jouets en plastique auprès d'un grossiste et vous commencez à les vendre dans la rue ; vous préparez un peu plus de dosas que d'habitude et vous vous installez devant chez vous pour les vendre ; vous ramassez la bouse de vache, la faites sécher et la vendez comme combustible ; vous prenez une vache et vous la trayez pour vendre son lait. Ce sont précisément ces types d'activité qu'exercent les pauvres.*
>
> *Il est important de ne pas enjoliver la situation de ces entrepreneurs impécunieux. Étant donné qu'ils n'ont pas d'argent, le recours à l'emprunt est risqué, personne ne veut leur accorder de prêt et leurs entreprises sont forcément d'extrêmement petite taille, synonyme d'économies d'échelle non réalisées. En outre, comme bon nombre de ces entreprises disposent d'une main-d'œuvre familiale en surnombre, elles créent très peu d'emplois pour les personnes extérieures. Bien entendu, cette situation fait qu'il devient difficile pour chacun de trouver un emploi et accentue la prolifération des petits entrepreneurs.*[120]

Partant de ce constat, Karnani fait valoir que le meilleur moyen de réduire la pauvreté est d'améliorer le revenu réel des personnes pauvres en augmentant leurs chances d'occuper un emploi régulier correctement rémunéré. Pour ce faire, les gouvernements devraient encourager la création et la croissance des entreprises privées dans les secteurs à forte intensité de main-d'œuvre en adoptant des politiques à même d'accompagner la déréglementation, d'améliorer les infrastructures de transport et de consolider les marchés de capitaux. Même s'il ne parle pas de la politique de la concurrence, il est probable que Karnani conseillerait aux autorités en charge de la concurrence de protéger la concurrence dans les secteurs employant beaucoup (ou potentiellement beaucoup) de main-d'œuvre plutôt que dans ceux où dominent les petits entrepreneurs.

Le renforcement de la concurrence pourrait-il être préjudiciable aux perspectives de revenus des personnes pauvres ? Il est tout à fait possible d'imaginer des scénarios où tel serait le cas. Par exemple, lorsque la concurrence est âpre sur le versant de l'offre du marché du travail, les salaires ont tendance à diminuer. Sur les marchés de produits et de services, les employeurs peuvent se voir contraints, sous l'effet d'une concurrence intense, de réduire leurs coûts en supprimant des emplois ou en baissant les salaires. Les entreprises finissent par disparaître complètement lorsque des concurrents plus efficients entrent sur le marché, ce qui entraîne à court terme des pertes d'emplois. Par exemple, les petits exploitants agricoles peuvent difficilement rivaliser avec les grandes entreprises agroalimentaires. L'innovation qui résulte de la concurrence peut également causer du tort aux entrepreneurs et aux travailleurs pauvres, tout au moins à court terme. Les nouvelles technologies peuvent causer des suppressions d'emplois en rendant les technologies plus anciennes obsolètes et en provoquant l'éviction des petits entrepreneurs et des entreprises qui utilisent ces technologies datées.

La prise en compte des effets théoriques du renforcement de la concurrence étrangère dû à l'intensification des échanges internationaux sur les salaires réels des travailleurs pauvres et peu qualifiés rend les effets de la concurrence sur les pauvres encore plus difficiles à cerner. Il existe au moins huit canaux potentiellement importants par lesquels les échanges internationaux sont susceptibles d'affecter les

119 Karnani, *supra* note 109.

120 Banerjee et Duflo, *supra* note 112, p. 162.

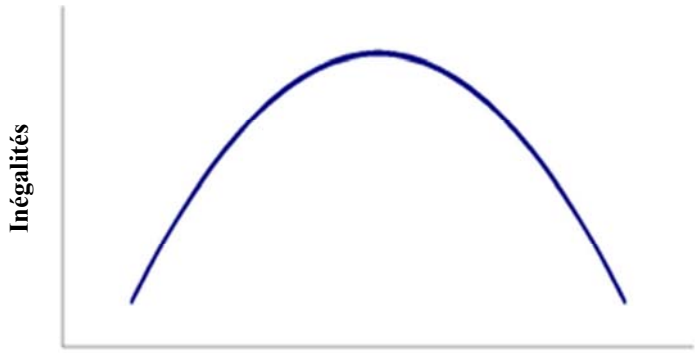
travailleurs pauvres et peu qualifiés, et l'effet net global est indéterminé[121] . Par exemple, le renforcement de la concurrence étrangère peut provoquer la sortie des entreprises nationales anciennes et inefficientes et favoriser l'entrée de nouvelles entreprises nationales plus efficientes. Autre cas de figure, les entreprises existantes peuvent se décider à affecter leurs ressources de manière plus efficiente. L'un ou l'autre de ces effets peut entraîner une hausse des salaires dès lors que la productivité augmente.

D'un autre côté, si les entreprises nationales réagissent au renforcement de la concurrence étrangère en externalisant une partie de leurs activités aux petites entreprises et travailleurs du secteur informel, le salaire moyen des personnes qui travaillaient dans le secteur formel risque de diminuer. Mais encore une fois, une hausse des revenus n'est pas à exclure malgré la baisse des salaires moyens si les travailleurs effectuent davantage d'heures dans le secteur informel.

Même si l'effet net de la concurrence sur la croissance, l'emploi et les salaires se révèle positif au final, c'est une chose que de dire que la concurrence favorise ces résultats positifs en général, c'en est une autre que d'affirmer qu'elle réduit la pauvreté en particulier. Les pauvres ont besoin d'une croissance *inclusive* – qui *leur* donne davantage de possibilités d'entreprendre, leur donne accès à davantage d'emploi et leur permette de percevoir des revenus plus élevés.

La probabilité que ces chances se concrétisent dépend d'un grand nombre de facteurs. Par exemple, l'effet de la croissance sur les personnes pauvres n'est pas nécessairement le même dans les pays en développement et dans les pays développés. Il y a presque 60 ans, l'économiste Simon Kuznets a émis l'hypothèse qu'à mesure qu'un pays se développe économiquement, la courbe obtenue en croisant le revenu par habitant en abscisse et les inégalités de revenu en ordonnée a la forme d'un U inversé. Autrement dit, Kuznets prédisait que les pauvres ne recevaient pas une part proportionnelle de la croissance des revenus dans un premier temps, mais que si la croissance se poursuivait, les inégalités finissaient par diminuer.[122]

Graphique 5. La courbe de Kuznets



121 Pranab Bardhan, « The Impact of Globalization on the Poor », in Susan Collins et Carol Graham (dir. pub.), Brookings Trade Forum 2004, 271, 275.

122 Simon Kuznets, « Economic Growth and Income Inequality », 45 *American Economic Review* 1 (1955). La forme de la courbe pouvait s'expliquer par le fait qu'initialement, les personnes qui avaient déjà de l'argent bénéficiaient soudainement d'un éventail plus large de possibilités d'investissement rentable. De leur côté, les pauvres partaient en masse à la ville dans l'espoir d'y trouver un emploi dans le secteur manufacturier, ce qui avait pour effet de maintenir les salaires à un niveau bas. Kuznets pensait qu'une fois un certain niveau de revenu moyen atteint, un processus de démocratisation pouvait s'installer, le pays pouvait consacrer des ressources à la protection sociale, et les fruits de la croissance se propageaient à tous les échelons de la société.

La théorie particulière de Kuznets n'était pas nécessairement juste. En fait, son hypothèse a été amplement critiquée au fil du temps.[123] L'essentiel à retenir est que le contexte a sans doute son importance ; autrement dit, la croissance macroéconomique générale ne se traduit pas automatiquement par une réduction de la pauvreté.

Pour en revenir à la concurrence, nous devons déterminer s'il existe des données probantes, portant sur quelque contexte que ce soit, qui étayent l'hypothèse selon laquelle le renforcement de la concurrence est bénéfique aux entrepreneurs et travailleurs pauvres en pratique, ou si, au contraire, la concurrence profite essentiellement aux grandes entreprises et aux personnes riches.

En outre, la concurrence peut tout à fait être profitable aux pauvres en tant que consommateurs, mais préjudiciable aux mêmes personnes en tant que propriétaires d'entreprise ou salariés. Supposons qu'une baisse de la concurrence à un certain niveau de la chaîne de production entraîne une hausse généralisée des prix alimentaires. Les agriculteurs pauvres qui vendent une partie de leur production peuvent être avantagés par la concurrence en tant que vendeurs et, simultanément, pénalisés en tant que consommateurs (à cause des denrées alimentaires qu'ils consomment et ne produisent pas eux-mêmes). Que sait-on du changement net du niveau de bien-être des pauvres en présence de ces effets mixtes ?

Dans la section suivante du document, nous passons en revue les éléments de réponse connus à ces questions.

5.2 Effets réels

Comme c'était le cas pour les liens entre la concurrence et les consommateurs pauvres, les données libres d'accès rendant compte de l'effet direct de la concurrence sur les petits propriétaires d'entreprise et les travailleurs pauvres ne sont pas légion. Il pourrait s'agir, ici encore, d'un champ de recherche fructueux pour les autorités en charge de la concurrence, qui sont sans doute les mieux placées pour examiner les effets de leurs interventions passées sur les chances qu'ont les pauvres d'améliorer leur niveau de vie. On dispose néanmoins de quelques informations utiles à la fois au niveau macroéconomique (économie générale) et au niveau microéconomique (marchés spécifiques).

5.2.1 Effets macroéconomiques réels de la concurrence sur la pauvreté

Au niveau macroéconomique, nous souhaitons savoir s'il existe une chaîne causale qui conduirait du renforcement de la concurrence à l'accélération de la croissance du PNB puis à la réduction de la pauvreté. Même si rien ne permet encore de répondre à cette question avec certitude, certaines données indiquent que la concurrence stimule la croissance du PNB, y compris la croissance tirée par l'innovation. Il semblerait également que la croissance du PNB contribue à faire reculer la pauvreté.

123 Joseph Stiglitz, « Some Lessons from the East Asian Miracle », World Bank Observer vol. 11, p. 151 (1996) (la croissance rapide – mais équitable – enregistrée par les pays d'Asie de l'Est dément la théorie de Kuznets) ; Klaus Deininger & Lyn Squire, « New Ways of Looking at Old Issues », Journal of Development Economics, vol. 57, p. 259 (1998) (la courbe en U inversé disparaît une fois pris en compte les niveaux d'inégalité historiquement élevés) ; Francisco Ferreira, « Distributions in Motion: Economic Growth, Inequality, and Poverty Dynamics », in Oxford Handbook of the Economics of Poverty, Philip Jefferson (dir. pub.) p. 428-29, 454-55 (Oxford University Press: 2012) (l'hypothèse de Kuznets n'est guère corroborée par les données améliorées recueillies dans les pays en développement dans les années 90).

5.2.1.1 Lien entre concurrence et croissance du PNB

L'effet des marchés concurrentiels sur la croissance macroéconomique est en soi un sujet de première importance. Une revue exhaustive de la littérature existante n'aurait pas sa place dans un document qui se concentre sur les effets de la concurrence sur les pauvres. Cependant, l'examen d'un échantillon de la littérature disponible suffit à montrer qu'il existe des données attestant que la concurrence stimule la croissance à l'échelle de l'économie dans son ensemble.

- En 2003, la Banque mondiale a publié un rapport duquel il ressortait qu'en général, les pays dotés de marchés intérieurs concurrentiels affichent non seulement des niveaux de revenu plus élevés, mais aussi des taux de croissance du revenu plus élevés.[124] Le rapport notait aussi, incidemment, que ces mêmes économies avaient tendance à présenter des taux de pauvreté plus bas.

- En 2007, le Secrétariat de l'OCDE a publié un rapport sur les relations entre la politique de la concurrence et les résultats macroéconomiques.[125] À partir d'une revue de la littérature théorique et empirique, le rapport parvenait à la conclusion que les politiques qui libèrent les forces concurrentielles du marché peuvent conduire à une hausse de la production par habitant en encourageant l'investissement, en améliorant la productivité et en stimulant l'emploi. S'appuyant sur les expériences de certains pays de l'OCDE, il montrait que les réformes favorables à la concurrence améliorent la résistance et la capacité d'adaptation des économies, leur permettant de croître plus rapidement et de créer davantage d'emplois. Il passait également en revue des données empiriques collectées sur une longue période, qui montraient que la suppression des réglementations anticoncurrentielles était corrélée avec une accélération de la croissance de la productivité du fait que la concurrence accélère l'adoption des nouvelles technologies.

- D'autres travaux de l'OCDE se sont attachés à déterminer dans quelle mesure les politiques et les réglementations favorables à la concurrence affectent les performances et ont mis en évidence un lien empirique entre l'existence d'une forte concurrence sur les marchés de biens et services et l'amélioration de la productivité et des résultats en termes d'emploi.[126]

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124 Banque mondiale, Global Economic Prospects and the Developing Countries, pp. 85-86 (2003), disponible à l'adresse : http://siteresources.worldbank.org/INTGEP/Resources/335315-1257200391829/gep2003complete.pdf.

125 Michael Wise, Relationship between Competition Policy and Economic Performance, DAF/COMP(2007)2.

126 Cf., par exemple, Rapport de l'OCDE sur la réforme de la réglementation, vol. II, Études thématiques (1997), disponible à l'adresse www.oecd-ilibrary.org/governance/the-oecd-report-on-regulatory-reform_9789264189751-en (le renforcement de la concurrence a fait progresser la production à long terme de 0.9 % aux États-Unis et jusqu'à 5.6 % au Japon et en Espagne) ; (Giuseppe Nicoletti et Stefano Scarpetta, « Product Market Reforms and Employment in OECD Countries », OECD Economics Department Working Paper n° 472 (2005), disponible à l'adresse http://dx.doi.org/10.1787/463767160680 (les réglementations qui restreignent la concurrence font diminuer l'emploi ; le niveau d'emploi pourrait augmenter de 2.5 à 5 points après l'adoption de mesures favorables à la concurrence) ; Paul Conway, Donato de Rosa, Giuseppe Nicoletti et Faye Steiner, « Regulation, Competition and Productivity Convergence », OECD Economics Department Working Papers n° 509 (2006), disponible à l'adresse http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=ECO/WKP(2006)37 (les réglementations anticoncurrentielles ralentissent la croissance de la productivité dans les secteurs où les technologies de l'information et des communications jouent un rôle particulièrement important ; elles retardent aussi le processus de rattrapage et d'alignement sur les meilleurs niveaux de productivité).

- En 2007, l'Office of National Statistics du Royaume-Uni a publié un rapport dans lequel il apparaissait que cinq facteurs principaux contribuent à l'augmentation de la productivité (généralement perçue comme un facteur de hausse de la croissance du PNB). L'un de ces facteurs est la concurrence et un autre l'innovation, qui est elle-même liée à la concurrence (cf. section 5.2.3.2. ci-dessous, « L'importance de l'innovation et de la politique de l'innovation »).[127]

- William Lewis, du cabinet McKinsey & Company, a compilé l'équivalent d'un livre d'exemples concrets pour démontrer qu'une concurrence non faussée sur les marchés de produits était le déterminant essentiel de la productivité, qui est à son tour la clé de la prospérité.[128] Lewis et ses collègues ont passé 12 ans à tenter d'expliquer pourquoi certaines nations restent pauvres, même après avoir reçu une aide internationale substantielle, alors que d'autres s'enrichissent. L'équipe McKinsey a constaté à plusieurs reprises que l'économie des pays les plus pauvres était entravée par des politiques gouvernementales qui interfèrent avec la concurrence. Ils en ont conclu que le progrès économique passait par une élévation de la productivité, et que celle-ci ne pouvait avoir lieu si des politiques empêchaient des entreprises efficientes de remplacer celles qui le sont moins.

- L'un des problèmes fréquemment constatés était que les pays pauvres ont tendance à protéger leurs entreprises nationales contre la concurrence étrangère, même lorsque les entreprises étrangères sont plus productives. Or, la main-d'œuvre locale serait mieux payée si elle travaillait pour des entreprises plus productives et les consommateurs locaux paieraient des prix plus bas.

5.2.1.2 Lien entre croissance du PNB et réduction de la pauvreté

S'agissant du lien éventuel entre la croissance économique générale et la réduction de la pauvreté, de nombreuses sources expriment la conviction qu'il existe une relation de causalité entre les deux facteurs. Par exemple, un rapport publié en 2011 par le ministère du Développement international du Royaume-Uni affirme non seulement que la croissance économique contribue à faire reculer la pauvreté, mais encore que de nombreuses données prouvent que la croissance économique est le facteur *principal* de la réduction de la pauvreté.[129] Le rapport cite notamment une étude empirique intéressante de Kraay, qui a étudié les variations de la pauvreté dans un échantillon de pays en développement au cours des années 80 et 90.[130] Kraay a constaté que la quasi-totalité des changements des niveaux de pauvreté sur le long terme s'expliquait par la croissance des revenus moyens. Ce résultat est important non seulement parce qu'il montre qu'il existe une corrélation étroite entre la croissance du PNB et la réduction de la pauvreté, mais aussi parce qu'il laisse supposer que les effets positifs du renforcement de la concurrence sur le PNB par habitant finissent par se répercuter sur les pauvres.

Il se trouve que dans des travaux empiriques antérieurs menés sur un échantillon de 92 pays développés et en développement, Kraay et Dollar avaient constaté que les taux de croissance des revenus des pauvres et des revenus moyens étaient à peu près équivalents.[131] Ce résultat contredit l'hypothèse de la

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127 Office of National Statistics, The ONS Productivity Handbook, p. 20 (2007), disponible à l'adresse www.ons.gov.uk/ons/guide-method/method-quality/specific/economy/productivity-measures/productivity-handbook/index.html.

128 Lewis, *supra* note 29.

129 Ministère du Développement international, *supra* note 17, p. 6.

130 Aart Kraay, « When Is Growth Pro-Poor? Evidence from a Panel of Countries », Journal of Development, vol. 80, p. 198 (2006).

131 David Dollar et Aart Kraay, « Growth Is Good for the Poor », Journal of Economic Growth, vol. 7, p. 195 (2002).

courbe de Kuznets. Il semblerait donc que « la marée montante soulève tous les bateaux », qui plus est au même rythme. Pour les gouvernements qui ont à cœur de réduire la pauvreté, le message central des travaux de Kraay est le suivant : ils doivent adopter des politiques qui encouragent une croissance à large assise de l'économie. Pour les autorités en charge de la concurrence qui veulent montrer qu'elles peuvent apporter leur concours à la lutte contre la pauvreté, le message clé est le suivant : si elles parviennent à démontrer que leurs activités sont bénéfiques à la croissance générale du PNB, elles auront montré que ces activités font reculer la pauvreté.

Cependant, il est difficile de faire coïncider les résultats de Kraay avec la réalité observée dans de nombreux pays. Le fossé entre les riches et les pauvres s'est creusé, et non rétréci, dans plus de trois quarts des pays de l'OCDE par exemple.[132] Ce fait serait moins préoccupant si le nombre de personnes pauvres qui sortent de la pauvreté absolue était supérieur au nombre de celles qui y entrent, quand bien même leur revenu ne progresserait pas aussi vite que celui des personnes riches. Mais après plusieurs décennies de croissance macroéconomique globalement positive, dans un grand nombre de pays, la proportion de personnes vivant dans la pauvreté absolue n'a pas changé depuis ces 30 dernières années ou plus.

L'exemple des États-Unis montre que la pauvreté peut persister, voire s'amplifier, même lorsque la croissance est globalement positive sur de longues périodes.[133] Au cours des 50 dernières années, le taux de croissance annuel du PNB des États-Unis a été bien plus souvent positif que négatif. Or, le taux de pauvreté officiel est plus ou moins stagnant depuis 1966, oscillant entre 11 et 15 %. À vrai dire, ces derniers temps, il se situait plutôt dans la partie haute de cette fourchette. En 2010, le taux de pauvreté aux États-Unis s'élevait à 15.1 %, ce qui représentait 46.2 millions de personnes. Jamais, au cours de la période de 52 années durant laquelle des estimations des niveaux de pauvreté ont été publiées, il n'y avait encore eu autant d'Américains vivant officiellement dans la pauvreté.[134, 135]

Que s'est-il donc passé ? Si la hausse récente de la pauvreté peut être attribuée au moins en partie à la crise financière mondiale de 2008, ce ne saurait être la seule explication. Si tel était le cas, le taux de pauvreté aurait dû connaître un déclin marqué et durable pendant toutes les années de croissance qui ont précédé l'éclatement de la crise. La réponse pourrait être à chercher dans la manière dont les revenus, la

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132 « Inégalités. Au pied du mur », Observateur de l'OCDE (n° 287, T4 2011), p. 7.

133 L'exemple des États-Unis est particulièrement parlant car c'est l'un des rares pays développés qui utilisent un seuil de pauvreté absolu et non relatif.

134 Carmen DeNavas-Walt, Bernadette Proctor et Jessica Smith, US Census Bureau, « Income, Poverty, and Health Insurance Coverage in the United States: 2010 », p. 14 (septembre 2011), disponible à l'adresse www.census.gov/prod/2011pubs/p60-239.pdf. En 2011, le taux de pauvreté a reculé légèrement à 15.0 %, mais le nombre d'Américains vivant officiellement dans la pauvreté s'est maintenu à 46.2 millions. Carmen DeNavas-Walt, Bernadette Proctor et Jessica Smith, US Census Bureau, « Income, Poverty, and Health Insurance Coverage in the United States: 2011 », p. 13 (septembre 2012), disponible à l'adresse www.census.gov/prod/2012pubs/p60-243.pdf.

135 Le cas des États-Unis est inhabituel au sens où les mesures officielles de la pauvreté y sont fondées sur le revenu avant impôts et n'incluent pas la valeur des aides publiques non monétaires (telles que l'accès à un logement social, les subventions alimentaires, etc.). Cependant, depuis 2011, le Census Bureau calcule une mesure complémentaire de la pauvreté (Supplemental Poverty Measure, SPM) qui prend en compte les impôts (et crédits d'impôt) et les aides non monétaires. En 2011, le taux de pauvreté SPM s'établissait à 16.1 %, soit plus que le taux officiel de 15.0 %, et concernait 49.7 millions de personnes. En fait, le taux SPM a été supérieur au taux officiel chacune des trois années pour lesquelles il a été calculé (2009-2011) et a augmenté en 2010 puis en 2011. Kathleen Short, US Census Bureau, « The Supplemental Poverty Measure: Examining the Incidence and Depth of Poverty in the U.S. Taking Account of Taxes and Transfers in 2011 », pp. 10, 16 (11 décembre 2012), disponible à l'adresse : www.census.gov/hhes/povmeas/methodology/supplemental/research/aea2013.kshort.pdf.

croissance des revenus et la richesse sont répartis aux États-Unis. Les inégalités de revenus dans le pays se creusent régulièrement depuis le milieu des années 70 : à cette époque, le coefficient de Gini s'établissait à 0.30 ; à la fin des années 2000, il atteignait 0.37.[136] La croissance des revenus a elle aussi évolué dans un sens de plus en plus favorable aux Américains aisés. Entre 1993 et 2000, la fraction moyenne de la croissance annuelle totale du revenu réel capturée par le centième le plus riche des Américains était de 45 %. Entre 2009 et 2010, 93 % de la croissance du revenu réel ont bénéficié au centième le plus riche des Américains, et les 7 % restants aux 99 % restants de la population.[137] À l'heure actuelle, une seule famille américaine – les Walton, dont le patriarche a fondé la chaîne Wal-Mart – possède plus que les 40 % de la population situés au bas de l'échelle de répartition des richesses.[138]

Par conséquent, « l'effet de Kraay » de la croissance du PNB réel sur la pauvreté n'a rien d'immuable. Il peut être compromis par la répartition des revenus lorsque celle-ci est fortement biaisée ou en train de le devenir.[139]

Le graphique 6 représente les niveaux d'inégalité des revenus, mesurés par le coefficient de Gini, dans les pays du monde en 2009. Les pays qui affichent les coefficients de Gini les plus bas (en bleu foncé) sont ceux où les inégalités de revenus sont les plus faibles. Dans ces pays, les pauvres ont davantage à gagner de la croissance macroéconomique. Les pays à coefficient de Gini élevé (en rouge foncé) présentent les inégalités de revenus les plus marquées. Les pauvres y ont comparativement moins à gagner de la croissance macroéconomique.

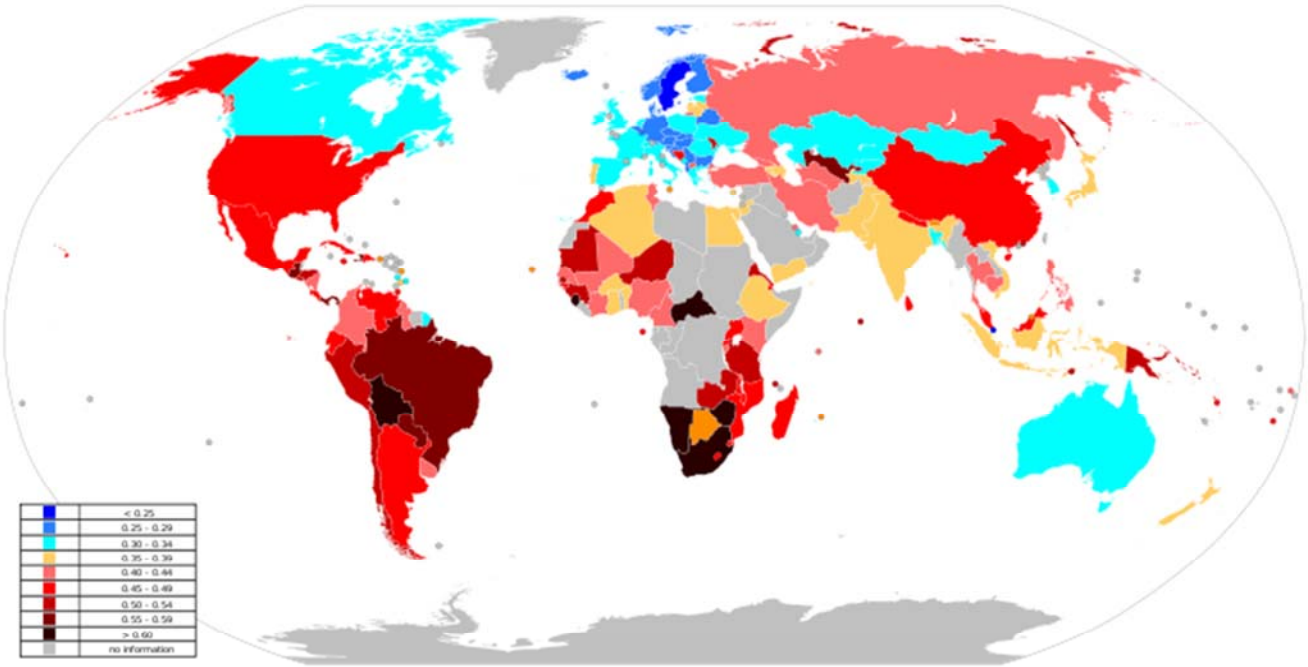
136 Le coefficient de Gini indique la mesure dans laquelle la répartition des revenus entre les individus et les ménages diverge d'une répartition parfaitement uniforme. Une valeur de zéro correspond à une inégalité parfaite, et une valeur de 1 à une inégalité parfaite. Les valeurs du coefficient de Gini s'appliquent à la population américaine d'âge actif (18-65 ans) et tiennent compte des impôts et des transferts. OECD StatExtracts, disponible à l'adresse http://stats.oecd.org/Index.aspx?QueryId=26068.

137 Emmanuel Saez, « Striking It Richer: The Evolution of Top Incomes in the United States », Université de Californie à Berkeley, document de travail (2 mars 2012) disponible à l'adresse http://elsa.berkeley.edu/~saez/saez-UStopincomes-2010.pdf ; cf. également Peter Robison, « Top 1% Got 93% of Income Growth as Rich-Poor Gap Widened », Bloomberg (2 octobre 2012), disponible à l'adresse www.bloomberg.com/news/2012-10-02/top-1-got-93-of-income-growth-as-rich-poor-gap-widened.html.

138 Josh Bivens, « Inequality, Exhibit A: Walmart and the Wealth of American Families », Economic Policy Institute (17 juillet 2012), disponible à l'adresse www.epi.org/blog/inequality-exhibit-wal-mart-wealth-american/.

139 Le lecteur trouvera d'autres arguments dans ce sens dans Ferreira, *supra* note 123, pp. 435-36 (qui indique que l'élasticité de la réduction de la pauvreté par rapport à la croissance diminue avec les inégalités – autrement dit, plus les inégalités sont importantes, moins la croissance a d'effet sur la réduction de la pauvreté).

Graphique 6. Répartition des revenus dans le monde en 2009

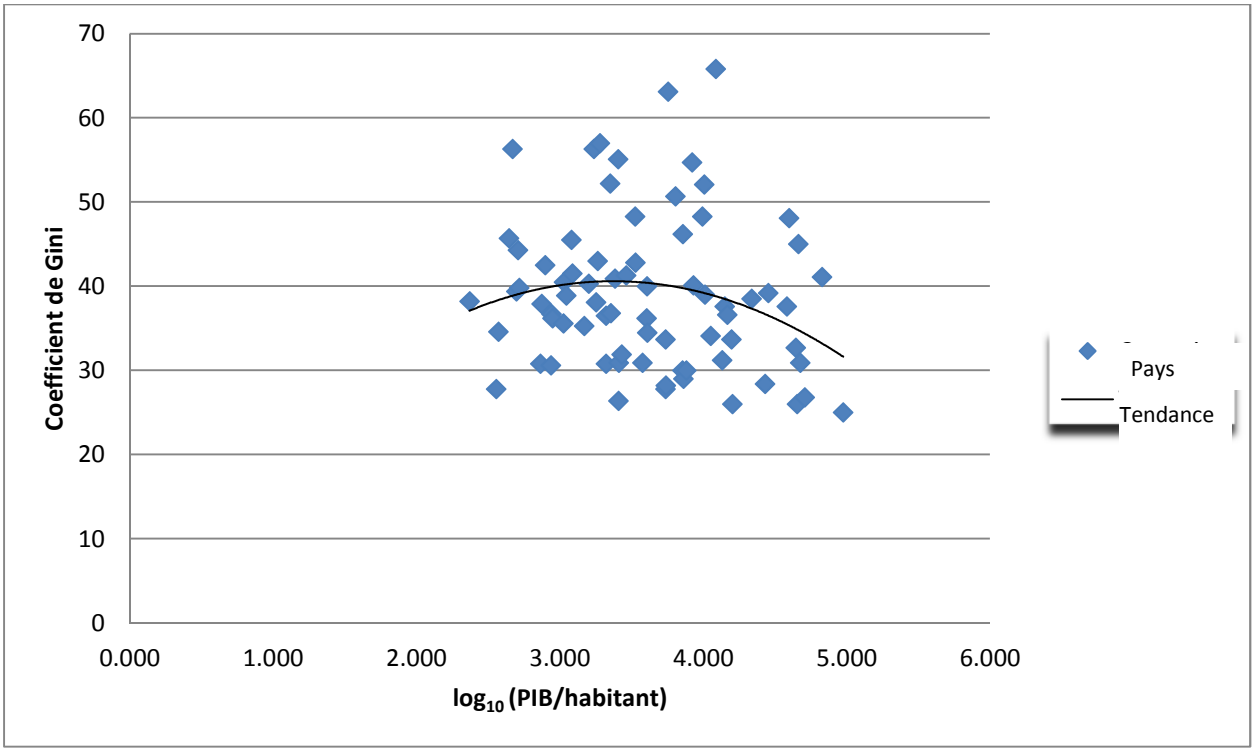


Source : CIA World Factbook (2009).

Le graphique 7 décrit la relation récente entre les revenus et les inégalités de revenus dans un échantillon de 74 pays.[140] Bien que les deux axes diffèrent peu de ceux utilisés pour tracer la courbe de Kuznets, ce graphique est différent dans la mesure où il donne un instantané de la situation qui prévaut dans de nombreux pays au lieu de décrire l'évolution dans le temps de la situation d'un seul pays. Sur l'ensemble des pays, on n'observe pas de relation très étroite entre les revenus et les inégalités de revenus. Les pays où les revenus sont relativement bas affichent des niveaux d'inégalités de revenus très divers, tout comme les pays où les revenus sont relativement élevés.

140 Quatorze des 74 pays sont membres de l'OCDE. Toutes les valeurs du coefficient de Gini proviennent de la Banque mondiale (http://data.worldbank.org/indicator/SI.POV.GINI), sauf les sept valeurs tirées du CIA World Factbook (https://www.cia.gov/library/publications/the-world-factbook/fields/2172.html). Les valeurs récentes du coefficient de Gini ne sont pas disponibles pour un grand nombre de pays. Par conséquent, le graphique n'inclut que les pays pour lesquels des données sont disponibles sur la période 2007-09. Les données sur le PIB par habitant proviennent de la base de données de la Division statistique des Nations Unies (http://unstats.un.org/unsd/snaama/dnllist.asp) et portent également sur la période 2007-09. Les données sur le coefficient de Gini et sur le PIB portent sur la même année pour chaque pays. Pour faciliter la visualisation des résultats, nous avons utilisé le logarithme décimal du PIB.

Graphique 7. PIB par habitant et coefficient de Gini



Source : OCDE et données de la Banque mondiale, des Nations Unies et du CIA World Factbook.

Pour les autorités en charge de la concurrence qui veulent apporter leur pierre à la réduction de la pauvreté – en particulier dans les pays où le coefficient de Gini est élevé – le message à retenir est qu'elles ne peuvent probablement pas compter uniquement sur l'effet positif de la concurrence sur la croissance du PNB. Elles doivent cibler les secteurs qui procurent ou peuvent procurer aux pauvres un gagne-pain.[141] Ces secteurs varient selon les pays et dépendent de la catégorie de population examinée – les pauvres des zones rurales ou des zones urbaines. Cependant, certains secteurs viennent immédiatement à l'esprit : l'agriculture et le matériel agricole, la transformation et la distribution des récoltes et les secteurs qui emploient beaucoup de main-d'œuvre peu qualifiée. Ceux qui se prêtent à l'exercice d'activités entrepreneuriales à petite échelle, notamment les services bancaires et de télécommunications mobiles, sont d'autres candidats possibles (le lecteur trouvera une analyse plus détaillée de ces secteurs dans la partie 5.2.2.2).

5.2.2 Effets microéconomiques réels de la concurrence sur la pauvreté

5.2.2.1 Le manque de concurrence nuit aux entrepreneurs et aux travailleurs pauvres

Nous avons examiné dans une section précédente des données témoignant de l'existence de problèmes de concurrence dans les pays en développement comme dans les pays développés et analysé leur incidence sur les consommateurs pauvres. Qu'en est-il des effets de ces problèmes sur les entrepreneurs et les salariés pauvres ?

141 Pour faire reculer la pauvreté du côté de la demande, il faudrait que les autorités en charge de la concurrence ciblent les secteurs dans lesquels les pauvres dépensent la majeure partie de leur argent, à savoir les produits et les services de base.

Dans un article récent, Frédéric Jenny a examiné les effets néfastes des cartels d'exportation sur les marchés de produits primaires.[142] Basant son analyse sur la potasse, un des composants essentiels des engrais, il a constaté que ces cartels avaient des retombées économiques générales très négatives. Bien qu'il n'estime pas les torts causés aux agriculteurs pauvres en particulier, son analyse contient des estimations des dommages totaux occasionnés à certains pays en développement importateurs de potasse. Il y a fort à parier qu'une part importante de ces dommages est supportée par les agriculteurs pauvres, qui achètent de l'engrais, et par l'État, qui subventionne le prix des engrais.

Par exemple, Jenny note que l'Inde et la Chine figurent parmi les premiers consommateurs de potasse du monde. L'Inde importe toute la potasse qu'elle utilise, tandis que la Chine importe environ 60 % de ses besoins. Selon les estimations de Jenny, entre 2011 et 2020, la Chine paiera un surcoût moyen d'environ 900 millions USD par an en raison de la cartelisation du marché de l'exportation de potasse. La situation est encore pire pour l'Inde qui, selon les prévisions de Jenny, devra acquitter un surcoût moyen annuel de 1.17 milliard USD. L'auteur observe que si l'Inde continue à subventionner la potasse à hauteur de 1.5 milliard USD par an, entre 80 et 100 % de cette subvention serviront uniquement à payer la rente monopolistique perçue par le cartel. On peut en déduire que même s'ils ne paient pas ce surcoût directement, les agriculteurs indiens pauvres n'en font pas moins les frais. Les deniers publics consacrés aux subventions à la potasse auraient pu aider les cultivateurs pauvres d'une autre manière s'ils n'avaient pas servi à enrichir le cartel de la potasse. Ou alors, ils auraient pu être utilisés pour aider d'autres catégories de la population indienne. Récapitulant les préjudices causés par le cartel, Jenny juge qu'il représente « un coût énorme pour les pays importateurs [et qu'il] pourrait avoir de terribles conséquences dans les pays en développement qui peinent à nourrir leur population en augmentation rapide."[143]

Pour trouver des exemples supplémentaires de situations dans lesquelles les petits entrepreneurs sont pénalisés par le manque de concurrence, nous nous tournons encore une fois vers le Professeur Jenny et les cas qu'il a recueillis dans les pays en développement.[144] Parmi eux figurent plusieurs exemples de concentration des marchés et d'accords sur les prix entre négociants de produits agricoles. Ces deux facteurs ont un effet monopsonistique sur les petits exploitants, qui percevraient un revenu plus élevé en situation de concurrence. On sait que ce problème affecte notamment les caféiculteurs du Kenya et d'Amérique latine, les cultivateurs de coton, de thé et de tabac au Malawi et les transformateurs de lait au Chili. Les cartels contribuent également à faire grimper le prix des intrants achetés par les cultivateurs, comme dans l'exemple du cartel de la potasse cité ci-dessus. Mais Jenny a eu connaissance d'allégations indiquant qu'il existerait également des cartels sur les marchés des engrais où s'approvisionnent les théiculteurs kenyans. Il décrit en outre les restrictions verticales qui prévalent dans les secteurs de la bière du Kenya, de la Zambie et de l'Afrique du Sud et qui limitent les possibilités de croissance pour les petits détaillants.[145]

5.2.2.2 Trois secteurs dans lesquels la concurrence a profité aux entrepreneurs et aux travailleurs pauvres

- **Services bancaires**

  Nous avons noté dans la partie consacrée aux consommateurs pauvres que relativement peu de personnes dans le monde ont accès aux services bancaires formels. C'est vrai non seulement pour

142 Frédéric Jenny, « Export Cartels in Primary Products: The Potash Case in Perspective », in Simon Evenett et Frédéric Jenny (dir. pub.), Trade, Competition and the Pricing of Commodities (Center for Economic Policy Research: 2012).

143 Id. p. 116.

144 Jenny, *supra* note 51.

145 Id.

les services tels que les comptes d'épargne, mais aussi pour les services de prêt – y compris les prêts professionnels aux petits entrepreneurs. Par exemple, il ressort d'une enquête de la BID que seulement 3.3 % de la population pauvre en Amérique latine et dans les Caraïbes ont accès au crédit formel ou semiformel. Des études menées par la Banque européenne pour la reconstruction et le développement et le Conseil de coopération économique du Pacifique font apparaître que l'incapacité d'obtenir des prêts est un obstacle majeur pour les PME dans les pays en développement et en transition.[146] Même aux États-Unis, plus de 40 millions de personnes n'ont pas accès aux services financiers.[147]

Or, les prêts revêtent une importance capitale pour les petits entrepreneurs qui veulent se lancer ou développer leur activité. Les petites entreprises sont à leur tour vitales pour l'emploi et donc pour la réduction de la pauvreté. Dans les pays en développement, les petites entreprises sont pourvoyeuses de presque 50 % de l'emploi total.[148] Lorsque les moyennes entreprises sont incluses, le chiffre est considérablement plus élevé. Par exemple, les PME en Asie du Sud représentent plus de 70 % de l'emploi total.[149] En Amérique latine, 98 % de l'ensemble des entreprises sont des micro, des petites ou des moyennes entreprises. Elles génèrent entre 40 et 50 % du PIB et représentent entre 40 et 60 % de l'emploi selon les pays. En outre, 70 % des personnes les plus pauvres du sous-continent sont propriétaires d'une microentreprise ou travaillent pour une microentreprise. Comme l'indique Luis Moreno, Président de la Banque interaméricaine de développement (BID), « [cela tend à montrer qu'il est possible d'accomplir de grands progrès en matière de réduction de la pauvreté en améliorant l'accès aux services financiers. »[150]

En outre, dans une étude de 2007, Thorsten Beck et deux de ses collègues ont constaté qu'un niveau de développement financier accru (caractérisé par des marchés de capitaux en expansion et fonctionnant mieux) est de nature non seulement à améliorer les revenus des pauvres, mais les fait progresser de façon exponentielle.[151] En conséquence, un accès amélioré aux capitaux contribue aussi à réduire les inégalités. Les auteurs montrent en particulier qu'environ 40 % de l'effet à long terme du développement financier sur la croissance des revenus du cinquième le plus pauvre de la population étaient dus à la réduction des inégalités de revenus. Les 60 % restants s'expliquent par l'effet du développement financier sur la croissance économique globale. Pour appuyer leur propos, les auteurs soulignent que le développement financier réduit le pourcentage d'une population donnée qui vit dans l'extrême pauvreté (définie par un revenu

146 BERD, « SME Finance in the Early Transition Countries: The EBRD's Experience » (2004), disponible à l'adresse : www.doc88.com/p-008703720102.html ; CCEP, « Financing Small and Medium Enterprises: Challenges and Options » (2003), disponible à l'adresse : www.pecc.org/resources/doc_view/206-financing-small-and-medium-enterprises-challenges-and-options.

147 Moreno, *supra* note 73 p. 86.

148 Ministère du Développement international, *supra* note 17, p. 13.

149 Syed Quader et Mohammed Abdullah, « Constraints to SMEs: A Rotated Factor Analysis Approach », Munich Personal RePEc Archive Paper n° 26135, p. 5 (octobre 2010), disponible à l'adresse : http://mpra.ub.uni-muenchen.de/26135/.

150 Moreno, *supra* note73 p. 85.

151 Thorsten Beck, Asli Demirgüc-Kunt et Ross Levine, « Finance, Inequality and the Poor », World Bank Working Paper (26 janvier 2007), disponible à l'adresse : http://siteresources.worldbank.org/DEC/Resources/Finance_Inequality_and_the_Poor.pdf.

inférieur à 1 USD par jour).[152] Par conséquent, améliorer l'offre et la qualité des services financiers constitue un moyen important de réduire la pauvreté.

En général, les institutions financières formelles ne font guère d'efforts pour attirer la clientèle des entrepreneurs pauvres. Dans ces circonstances, les petits propriétaires d'entreprise appauvris empruntent – si tant est qu'ils en aient la possibilité – auprès de prêteurs informels non réglementés.[153] Cependant, ces crédits informels coûtent cher en comparaison des crédits bancaires,[154] et les coûts de financement ont une influence majeure sur les possibilités de croissance d'une entreprise. Par ailleurs, n'étant pas réglementé, le crédit informel est plus risqué que le crédit informel car il rend les transactions peu sûres. Le renforcement de la concurrence pourrait faciliter l'accès au crédit formel et abaisser les taux d'intérêt.

En fait, des données indiquent d'ores et déjà que le renforcement de la concurrence a amélioré l'accessibilité et les conditions des services bancaires dans certaines régions du monde. Premièrement, les Nations Unies indiquent que les taux d'intérêt du microcrédit diminuent rapidement dans les zones où la concurrence sur le marché s'intensifie.[155] Deuxièmement, le Président de la BID, Luis Moreno, a fait observer que lorsque les marchés financiers en Amérique latine ont été libéralisés et que les banques étrangères y ont pris pied dans les années 90, la concurrence a commencé à s'intensifier. Aussi les banques se sont-elles progressivement intéressées à des clients potentiels de plus en plus petits. « Cette évolution a grandement contribué à approfondir l'accès aux services financiers. »[156] Qui plus est, non seulement la concurrence a favorisé le resserrement des écarts entre taux d'épargne et taux de prêt, mais le secteur bancaire a connu un formidable essor dans certains pays comme la Colombie. Troisièmement, la Banque mondiale a constaté que le degré de concurrence dans le secteur bancaire était corrélé positivement avec l'accès des entreprises aux services financiers, notamment dans les pays pauvres et les pays où les infrastructures financières et institutionnelles sont sous-développées. En particulier, dans ces pays, la concurrence est associée à une augmentation des prêts accordés au secteur privé et à des exigences moindres en matière de nantissement.[157]

Toutefois, Jenny a pu constater que les secteurs bancaires de nombreux pays en développement étaient très peu ouverts à la concurrence en raison des comportements anticoncurrentiels et des fusions. En l'absence de concurrence, l'écart entre les taux de prêt et les taux d'emprunt est plus important qu'il devrait l'être. « Cela entrave le développement économique des entreprises qui sont trop petites pour pouvoir accéder facilement aux marchés internationaux de capitaux. »[158]

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152 Id.

153 Abhijit Banerjee et Esther Dufo, « The Economic Lives of the Poor », 21 Journal of Economic Perspectives 141, 155-56 (2007) ; Moreno, *supra* note 73 p. 85-86 ; Tejerina, Bouillón et Demaestri, *supra* note 79, vii ; Loïc Sadoulet, « Savings and Deposit Services for the Poor », in Luis Tejerina, César Bouillón et Edgardo Demaestri (dir. pub.), Financial Services and Poverty Reduction in Latin America and the Caribbean, Banque interaméricaine de développement (2006).

154 Abhijit Banerjee et Esther Dufo, « The Economic Lives of the Poor », 21 Journal of Economic Perspectives 141, 155 (2007).

155 Nations Unies, *supra* note 69 p. 103.

156 Moreno, *supra* note73 p. 87.

157 Banque mondiale, *supra* note 72 p. 60.

158 Jenny, *supra* note 51, p. 123.

De même, Khemani note que dans la plupart des économies de marché en développement et en transition, le manque de concurrence restreint l'accès au capital pour les nouvelles et les petites entreprises. « Dans de nombreux pays, les banquiers locaux se sont opposés avec succès à l'introduction de la concurrence et à l'entrée de nouvelles banques nationales ou étrangères. »[159] Il fait observer que même au beau milieu d'une crise financière majeure, les grands conglomérats d'Asie de l'Est ont réussi à obtenir une dilution des réformes et à retarder leur mise en œuvre. Comme dans les pays développés, les bailleurs de fonds et les investisseurs ont tendance à considérer que leurs capitaux seront plus en sécurité s'ils les confient à des entreprises solidement établies. Mais tandis que dans les pays dotés de marchés de capitaux bien développés, les nouvelles et les petites entreprises peuvent espérer trouver des bailleurs de fonds et des investisseurs compétitifs attirés par le risque (et espérant en retirer une prime), les petits entrepreneurs des pays où les marchés de capitaux sont peu développés ne peuvent pas se financer, ou alors à des taux d'intérêt prohibitifs. Au bout du compte, ce problème peut conduire à une structure de marché déséquilibrée, dans laquelle une poignée de grands conglomérats dominent l'économie tandis qu'une multitude de petites entreprises luttent pour leur survie. Ces observations confirment que l'introduction d'un surcroît de concurrence dans le secteur bancaire peut aider à faire reculer la pauvreté.

- Services de télécommunications mobiles

Une profusion de données issues du monde entier montre que les services de téléphonie mobile sont porteurs de nombreux avantages, parmi lesquels une baisse substantielle du coût des affaires et l'amélioration de la connectivité, qui facilite les liaisons entre les entreprises et leurs fournisseurs et leurs clients existants et potentiels. Ce faisant, ils améliorent le climat de l'investissement, catalysent le développement du secteur privé et stimulent la croissance. Ainsi, l'existence d'un secteur de la téléphonie mobile performant et concurrentiel, qui offre des services à bas prix et à couverture étendue, peut avoir des retombées positives notables sur l'ensemble de l'économie.[160]

Ces avantages profitent-ils, en bout de chaîne, aux petits entrepreneurs et salariés pauvres, ou seulement aux grandes entreprises et aux riches ? L'exemple du secteur indien de la pêche montre que les petits producteurs de produits primaires peuvent tirer parti de l'entrée et du développement de services de téléphonie mobile concurrentiels.

Les premiers services de téléphonie mobile sont apparus au Kerala, état indien où la pêche revêt une importance considérable, entre 1997 et 2001. Selon l'analyse de Robert Jensen, lorsque les pêcheurs et les grossistes locaux ont commencé à se servir du téléphone mobile, il leur est devenu plus facile d'accéder aux informations sur le marché, en conséquence de quoi les fluctuations des prix du poisson ont été largement atténuées et le gaspillage complètement éliminé. Cela a eu pour effet d'améliorer le bien-être et des pêcheurs et des consommateurs.[161] Compte tenu du rôle de la pêche dans l'économie du Kerala, ces progrès ont été ressentis par un très grand nombre de personnes. Le fait est que dans cet état, plus d'un million de personnes travaillent pour le secteur de la pêche et plus de 70 % des adultes mangent du poisson au moins une fois par jour.

159 Khemani, *supra* note 89, p. 61-62.

160 Ellis et Singh, *supra* note 86, p. 74.

161 Robert Jensen, « The Digital Provide: Information (Technology), Market Performance, and Welfare in the South Indian Fisheries Sector », in Philip Jefferson (dir. pub.), Oxford Handbook of the Economics of Poverty 879 (Oxford University Press : 2012).

Avant l'entrée des opérateurs de services mobiles, les pêcheurs en mer n'avaient aucun moyen de connaître les cours en temps réel du poisson sur les différents marchés de la côte. En outre, ils ne pouvaient en général se rendre que sur un seul marché chaque jour en raison du coût élevé du transport (les marchés étant distants d'environ 15 kilomètres en moyenne) et de la durée d'ouverture limitée des marchés. Le stockage étant très coûteux, la plupart des pêcheurs se contentaient de vendre leurs prises sur leur propre marché local. Pour ces raisons, la quantité de poisson disponible sur tel ou tel marché était fortement tributaire de la quantité qui était pêchée dans les environs. De ce fait, les prix étaient très variables d'un marché à l'autre ; tandis que sur certains marchés, les pêcheurs étaient obligés de rejeter leurs prises faute d'un nombre d'acheteurs suffisant, sur d'autres, les clients repartaient les mains vides parce que trop peu de pêcheurs étaient venus vendre leur capture. Si les pêcheurs avaient su sur quels marchés les prix étaient les plus intéressants alors qu'ils étaient encore en mer, ils auraient pu retirer un prix beaucoup plus élevé de leur poisson et vendre la totalité de leurs prises. Parallèlement, l'augmentation de l'offre de poisson sur ces marchés aurait entraîné une baisse des prix qui aurait profité aux consommateurs.[162] En d'autres termes, le marché était alors très inefficient.

Mais en 2001, plus de 60 % des bateaux de pêche et la plupart des grossistes et détaillants en poisson du Kerala étaient équipés de téléphones mobiles. Jensen a mené une étude au microniveau de laquelle il est ressorti que la dispersion des prix et le gaspillage avaient considérablement diminué du fait de la nette amélioration de l'accès aux informations sur le marché. Les pêcheurs allaient systématiquement vendre leurs prises sur les marchés où ils pouvaient espérer en tirer le meilleur prix. Jensen a également constaté que les bénéfices des pêcheurs avaient augmenté en moyenne de 8 % tandis que les prix à la consommation avaient diminué de 4 %.[163] Ces progrès peuvent paraître minimes, mais ils se sont révélés durables et non éphémères.

Ce ne sont pas seulement les pêcheurs mais aussi les producteurs et les consommateurs d'autres denrées primaires périssables (telles que le lait, les œufs, les fruits et les légumes) qui désormais, un peu partout dans le monde en développement, profitent des avantages la technologie mobile comme en ont profité les pêcheurs et les consommateurs du Kerala.[164] Ces progrès ne se seraient jamais matérialisés sans la concurrence et l'innovation permises par l'arrivée des opérateurs de téléphonie mobile.

Dans l'exemple du Kerala, la concurrence opère à deux niveaux différents. En amont, la concurrence entre les opérateurs mobiles et les autres fournisseurs de communications a favorisé l'innovation, l'entrée de nouveaux acteurs et l'offre de services abordables. Il s'en est suivi un renforcement de la concurrence en aval, sur les marchés de gros des produits de la pêche, où l'imperfection de l'information empêchait jusqu'alors que la concurrence s'exerce entre les acheteurs en gros et entre les pêcheurs. L'élimination de cette imperfection a mis fin à son tour au gaspillage et à l'établissement non concurrentiel des prix, ce qui s'est traduit par une amélioration du bien-être des pêcheurs et des consommateurs.

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162 Id. p. 881-82.

163 Plus spécifiquement, Jensen a observé que le coefficient moyen de variation des prix sur les différents marchés du Kerala avait chuté de 60-70 % à 15 % voire moins. Le gaspillage, qui représentait en moyenne 5 à 8 % de chaque capture, a été totalement éliminé après l'apparition des téléphones mobiles. Id. p. 883.

164 Id. p. 881 et note 2, p. 920.

- Le secteur de la volaille en Zambie

Dans sa description de l'histoire récente du secteur de la volaille en Zambie, Thulasoni Kaira présente un autre exemple des avantages que peut procurer la concurrence aux petits entrepreneurs.[165] La pauvreté est très répandue en Zambie, où 64 % de la population vivent avec moins de 1.25 USD par jour.[166] Cependant, le secteur de la volaille y a connu une réussite exemplaire. Avec une production qui a grimpé de 16 millions d'oiseaux en 2000 à 26 millions en 2007, c'est devenu l'un des principaux employeurs du pays.[167] Cette croissance doit beaucoup à la mise en application du droit de la concurrence.

En 1999, le premier producteur de poussins d'un jour du pays, Hybrid, a consenti à vendre l'une de ses fermes avicoles et une usine de transformation de volaille à Galaunia Holdings, son principal client. La vente reposait sur un accord commercial exclusif en vertu duquel Galaunia s'engageait à s'approvisionner en poussins d'un jour uniquement auprès de Hybrid, à ne pas élever de volailles dans l'exploitation acquise et à ne pas se lancer dans l'activité d'écloserie. Pour sa part, Hybrid promettait de ne pas établir d'usine de transformation de volaille concurrente de celle acquise par Galaunia. À cette époque, Hybrid n'avait qu'un concurrent sérieux (Tamba Chicks) et la Commission de la concurrence de Zambie considérait qu'elle exerçait une position dominante ; de son côté, Galaunia était le plus gros acheteur de poussins d'un jour – son concurrent le plus proche étant quatre fois plus petit.

L'accord entre les deux entreprises a entraîné une hausse du prix des poussins d'un jour et, par ailleurs, empêchait Tamba Chicks de vendre sa production au principal acheteur de poussins, ce qui a fini par lui causer des problèmes de trésorerie. Pressentant qu'il y avait là une occasion à saisir, Hybrid a proposé un prêt à Tamba, mais en obligeant cette dernière à lui donner le droit de l'acheter en premier au cas où elle envisagerait de céder ses activités – ce qu'elle a fini par faire. La Commission a invalidé tous ces accords au motif qu'ils contrevenaient à la Loi sur la concurrence et l'équité commerciale. Lorsque, néanmoins, Hybrid a voulu se porter acquéreuse de Tamba, la Commission a bloqué son offre. C'est une entreprise nouvelle venue qui a finalement racheté Tamba ; et non seulement l'acquéreur est parvenu à se maintenir en activité mais il a surclassé Hybrid, décrochant 50 % de parts de marché alors que Hybrid devait se contenter de 40 %.

Cette concurrence a eu des effets spectaculaires en aval. Comme cela a été noté plus haut, le secteur de la volaille a enregistré une croissance substantielle après 2000. Au bout du compte, Galaunia s'est trouvée en concurrence avec plus de dix entreprises importantes, chaque année voyant arriver près d'une nouvelle entreprise sur le marché. Kaira indique que face à l'augmentation de la demande, les gros producteurs de volaille se sont résolus à signer des contrats avec de petits éleveurs pour pouvoir honorer leurs commandes. Il en a résulté une croissance exceptionnelle pour les producteurs de volaille formels et informels.[168]

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165 Thulasoni Kaira, « The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia », in Hassan Qaqaya et George Lipimile (dir. pub.), The Effect of Anti-Competitive Business Practices on Developing Countries and their Development Prospects 133 (Nations Unies : 2008).

166 En 2006, dernière année pour laquelle des données sont disponibles. CIA World Factbook, disponible à l'adresse : https://www.cia.gov/library/publications/the-world-factbook/geos/za.html.

167 Kaira, *supra* note 165, p. 161.

168 Kaira, *supra* note 165, p. 161.

5.2.3 D'autres paramètres influent sur la mesure dans laquelle la concurrence peut aider les entrepreneurs et les travailleurs pauvres

Nous avons noté que le bon fonctionnement de la politique de la concurrence et la mesure dans laquelle elle améliorait la situation des consommateurs pauvres dépendaient non seulement de la qualité de l'autorité en charge de la concurrence et de l'application du droit de la concurrence dans le pays, mais aussi d'autres conditions-cadres. Par exemple, il importe que l'état de droit soit respecté. L'administration publique doit être suffisamment transparente et intègre. Les tribunaux et les forces de police doivent fonctionner correctement. Le régime commercial ne doit pas être trop protectionniste. Il doit également y avoir une certaine stabilité politique et macroéconomique. Ces conditions-cadres, et d'autres encore, ont également une incidence sur la probabilité que la politique de la concurrence soit bénéfique aux entrepreneurs et aux salariés pauvres.

5.2.3.1 Les relations étroites qui existent entre les entreprises et les responsables gouvernementaux créent des interférences indésirables

Des relations symbiotiques et entachées par la corruption entre les entreprises puissantes et les responsables gouvernementaux peuvent nuire aux entrepreneurs pauvres comme elles nuisent aux consommateurs pauvres. Après tout, les manœuvres de protection des entreprises en place mentionnées dans la section 4.2.5.1 sont conçues et mises en œuvre dans l'objectif spécifique d'éloigner les concurrents potentiels des marchés. Lorsque ces concurrents potentiels sont des entrepreneurs pauvres, ils sont pénalisés car le processus compétitif ne fonctionne pas et les prive de possibilités dont ils bénéficieraient dans d'autres circonstances. Si les responsables des marchés publics attribuent les marchés à des entreprises privilégiées et solidement établies, par exemple, au lieu de sélectionner les adjudicataires sur la base de procédures d'appel d'offres légitimes et concurrentielles, les autorités gouvernementales perdent une occasion évidente d'encourager les entrepreneurs moins bien établis et de réduire les inégalités de revenus. Si, de surcroît, il s'avère qu'une nouvelle entreprise se montrerait plus efficiente que l'entreprise protégée, l'État perd aussi une occasion de faire des économies. En outre, dans la mesure où l'entreprise protégée majore ses prix, la production diminue, ce qui nuit à l'emploi.

Les stratégies qui visent à empêcher l'entrée de nouveaux concurrents en s'appuyant sur des réglementations astreignantes, telles que des demandes de permis injustifiées, des frais de dépôt de dossier onéreux ou des démarches administratives lourdes, peuvent être particulièrement efficaces à l'encontre des petits entrepreneurs pauvres. En effet, les petits entrepreneurs ont moins de ressources que les entreprises plus grandes et solidement établies, de sorte que ces formalités absorbent une plus large part de leur budget et de leur attention. Par exemple, en Ouganda, les personnes qui souhaitent créer une entreprise doivent accomplir 18 procédures différentes qui prennent presque un mois et absorbent plus de 90 % du revenu annuel par habitant avant de pouvoir démarrer légalement leurs activités. Par comparaison, au Royaume-Uni, il suffit pour créer une entreprise d'accomplir six formalités qui prennent 13 jours et coûtent moins de 1 % du revenu annuel moyen.[169] Des études montrent que la lourdeur des réglementations qui conditionnent la création d'entreprise est corrélée avec la corruption.[170]

Une étude menée par Suresh Moktan au Bhoutan apporte la démonstration que les réglementations réduisent considérablement la marge de manœuvre des petits entrepreneurs. L'auteur a mené des entretiens et adressé des questionnaires aux propriétaires et gérants de 168 micro et petites entreprises au sujet des facteurs qui entravent leur croissance. Leurs réponses indiquent que les contraintes les plus handicapantes

169 Ministère du Développement international, *supra* note 17, p. 18.

170 Banque mondiale, Doing Business in 2004, p. 18 (2004), disponible à l'adresse : www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB04-FullReport.pdf.

sont les réglementations restrictives imposées par l'État, le manque d'accès au capital et la médiocrité des infrastructures.[171] Une enquête menée sur les PME au Bangladesh est parvenue à des résultats comparables, à savoir : la lourdeur des contraintes réglementaires se classe au deuxième rang des facteurs qui limitent la croissance des PME, juste derrière le niveau élevé des taux d'intérêt. Les auteurs notent ceci :

> *même si les réglementations juridiques ou administratives n'appliquent pas de discrimination délibérée à l'encontre des PME du Bangladesh, celles-ci peuvent faire l'objet d'un traitement inéquitable en raison du déséquilibre des capacités économiques, des phases de transition, de leur potentiel de ressources, de leur localisation, du manque de connexions adaptées, etc. Ces déséquilibres faussent l'environnement concurrentiel des affaires et les entreprises artisanales et micro entreprises sont souvent les premières à en faire les frais, ce qui est susceptible d'entraîner une prolifération d'activités informelles.*[172]

En menant leurs activités de manière informelle, c'est-à-dire en s'abstenant de se conformer à la loi, les petites entreprises se privent de la possibilité de croître, d'embaucher davantage et de rivaliser avec les entreprises formelles solidement établies et de plus grande taille. Ces entreprises ne peuvent pas tirer leur épingle du jeu dans cette situation : soit elles opèrent dans le cadre légal et sont pénalisées par des réglementations qui leur imposent des restrictions beaucoup plus lourdes qu'aux grandes entreprises, soit elles opèrent illégalement et voient leur marge de manœuvre limitée par la nécessité « d'échapper au radar » du système d'exécution des lois. Les autorités en charge de la concurrence peuvent faire beaucoup pour accroître la concurrence et améliorer le sort des petits entrepreneurs pauvres en identifiant les réglementations qui bloquent inutilement la concurrence et en militant pour leur suppression ou leur révision.

Afin d'aider les gouvernements à réduire les réglementations inutiles, l'OCDE a mis au point un Manuel pour l'évaluation de la concurrence[173] qui propose une méthodologie générale pour identifier les restrictions inutiles imposées par l'État et élaborer des politiques différentes, moins restrictives et ne compromettant pas les objectifs du gouvernement. Conçu à l'attention des responsables gouvernementaux situés à tous les échelons de l'administration, le Manuel ne nécessite aucune formation spécialisée en économie ou en politique de la concurrence : il est constitué d'une série de questions simples permettant de repérer les lois et réglementations susceptibles d'entraver inutilement la concurrence. Plus particulièrement, le Manuel facilite l'évaluation des nouveaux projets de loi et de réglementation, par exemple au travers des programmes d'évaluation d'impact réglementaire, ainsi que l'évaluation des lois et réglementations existantes, qu'elles s'appliquent à l'économie en général ou à des secteurs spécifiques. Il peut également être d'une aide utile aux organes gouvernementaux qui élaborent et examinent les politiques, par exemple les ministères qui rédigent les lois ou l'autorité en charge de la concurrence dans le cadre de l'évaluation de l'impact des réglementations sur la concurrence.

5.2.3.2 L'importance de l'innovation et de la politique de l'innovation

La politique de l'innovation est l'une des conditions-cadres qui peut amplifier la contribution de la concurrence à la réduction de la pauvreté. L'innovation explique la majeure partie de l'augmentation du niveau de vie matériel intervenue depuis la révolution industrielle.[174] Les produits, services et procédés de fabrication nouveaux et améliorés sont les principaux moteurs de la croissance économique. En fait, il est

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171 Suresh Moktan, « Development of Small and Medium Enterprises in Bhutan: Analysing Constraints to Growth », 14 South Asian Survey 251 (2007).

172 Quader et Abdullah, *supra* note 149.

173 Cf. www.oecd.org/daf/competition/competitionassessmenttoolkit.htm

174 OCDE, Going for Growth (2006), p. 56.

largement admis que l'effet dynamique de l'innovation sur le bien-être des consommateurs dépasse largement les effets statiques sur lesquels se focalise habituellement la politique de la concurrence. Or, la concurrence peut elle-même constituer un formidable aiguillon pour l'innovation, de sorte qu'il peut y avoir – au moins en principe – une chaîne de causalité reliant la concurrence à l'innovation, l'innovation à la croissance et la croissance à la réduction de la pauvreté.

Cette section du document examine brièvement le premier de ces liens – l'effet moteur de la concurrence sur l'innovation. L'existence de cette relation reste sujette à polémique. Tandis que certains universitaires sont intimement convaincus que la concurrence favorise l'innovation, d'autres affirment que les entreprises les plus innovantes sont celles qui sont peu ou ne sont pas du tout confrontées à la concurrence. C'est un vieux débat parmi les économistes, qui continue de donner matière à de nombreux travaux théoriques et empiriques. La question de savoir comment, précisément, la concurrence affecte l'innovation ne semble pas avoir de réponse universelle. En fait, la réponse dépend d'une multitude de conditions et appelle de nombreuses exceptions et réserves. Ce qui paraît certain, c'est que la concurrence peut à la fois encourager et décourager l'innovation. D'un côté, lorsque la concurrence est intense, les entreprises peuvent être incitées à innover pour ne pas se laisser distancer, pour dépasser ou pour se maintenir au niveau de leurs concurrentes. D'un autre côté, un certain degré de pouvoir de marché peut stimuler l'innovation en permettant aux entreprises d'amortir leurs coûts et de dégager des bénéfices plus facilement. Il incombe aux décideurs la tâche délicate de créer un environnement dans lequel l'innovation est suffisamment payante pour que les entreprises soient incitées à innover, mais où, par ailleurs, il existe des pressions concurrentielles qui incitent les entreprises à créer, utiliser et diffuser l'innovation. Le choix du degré de concurrence optimal est rendu encore plus complexe par le fait que les procédés innovants varient dans une très large mesure entre les secteurs d'activité et les types d'invention.[175]

S'il est possible de tirer une conclusion fondamentale, assez largement acceptée, de la littérature empirique consacrée à ce sujet, c'est probablement l'idée qu'il existe une relation en U inversé entre la concentration du marché et l'intensité de recherche-développement (« R-D ») sur un graphique représentant la première en abscisse et la seconde en ordonnée. En d'autres termes, on constate un appui croissant à la théorie qui veut qu'il y ait une relation positive entre la concentration et l'intensité de R-D à de faibles niveaux de concentration, que les activités de R-D atteignent leur pic à un niveau de concentration modéré, puis que la relation devienne négative et que l'intensité de R-D diminue à mesure que la concentration continue à augmenter. Pour autant que la concentration du marché offre une image correcte du degré de concurrence et que l'intensité de R-D constitue un bon indicateur d'innovation, le message à retenir ici est que l'environnement le plus propice à l'innovation est un marché caractérisé par un degré de concurrence modéré.[176]

L'une des nuances importantes – en particulier dans le contexte de la politique de la concurrence et des petits entrepreneurs – mises en évidence par les études empiriques concerne la différence entre le type d'innovation que les grandes entreprises établies mettent généralement en œuvre et celui auquel s'essaient les nouveaux venus de plus petite taille. La première catégorie tend à privilégier les inventions qui exploitent ou améliorent le statu quo technologique, tandis que les entreprises plus petites et les nouvelles venues sont plus susceptibles de créer des innovations révolutionnaires pouvant modifier la nature du marché. Dans la mesure où elles peuvent modifier la donne de la concurrence, les nouvelles technologies qui transforment la nature des facteurs de réussite sont souvent perçues comme une opportunité stratégique par les concurrents marginaux et comme une menace par les entreprises dominantes. Cela est généralement vrai même lorsque ce sont les entreprises dominantes qui sont à l'origine de la nouvelle technologie. Dans ce cas, l'entreprise en place se contente de ranger son invention dans un tiroir, après avoir pris soin de la

175 OCDE, Competition, Patents and Innovation (2007), DAF/COMP(2007)40, pp. 42-43.

176 Id. p. 46.

faire breveter, gardé son existence secrète ou pris d'autres mesures pour empêcher ses concurrents de l'utiliser. En conséquence, les inventions révolutionnaires sont souvent le fait d'entreprises nouvelles de petite taille. Pour les autorités chargées de faire appliquer le droit de la concurrence, cela signifie que l'innovation est plus susceptible de se développer dans un environnement de marché accueillant des entreprises de différentes tailles et où l'entrée de nouvelles entreprises innovantes est relativement aisée.[177]

L'hypothèse de la courbe en U inversé et la propension plus grande qu'ont les nouvelles entreprises de petite taille à produire des innovations déterminantes ont une implication majeure : la nécessité de faire appliquer le droit de la concurrence de manière efficace. La courbe en U inversé laisse supposer qu'en règle générale, un niveau de concentration modéré crée l'environnement de marché le plus propice à la concurrence. La mise en application du droit de la concurrence caractérise généralement les marchés relativement concentrés, c'est-à-dire qui présentent un potentiel important d'amélioration de la concurrence et, donc, de l'innovation. Par conséquent, en exécutant leur mission habituelle de mise en application de la loi et en empêchant les entreprises établies de recourir à des pratiques commerciales restrictives pour bloquer l'entrée de concurrents potentiels, les autorités en charge de la concurrence préservent les possibilités d'innovation et de croissance.

Bien entendu, la mise en application du droit de la concurrence est tributaire du cadre de politique dans lequel elle s'inscrit. La capacité de la concurrence à impulser un processus d'innovation favorable à la croissance et potentiellement à la réduction de la pauvreté dépend d'autres éléments de l'approche générale adoptée par un pays en matière d'innovation. Par exemple, les politiques menées dans les domaines de l'éducation, de la fiscalité, des échanges commerciaux et de la propriété intellectuelle ont une influence notable sur la nature et la quantité des innovations produites. Si un pays encourage l'innovation en mettant en place un ensemble de conditions-cadres adaptées, il y aura davantage de chances pour que la politique de la concurrence et la mise en application du droit de la concurrence incitent les entrepreneurs créatifs à investir pour concrétiser leurs idées et les commercialiser sur le marché.

L'OCDE a récemment publié une étude majeure sur les politiques favorables à l'innovation. La Stratégie de l'OCDE pour l'innovation est le point culminant d'une initiative pluridisciplinaire à partenaires multiples qui s'est déroulée sur trois ans.[178] Elle fournit des analyses et des orientations stratégiques sur un large éventail de questions allant des politiques d'éducation et de formation aux politiques favorisant la création d'environnements d'affaires et d'infrastructures propices à l'innovation, en passant par celles qui encouragent la production et la diffusion des connaissances. Elle peut aider les gouvernements dans leurs efforts pour élaborer des stratégies efficaces en matière d'innovation et atteindre leurs objectifs économiques et sociaux. Elle préconise l'adoption d'une approche qui prend en compte l'interdépendance entre les différents domaines d'action et qui les rapproche au travers de mécanismes de soutien à la gouvernance aux niveaux local, régional, national et international.

177 Id. p. 51.

178 OCDE, La stratégie de l'OCDE pour l'innovation : Pour prendre une longueur d'avance (2010). Résumé, principales constatations et table des matières disponibles à l'adresse : http://www.oecd.org/fr/sti/linnovationdanslasciencelatechnologieetlindustrie/lastrategiedelocdepourlinnovationpourprendreunelongueurdavance.htm.

Encadré 1. Deux exemples récents d'innovations qui ont été favorables aux pauvres[†]

1. *Un système d'éclairage et de chargement solaire*. En avril dernier, la société britannique Azuri Technologies a présenté un système d'éclairage et de chargement solaire aux habitants de la localité de Kokete au Kenya. Comme de nombreux autres villages kenyans, Kokete n'est raccordé à aucun réseau électrique. Jusqu'alors, s'ils voulaient travailler ou étudier après la nuit tombée, les villageois devaient acheter de l'huile de paraffine pour leurs lampes. Il leur fallait également parcourir plusieurs heures de route jusqu'à la borne de chargement la plus proche s'ils voulaient utiliser le téléphone mobile pour communiquer. Cette situation avait engendré un piège de pauvreté : les résidents de Kokete n'avaient pas les moyens de faire construire des lignes électriques jusqu'à leurs habitations, et l'absence d'électricité les maintenait dans la pauvreté.

Le chargeur électrique d'Azuri, appelé Indigo, est en train de mettre fin à cette situation. Il transforme et stocke suffisamment d'énergie solaire pour alimenter deux ampoules LED et un chargeur de téléphone pendant huit heures chaque jour. Désormais, les écoliers peuvent continuer à travailler après la tombée de la nuit. Les parents peuvent économiser l'argent qui leur servait à acheter la paraffine et communiquer plus souvent avec les personnes qui vivent à l'extérieur de Kokete. Enfin, plus personne ne respire les vapeurs de paraffine.

Comment les villageois pauvres peuvent-ils se permettre d'acheter un chargeur Indigo, et comment Azuri peut-elle dégager des bénéfices ? La société utilise un modèle d'entreprise semblable à celui qu'ont inauguré les fournisseurs de téléphonie mobile pour des millions de personnes à faible revenu. Les clients ne paient pas l'intégralité du prix de l'appareil au moment de son acquisition. Ils achètent des cartes à gratter prépayées qu'ils utilisent à chaque fois qu'ils ont besoin d'électricité, tout comme les utilisateurs de téléphones mobiles prépayés se servent des cartes à gratter pour acheter du temps de communication. Les utilisateurs du système Indigo valident leurs cartes à gratter par SMS à partir d'un téléphone mobile. Ils reçoivent alors un numéro de code à usage unique qu'ils saisissent sur le clavier de l'appareil Indigo. Une fois le code activé, l'appareil se met en marche pour une période déterminée (généralement une semaine). Après avoir consommé un certain nombre de cartes à gratter, les clients deviennent propriétaires de l'appareil et peuvent utiliser l'électricité gratuitement. Certains habitants de Kokete envisagent déjà d'utiliser des systèmes d'Azuri de plus grande capacité pour démarrer une activité économique – une option que la société appelle « pay as you grow » (formée sur l'expression « pay as you go », qui désigne le système des cartes prépayées).

Plus d'un milliard d'individus dans le monde n'ont toujours pas accès à l'électricité. Par conséquent, le système Indigo présente un potentiel commercial et un potentiel de réduction de la pauvreté considérables. Cet exemple illustre de quelle manière l'innovation peut aider à la fois les consommateurs et les entrepreneurs pauvres. Il montre par ailleurs que l'innovation peut prendre la forme d'un nouveau produit, mais aussi d'un nouveau modèle d'entreprise adaptable à d'autres marchés.

2. *Un système de réfrigération du lait frais*. Le lait est une importante source de protéines en Inde, où une grande partie de la population est végétarienne. En fait, l'Inde est le premier producteur et consommateur de lait dans le monde. La majeure partie du lait est produite par de petits producteurs laitiers qui possèdent en général quatre ou cinq vaches. Les paysans amènent leurs seaux de lait dans un centre de collecte deux fois par jour ; de là, le lait est rapidement emmené par camion jusqu'à la station de réfrigération la plus proche avant qu'il ne tourne. Cependant, comme l'alimentation en électricité n'est pas régulière et que les réfrigérateurs ne sont pas toujours fiables, une énorme quantité de lait – 30 % – est perdue.

Un entrepreneur du nom de Sam White s'est rendu en Inde en 2007 pour présenter aux laiteries un système de réfrigération alimenté à l'énergie solaire que son partenaire Sorin Grama était en train de développer. White entendait toujours dire que les réfrigérateurs solaires n'étaient pas suffisamment stables pour pouvoir être utilisés dans l'industrie laitière. Les laiteries ont besoin d'un système plus fiable, et les fabricants de matériel de réfrigération ne proposaient rien de satisfaisant. Grama a donc conçu un réfrigérateur équipé d'une cellule thermique comparable à une batterie rechargeable ; la cellule est alimentée à partir du réseau électrique la nuit, période où l'alimentation est plus stable, stocke l'électricité prélevée et se met en veille dans la journée. Les producteurs stockent leur lait dans le réfrigérateur pendant la journée. En cas de coupure du réseau électrique, la cellule thermique entre immédiatement en action et maintient le lait au frais. En s'équipant du système de réfrigération de White et Grama, appelé Promethean Power System, les producteurs laitiers peuvent désormais se passer des groupes diesel coûteux qui étaient auparavant nécessaires pour pallier les défaillances des réfrigérateurs d'ancienne génération. Non seulement les producteurs économisent l'argent qu'ils devaient investir dans l'achat d'un groupe électrogène, mais ils gagnent un revenu plus élevé grâce à la meilleure conservation de leur lait.

[†]Ces deux exemples sont décrits dans le magazine TIME (numéro du 17 septembre 2012), pp. 40-42.

5.2.3.3 L'importance de l'efficacité des lois et des tribunaux

Dans un ouvrage récent, les professeurs Robert Cooter et Hans-Bernd Schäfer font valoir que la présence de lois et d'institutions juridiques efficaces revêt une importance clé pour la lutte contre la pauvreté. Inversement, quand les lois et les institutions juridiques sont absentes ou inefficaces, l'innovation – et, par voie de conséquence, la réduction de la pauvreté – sont freinées.[179] Des lois adéquates et un système judiciaire performant sont nécessaires pour assurer la mise en œuvre des investissements nécessaires et permettre une sortie rapide et sans heurts des entreprises inefficientes ; mais tous les pays ne sont pas encore dotés de ces lois et tribunaux.

Que ce soit dans la Silicon Valley ou dans les pays en développement, il importe que les contrats, la propriété et l'organisation des entreprises soient régis par des lois correctement rédigées pour que les inventeurs, les créanciers et les partenaires puissent établir des relations de confiance mutuelle et se lancer dans la création d'entreprises innovantes. L'inventeur doit pouvoir faire confiance au financier pour lui soumettre une idée, et le financier doit pouvoir faire confiance à l'inventeur pour lui proposer son argent. Cependant, comme le notent les auteurs, les gouvernements ne peuvent pas se contenter d'adopter de bonnes lois et s'attendre à ce qu'elles fassent effet immédiatement comme par enchantement. Il faut du temps pour que les lois évoluent vers des institutions solides capables de protéger les investissements à risque et les bénéfices qu'ils génèrent.

Dans les pays les plus pauvres de la planète, les marchés de capitaux sont en général peu développés, de sorte que les entrepreneurs sont souvent obligés de se tourner vers leurs amis et leur famille pour se procurer des fonds. Cooter et Schäfer montrent que, traditionnellement, lorsqu'une société où prévalait une situation de non-droit se dote d'un cadre juridique garantissant les droits de propriété, cela peut déboucher sur un élan de croissance alimenté principalement par le financement « relationnel », c'est-à-dire les emprunts contractés auprès des membres de la famille. Comme les sommes concernées sont limitées dans la plupart des cas, les entreprises qu'elles financent conservent une petite taille et une dimension locale. Aucun pays moderne n'est parvenu à s'enrichir grâce au financement relationnel.

Les pays doivent au contraire améliorer l'accès de leurs citoyens au financement en encourageant les systèmes de financement privé, notamment les activités de prêt des banques commerciales. C'est pourquoi ils ont besoin de lois qui exercent un contrôle effectif sur les comportements – non de lois remplies de bonnes intentions et rédigées en termes idéalistes, qui n'obligent pas les individus à se comporter de manière responsable. Les lois ne sont efficaces que dans la mesure où les sanctions qui les accompagnent le sont, nous expliquent les auteurs. Les individus doivent comprendre qu'ils ont davantage intérêt à se conformer aux lois qu'à s'en affranchir. Lorsqu'ils ont acquis cette conviction, les activités de financement peuvent suivre, avec elles l'innovation et la croissance qui en sont le corollaire. Cette idée n'est assurément pas nouvelle. La Banque mondiale, pour ne citer que cet exemple, est parvenue à la même conclusion en 2009 dans une publication intitulée Banking the Poor.[180]

Le point à retenir est que la concurrence peut créer des incitations et des débouchés pour les petits entrepreneurs, mais en l'absence d'un système juridique fiable, les transactions qui sous-tendent la transformation d'une idée en produit commercial sont moins susceptibles d'aboutir.

179 Robert Cooter et Hans-Bernd Schäfer, Solomon's Knot: How Law Can End the Poverty of Nations (Princeton University Press : 2011).

180 Cf. Banque mondiale, *supra* note 72, pp. 58-59 (où il est noté que la mesure dans laquelle les créanciers peuvent exiger, de façon crédible, la mise en œuvre des contrats joue un rôle important dans la réduction du risque de crédit pour les banques, ce qui facilite l'accès au financement).

6. Les mesures des pouvoirs publics en faveur des pauvres valent-elles mieux que la concurrence ?

Que leur objectif déclaré soit de combattre la pauvreté, de stabiliser les prix, d'aider les entreprises nationales à se développer ou autre chose encore, les gouvernements sont parfois tentés d'intervenir directement sur les marchés au lieu de laisser faire le jeu de la concurrence. Ces interventions peuvent prendre la forme de contrôles des prix ou de barrières commerciales, de l'octroi de subventions ou de l'établissement d'entreprises publiques ayant pour mission de desservir les marchés « pauvres », pour ne citer que quelques exemples. Cependant, même lorsqu'elles répondent à des intentions louables, les politiques interventionnistes ne produisent pas, à long terme, de meilleurs résultats que des marchés concurrentiels libéralisés. Comme le notait un intervenant lors du Forum mondial sur la concurrence de l'an dernier, les interventions telles que les contrôles des prix peuvent, dans un premier temps, améliorer la situation des consommateurs pauvres qui ont à peine de quoi acheter les produits de première nécessité, mais à terme, cette stratégie risque fort de se révéler contreproductive dans la mesure où elle interfère avec l'effet de signal que les prix adressent aux acteurs du marché.[181]

Le plafonnement des prix, par exemple, entraîne généralement une baisse de revenu pour les agriculteurs et, ce faisant, réduit leur incitation à produire davantage de denrées alimentaires – action qui, précisément, aiderait les consommateurs pauvres. Pour être viable, une stratégie qui vise à stabiliser et réduire les prix des denrées alimentaires doit, d'une manière ou d'une autre, réussir à accroître la production alimentaire, non la réduire. Autre problème : le plafonnement des prix entraîne une réduction des prix non seulement pour les consommateurs pauvres mais pour tous les consommateurs – même ceux qui peuvent se permettre de payer des prix plus élevés. Par conséquent, le plafonnement des prix détourne les ressources au profit de personnes qui n'ont pas besoin d'être aidées.[182] En outre, il peut entraîner des pénuries car il réduit les incitations à augmenter la production du produit considéré. Maintenir le prix d'un produit à un niveau plus bas que son prix normal ne sert pas à grand-chose si ce produit n'est pas disponible à l'achat. Les subventions aux intrants et aux extrants agricoles sont également inefficientes et sources de distorsions dans la mesure où la majeure partie des aides profite aux grands exploitants, c'est-à-dire ceux qui ont le moins besoin d'être aidés.[183]

Pire encore, ces interventions engendrent un effet boule de neige qui fait qu'elles deviennent de plus en plus onéreuses. Supposons qu'un gouvernement décide de subventionner le prix du pain. Cette mesure va encourager la consommation, ce qui est l'effet recherché, mais l'augmentation de la demande fera grimper le prix du pain, obligeant le gouvernement à consacrer des sommes de plus en plus importantes aux subventions pour maintenir le prix effectif du pain constant.

C'est exactement ce qui s'est produit au Mexique lorsque le gouvernement a subventionné le prix des tortillas, qui représentent plus de la moitié de la ration calorique et protéinique quotidienne des pauvres du pays. Au fil du temps, le poids financier de la subvention aux tortillas est devenu de plus en plus lourd pour le gouvernement. En 1994, on estimait qu'à moins d'être restreinte, cette subvention allait coûter 1 milliard USD par an dans les deux années à suivre. Le gouvernement a donc pris la décision de la réduire

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181 Bibek Debroy, contribution à la session « Concurrence, matières premières et volatilité des prix » du Forum mondial de l'OCDE sur la concurrence (2012), DAF/COMP/GF(2012)3.

182 Debroy, *supra* note 181, p. 5 (citation de Joachim von Braun, « Rising Food Prices, What Should Be Done? », IFPRI Policy Brief (avril 2008), disponible à l'adresse : www.ifpri.org/sites/default/files/publications/bp001.pdf).

183 Scott Davenport, contribution à la session « Concurrence, matières premières et volatilité des prix » du Forum mondial de l'OCDE sur la concurrence (2012), DAF/COMP/GF(2012)1, p. 5.

graduellement, ce qui en a fait baisser le coût. Les contrôles des prix, qui étaient également en vigueur, ont été levés progressivement et totalement supprimés en 1999.[184]

Lorsque les gens meurent de faim, il n'est assurément pas acceptable à court terme de laisser les prix des denrées alimentaires se maintenir à des niveaux élevés et inabordables. Dans la durée, cependant, les signaux que des prix élevés envoient aux consommateurs et aux producteurs sont cruciaux pour imprimer des changements positifs, et certains types d'interférences « favorables aux pauvres » (par exemple, les contrôles des prix) peuvent provoquer des pénuries – qui n'aident pas davantage les gens qui meurent de faim. D'une manière ou d'une autre, les pénuries imposent de procéder à des rationnements jusqu'à ce que la production augmente ou que d'autres produits soient trouvés et consommés. Un prix élevé constitue un mécanisme de rationnement. Qui plus est, ce peut être un mécanisme efficient en comparaison d'autres options : toutefois, la façon dont il opère a des effets distributifs qui ne sont pas forcément souhaitables – autrement dit, il pénalise les pauvres. Il peut donc être préférable de combiner contrôles des prix et rationnement effectif, en particulier à court terme. Si un gouvernement se contente de contrôler les prix en laissant les consommateurs acheter les quantités qu'ils souhaitent à ces prix, le rationnement interviendra au moment où les magasins tomberont à court du produit en question, quelques heures après leur ouverture. De nouveaux coûts apparaîtront sous la forme de longues files d'attente. Il arrive qu'une solution intermédiaire soit trouvée : un commerçant peut décider de rationner lui-même sa marchandise, en n'autorisant ses clients à n'acheter qu'une certaine quantité de pain par exemple. Mais d'une manière ou d'une autre, un produit qui n'est disponible qu'en faible quantité doit être rationné.

En résumé, des prix élevés indiquent aux consommateurs que certains produits coûtent relativement cher à produire et les incitent à se rabattre sur des produits de substitution moins onéreux. Parallèlement, ils signalent aux producteurs qu'ils auraient intérêt à investir pour accroître leur production. Ces réponses combinées amèneront le marché vers un nouvel équilibre caractérisé par une production alimentaire accrue et des prix plus bas. Si, en revanche, les prix sont maintenus à un niveau artificiellement bas, les consommateurs et les producteurs réagiront de manière différente et il en résultera une pénurie.

Dans certains pays, la législation exige que les produits agricoles soient vendus à des offices de commercialisation, qui sont administrés par des représentants des cultivateurs ou qui fixent les prix des produits alimentaires de base. Implicitement, ces lois centralisent la détermination des prix et des volumes au moyen de cadres obligatoires et approuvés par l'État, qui seraient illégaux s'ils étaient mis en œuvre par des entreprises privées. Le risque existe que ces dispositifs soient détournés à leur profit par les grands cultivateurs.

À un niveau général, on peut en partie comprendre pourquoi des pays décident parfois de suspendre momentanément la libre concurrence sur les marchés agricoles. Dans de nombreux pays en développement, les droits de propriété restent peu sûrs, les activités agricoles ne sont pas encore intégrées dans le régime fiscal et les populations rurales ne participent pas pleinement à l'éducation ou n'ont pas accès aux services médicaux et autres services de base. Il peut donc y avoir d'autres priorités urgentes. Il est important que les réformes du marché soient soigneusement échelonnées.[185] Cependant, si les autorités attendent trop longtemps pour mettre en œuvre le droit de la concurrence, laisser les marchés fonctionner avec un minimum d'interférences de la part de l'État et instiller une culture de la concurrence, cela peut aussi avoir un coût. Plus vite la concurrence sera mise en place, plus vite ses avantages se manifesteront.

184 « Mexico's Economy: Monopolies and Tortillas », The Economist (19 janvier 2007).

185 Nicolas Taylor et Michal Petr, OCDE DAF/COMP/GF(2012)2/REV1, Note d'information pour la session « Concurrence, matières premières et volatilité des prix » du Forum mondial de l'OCDE sur la concurrence (2012), p. 20.

7. Des effets mitigés sur la pauvreté

Certains biens essentiels sont à la fois consommés et produits par les personnes pauvres. Lorsque les pauvres se situent sur les deux versants d'un marché, celui de l'offre et celui de la demande, la concurrence peut avoir des effets mitigés sur la pauvreté. Par exemple, le renforcement de la concurrence sur le marché du maïs peut faire évoluer le bien-être des consommateurs pauvres dans un sens et celui des producteurs pauvres dans le sens opposé. Imaginons que le marché du maïs fasse l'objet d'une intensification de la concurrence donnant lieu à une baisse des prix de gros. Cela devrait profiter aux consommateurs pauvres qui achètent des produits à base de maïs. Toutefois, la baisse des prix va entraîner une diminution des revenus des agriculteurs pauvres qui cultivent le maïs. Inversement, une hausse des prix de gros du maïs profiterait aux agriculteurs mais serait préjudiciable aux consommateurs. Pour les cultivateurs qui satisfont une partie de leur propre demande de maïs avec leur production et achètent le reste à l'extérieur, les variations de prix intervenant sur le marché du maïs produiront simultanément deux effets opposés en termes de bien-être.

Faut-il en conclure que dès lors qu'il y a des pauvres sur les deux versants du marché, l'effet global de la concurrence sur la pauvreté est indéterminé ? Est-il alors impossible d'affirmer que la politique de la concurrence peut contribuer à faire reculer la pauvreté sur ces marchés ?

Il semblerait que la réponse à ces deux questions soit « non » pour la plupart des marchés de produits alimentaires de base. (Le cas des denrées de base est particulièrement pertinent dans la mesure où, dans de nombreux pays, les pauvres produisent et vendent ces produits en même temps qu'ils leur consacrent la majeure partie de leur revenu.[186]) Ivanic et Martin ont étudié l'incidence de l'augmentation du prix des produits alimentaires de base sur la pauvreté dans neuf pays à faible revenu. Même si les effets varient selon les produits et les pays, la pauvreté nette a augmenté beaucoup plus fréquemment et dans une mesure plus importante qu'elle n'a diminué.[187] On peut en conclure que la baisse des prix alimentaires – qui est généralement une conséquence attendue de l'intensification de la concurrence – réduirait la pauvreté nette plus fréquemment et dans une mesure plus importante qu'elle ne la ferait progresser.

On peut par ailleurs supposer qu'Ivanic et Martin obtiendraient des résultats plus tranchés dans les cas où la baisse des prix est causée spécifiquement par le renforcement de la concurrence. La raison en est que bien souvent, les agriculteurs pauvres ne profitent pas beaucoup de la hausse des prix alimentaires. Par conséquent, ils ont moins à perdre lorsque les prix baissent, et les gains de bien-être dont ils bénéficient en tant que consommateurs sont diminués d'un montant plus faible. Comme l'a montré l'édition 2012 du FMC, lorsqu'un pouvoir de marché s'exerce sur le versant de l'offre des marchés de produits alimentaires de base, il est généralement le fait d'une grande entreprise agroalimentaire qui fait cultiver ses terres par des agriculteurs pauvres contre salaire, ou d'une grande entreprise qui exerce une fonction d'intermédiaire entre un grand nombre de petits agriculteurs pauvres d'un côté et les petits commerces qui distribuent leur production de l'autre. Étant en position de force, les grandes entreprises intermédiaires engrangent la majeure partie des bénéfices disponibles.

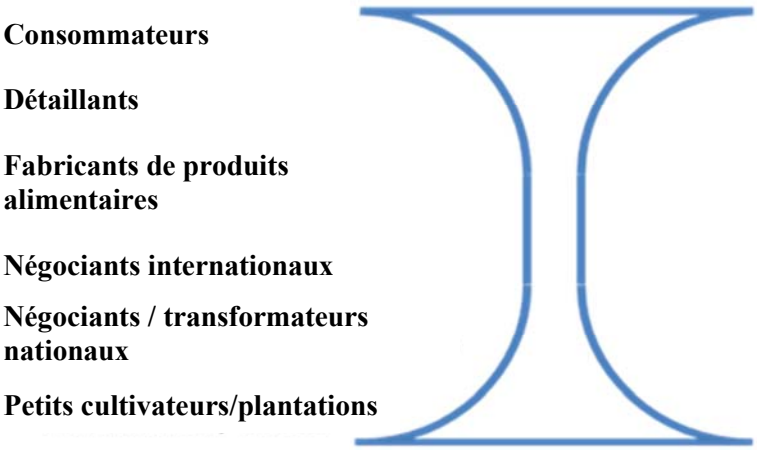
La forme en sablier ci-dessous illustre une situation courante sur les marchés du blé, du riz, de la volaille, du café et de nombreux autres produits :

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186 Maros Ivanic et Will Martin, « Implications of Higher Global Food Prices for Poverty in Low-Income Countries », World Bank Policy Research Paper n° 4594 (2008), pp. 1-2 (où il est indiqué que les consommateurs les plus pauvres consacrent environ 75 % de leur revenu à l'achat de produits alimentaires de base) (citant J. Cranfield, P. Preckel et T. Hertel, « Poverty Analysis Using an International Cross-Country Demand System », Policy Research Working Paper Series 4285, Banque mondiale (2007)).

187 Ivanic et Martin, *supra* note 186, pp. 1-2. Les produits de base considérés dans cette étude sont le blé, le riz, le maïs, le sucre et la volaille.

Graphique 8. Goulets d'étranglement fréquents dans l'agriculture



Source : OCDE

Sur ces marchés, une hausse ou une baisse des prix des denrées alimentaires ne modifiera pas le revenu des personnes pauvres situées sur le versant de l'offre dans une mesure significative.[188] En conséquence, les effets en termes de bien-être d'une baisse des prix des produits alimentaires de base provoquée par le renforcement de la concurrence seront ressentis davantage par les consommateurs pauvres (qui en bénéficieront) que par les producteurs pauvres.

8. Que peuvent faire les autorités en charge de la concurrence pour contribuer à faire reculer la pauvreté ?

Premièrement, elles peuvent continuer à faire leur travail – c'est-à-dire, faire appliquer le droit de la concurrence, l'améliorer lorsque c'est nécessaire, faire pression pour obtenir davantage de ressources s'il y a lieu et – ce qui est essentiel – recourir à des actions militantes pour instiller une culture de la concurrence dans l'économie nationale.

La culture de la concurrence n'est pas l'apanage du secteur privé et devrait s'étendre au secteur public. « L'organisme en charge de la concurrence peut jouer un rôle important en attirant l'attention sur les mesures gouvernementales anticoncurrentielles et improductives et leur coût pour la société. Ce devrait sans doute être, dans un pays, 'le porte-parole le plus important pour ce qui est de promouvoir la concurrence et d'attirer l'attention sur cette dimension.' »[189] Étant donné qu'une multitude de politiques ont une incidence sur la concurrence, l'autorité de la concurrence devrait s'attacher à déterminer de quelle manière les politiques élaborées en grande partie ou entièrement dans d'autres secteurs du gouvernement – par exemple celles qui ont trait au commerce, à l'industrie, à la propriété publique, à la réglementation, à la promotion de l'investissement et à la lutte contre la corruption – affectent la concurrence. Lorsque ces effets sont négatifs (ou supposés être négatifs), l'autorité de la concurrence devrait le faire savoir.

Les autorités en charge de la concurrence peuvent en particulier expliquer à leurs collègues des autres organes gouvernementaux que les mesures interventionnistes telles que l'octroi de subventions et les contrôles des prix engendrent des distorsions néfastes. Si le gouvernement envisage de faire passer dans le giron de l'État la production d'un bien ou service essentiel donné – à moins qu'il n'y ait de solides raisons de penser que cette intervention est indispensable (par exemple, à cause d'un manque d'infrastructures de

188 Taylor et Petr, *supra* note 185, p. 15.

189 Fox, *supra* note 54, p. 233 (citation de Mark Dutz et R. Shyam Khemani, Competition Law & Policy: Challenges in South Asia 28 (2007)).

transport pour acheminer les denrées alimentaires dans les régions où elles font cruellement défaut) – l'autorité de la concurrence peut faire valoir que l'État n'est pas mieux placé que le secteur privé pour gérer les entreprises et que son intervention peut avoir pour effet contreproductif de provoquer des pénuries et d'empêcher l'entrée sur le marché d'entreprises privées qui pourraient résoudre le problème.

De même, les autorités en charge de la concurrence gagneraient à rappeler aux organismes gouvernementaux favorables aux mesures telles que les subventions, les droits de douane ou les contingents d'importation que la sortie du marché est une phase normale, saine et nécessaire du processus concurrentiel. Le fait de soutenir des entreprises inefficientes et non viables fausse ce processus et peut entraîner un gaspillage de l'argent public, des pénuries et une hausse des prix. Il peut également être synonyme d'occasions perdues pour les petits entrepreneurs nationaux, qui pourraient dans d'autres circonstances prendre pied sur le marché, concurrencer les autres entreprises et améliorer leur revenu.

L'un des arguments avancés par les défenseurs des subventions et du protectionnisme commercial est qu'il est cruel ou injuste de laisser des entreprises mettre la clé sous la porte. Lorsqu'une entreprise ferme, les suppressions d'emplois sont inévitables et le coût humain est donc bien réel. Toutefois, la concurrence créée à la fois des gagnants et des perdants. En outre, le fait de maintenir artificiellement des entreprises inefficientes en activité interfère avec la croissance économique, qui est un ingrédient indispensable de la réduction de la pauvreté. S'ils veulent aider les personnes qui perdent leur emploi à cause de la baisse ou de la suppression des subventions, les pouvoirs publics feraient mieux, avec l'argent économisé, de mettre en place des dispositifs de protection sociale ou d'améliorer les dispositifs existants. Différents types de mesure peuvent venir en aide aux travailleurs qui se sont appauvris ou risquent de tomber dans la pauvreté suite à la perte de leur emploi : octroi de garanties de ressources temporaires, participation à des formations professionnelles et participation à des services de placement facilitant la transition d'un type d'activité vers un autre où les perspectives d'emploi sont meilleures.

Cela étant, des facteurs autres que les subventions et la politique commerciale peuvent retarder la sortie des entreprises inefficientes. Un droit des faillites et un système judiciaire efficaces sont nécessaires pour assurer que les entreprises inefficientes sortent sans heurts du marché ; or, tous les pays n'en sont pas encore pourvus. Lorsque des lacunes sont observées dans ce domaine et que les circonstances s'y prêtent, l'autorité de la concurrence pourrait préconiser des mesures permettant d'y remédier.

En outre, les autorités en charge de la concurrence peuvent convaincre les instances réglementaires de tenir compte des effets de leurs politiques sur la concurrence et de supprimer les réglementations inutilement anticoncurrentielles. L'un des moyens d'y parvenir est d'examiner les implications des réglementations pour la concurrence en menant une évaluation d'impact. Le Manuel de l'OCDE pour l'évaluation de la concurrence a été conçu spécifiquement pour aider les pouvoirs publics à s'acquitter de cette tâche.[190]

Bien entendu, les autorités de la concurrence seront parfois amenées à formuler leurs conseils dans des contextes politiques sensibles, auquel cas il leur faudra trouva le bon dosage entre deux impératifs : promouvoir une politique de la concurrence saine, et éviter de paraître insensibles ou déconnectés de la réalité vécue par les citoyens appauvris. À cet égard, elles pourront faire valoir que l'une de leurs principales motivations est précisément le bien-être de ces citoyens.

Mais comment faire dans les situations où ces pistes ne sont pas envisageables ?

Ce type de situation peut se produire par exemple lorsqu'il existe une trop grande proximité entre des entreprises influentes et des responsables gouvernementaux. Il faut s'attendre à ce que les intérêts corporatistes se battent avec acharnement pour éviter que des mesures favorables à la concurrence ne soient mises en œuvre. Pour surmonter cette difficulté, Ellis et Singh suggèrent que les autorités en charge

190 Cf. www.oecd.org/daf/competition/competitionassessmenttoolkit.htm

de la concurrence apportent leur soutien aux groupes d'intérêt susceptibles de profiter des réformes favorables à la concurrence, voire qu'elles mettent sur pied de tels groupes. Ces groupes pourraient comprendre des consommateurs qui seraient avantagés par une baisse des prix (ménages et secteur commercial), ainsi que de nouvelles entreprises récentes ou potentielles qui sont handicapées par les politiques en vigueur mais continuent de vouloir s'implanter sur le marché. Il se peut que des groupes de consommateurs et des associations professionnelles existent déjà ; si tel est le cas, l'organisme de la concurrence pourra se contenter de les soutenir sans être obligé de créer des groupes entièrement nouveaux. Ce soutien pourrait consister à coordonner les initiatives menées par les différents groupes, à faire connaître les problèmes existants et à démontrer que les réformes favorables à la concurrence aideraient les consommateurs. Avec l'aide de l'autorité de la concurrence, ces groupes réussiraient peut-être à faire contrepoids aux forces politiques qui maintiennent le statu quo.[191]

Brusick et Evenett notent que cette tâche ne sera sans doute pas aisée, mais que la façon de procéder qui consiste à réunir de vastes groupes de personnes et d'entreprises intéressées est assurément la bonne :

> *[I]ntroduire la discipline de la concurrence et limiter l'exercice du pouvoir de marché dans les économies où les intérêts corporatistes entretiennent des liens étroits avec les décideurs ne sera sans doute pas facile dans les pays en développement (ni d'ailleurs dans les pays industrialisés)... Les partisans de ces mesures devront viser à gagner un large soutien au sein de la société et ne pas se focaliser uniquement sur les détails technocratiques importants.*[192]

9. Conclusion

Il ne suffit pas qu'un droit de la concurrence adéquat soit en place pour que la concurrence profite aux pauvres. La présence d'une autorité de la concurrence compétente n'est pas suffisante non plus. Une culture de la concurrence doit s'enraciner dans le pays – non seulement parmi les acheteurs et les vendeurs mais aussi dans les milieux judiciaires, chez les responsables politiques et dans les organismes gouvernementaux. Pour fonctionner correctement, la concurrence doit s'accompagner d'un environnement de politique publique favorable et de conditions-cadres adéquates. Il faut que le pays soit doté d'une véritable économie de marché et que les pouvoirs publics prennent en compte les effets de la législation et des réglementations sur la concurrence. Ils devront veiller, en particulier, à ne pas perdre de vue les réalités locales, non seulement en termes de capacités institutionnelles mais aussi en ce qui concerne les compétences et facteurs de vulnérabilité des populations pauvres.

Pour comprendre les effets réels de la concurrence sur les consommateurs pauvres, les petits propriétaires d'entreprise et les travailleurs de façon plus approfondie, il y a lieu d'effectuer davantage de recherches empiriques. Il faudrait analyser systématiquement, dans plusieurs pays et sur plusieurs marchés de produits/services, le bien-être des personnes pauvres avant et après le changement du niveau de concurrence – que ce changement résulte d'une intervention de l'autorité de la concurrence, d'une entrée ou d'une sortie normale ou d'un autre facteur. C'est là un domaine d'étude très prometteur pour les universitaires, les autorités de la concurrence et les organisations internationales.

À ce stade, même si des données indiquent que la concurrence est bénéfique à la croissance macroéconomique, il n'est pas certain que la croissance macroéconomique soit profitable à tous ; en fonction du niveau d'inégalité des revenus dans un pays, les pauvres peuvent être laissés pour compte et le recul de la pauvreté marquer le pas. En conséquence, si les autorités de la concurrence veulent réduire la pauvreté, elles ont tout intérêt à cibler les marchés sur lesquels les pauvres dépensent la majeure partie de leur revenu (biens et services essentiels), les marchés qui facilitent la réussite des petits entrepreneurs (services bancaires et de communications) et les secteurs à forte intensité de main-d'œuvre qui emploient des pauvres.

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191 Ellis, *supra* note 88, p. 2 ; Ellis et Singh, *supra* note 86.

192 Brusick et Evenett, *supra* note 98, p. 294.

COMPTE RENDU DE LA DISCUSSION

Par le Secrétariat

1. Allocutions d'ouverture

1.1 M. Richard Boucher, Secrétaire général adjoint de l'OCDE

M. Richard Boucher, Secrétaire général adjoint de l'OCDE, introduit le débat. Il note que l'OCDE et la CNUCED ont reçu du G20 la mission de prévenir toute rechute dans le protectionnisme. Les enjeux auxquels l'économie mondiale devra faire face en 2013 nécessiteront des marchés ouverts et une bonne gouvernance. L'Europe stagne et les économies dynamiques émergentes connaissent un ralentissement. L'amélioration de la gouvernance et l'ouverture des échanges au cours des 30 dernières années ont certes contribué à faire reculer la pauvreté absolue, mais plus d'un milliard de personnes vivent encore au-dessous de ce seuil. Elles payent plus cher pour les services de base ou n'y ont pas accès. Une concurrence plus vive sur le marché intérieur renforce la compétitivité des exportateurs, aide « le petit » à se défendre contre les monopoles et permet de combattre le type de corruption qu'encouragent les réglementations publiques qui protègent les monopoles.

1.2 M. Supachai Panitchpakdi, Secrétaire général de la CNUCED

Pour M. Supachai Panitchpakdi, Secrétaire général de la CNUCED et intervenant principal, la CNUCED a pour mandat d'encourager la concurrence et la protection du consommateur. À son avis, une "mondialisation centrée sur le développement" repose sur le secteur réel, la création de capacités de production et d'emplois, et elle offre davantage de possibilités aux pauvres et aux femmes. L'an dernier à Pékin, à l'occasion d'une réunion avec l'OMC, les participants se sont mis d'accord sur l'idée que la chaîne de valeur mondiale ne peut fonctionner efficacement qu'avec davantage de concurrence et moins d'obstacles aux échanges et à la concurrence. La libéralisation des échanges ne réduit toutefois pas automatiquement à elle seule la pauvreté ; il faut d'autres politiques, notamment une politique de la concurrence, même s'il n'y a pas de lien direct. La protection des consommateurs est aussi un enjeu important. Les ménages pauvres dépensent une part disproportionnée de leur revenu pour l'achat de biens de première nécessité, c'est pourquoi des politiques de la concurrence visant à faire baisser les prix de ces produits sont utiles. Mais à côté de prix plus bas, les pauvres ont aussi besoin de revenus plus élevés, de plus d'emplois et d'un plus large éventail de choix ; c'est là que la concurrence peut aider. D'autre part, la concurrence dans un domaine comme celui de la téléphonie mobile, par exemple, permet d'améliorer l'accès des producteurs pauvres aux marchés ainsi qu'aux informations sur les prix de leurs produits ; elle facilite aussi les services bancaires mobiles.

Dans les pays en développement, on observe souvent un pouvoir de marché excessif dans le secteur des intrants, ainsi que dans ceux de la transformation et de la distribution. En Amérique latine, la concentration des industries et de la terre entre les mains de quelques familles est un héritage historique. Il est difficile pour les gouvernements de s'opposer à cette situation que la législation et la réglementation contribuent parfois même à faire perdurer. Les pauvres ont donc devant eux d'énormes obstacles à franchir pour devenir des producteurs indépendants. Les règles de la concurrence peuvent les aider à démanteler ces structures et à diluer le pouvoir de concentration. Bien sûr, certaines mesures telles que le contrôle des prix, les subventions ou les restrictions sur l'accès au marché sont expressément destinées à venir en aide

aux pauvres, mais elles entravent la concurrence. Lorsque les contrôles sont levés, les prix augmentent et la situation des pauvres tend alors à s'aggraver.

Un autre problème grave tient à la taille croissante des projets d'infrastructure publics dans le monde entier, et au développement concomitant des soumissions concertées. Cette situation pose un problème de gouvernance que l'OCDE pourrait aider à résoudre. L'argent du contribuable est gaspillé, alors qu'on pourrait le mettre au service de la lutte contre le pauvreté.

M. Panitchpakdi opère une distinction entre les biens "d'expérience" (dont le consommateur peut observer personnellement les caractéristiques), les biens "de confiance" (que le consommateur doit acheter sur la foi des informations données quant à leurs caractéristiques ; par exemple : les médicaments) et les biens "de recherche" (pour lesquels des informations comparatives sont souhaitables, mais pas toujours facilement accessibles). Faute d'instruction et d'accès aux TI, les pauvres ne sont pas en mesure de choisir ces biens de façon avisée. En conclusion, M. Panitchpakdi insiste sur le fait que la concurrence doit faire partie de la culture, et qu'il vaut mieux prévenir que punir. Il est important d'éviter que les associations professionnelles se transforment en clubs ayant vocation à protéger leurs membres. Pour mieux aider les pauvres, les politiques de la concurrence devraient privilégier les interventions dont ils bénéficient le plus directement. Néanmoins, une concurrence accrue à l'intérieur des pays et entre eux ne se traduit pas nécessairement par moins d'inégalités.

1.3 M. Frédéric Jenny, Président du Comité de la concurrence de l'OCDE

Après avoir souhaité la bienvenue aux 400 délégués venus de 95 pays pour assister au 12ème Forum mondial sur la concurrence, M. Jenny fait observer qu'il n'était pas sûr au départ que le Forum soit un succès. L'intention était de promouvoir le dialogue entre des pays qui ont une grande expérience en matière de politique de la concurrence et d'autres qui en ont moins. Le pari a réussi parce que les thèmes qui ont été choisis intéressent tous les pays. L'OCDE met l'accent sur l'intégration des politiques parmi ses membres, mais comment la politique de la concurrence s'articule-t-elle avec les autres politiques dans les pays en développement, et quelle est son utilité pour ces pays ? La politique de la concurrence et son application dans les pays en développement contribuent-elles à des objectifs nationaux plus généraux et plus importants ? M. Jenny estime qu'elles ont une place naturelle et que c'est pour cette raison que tant de pays assistent au Forum mondial cette année.

Il y a de bonnes raisons de penser qu'il existe une relation macroéconomique entre la politique de la concurrence, son application et la réduction de la pauvreté. Une concurrence plus vive se traduit par des gains de productivité, une accélération de la croissance et par conséquent moins de pauvreté. Dans les pays qui se sont développés grâce aux mécanismes du marché, une bonne part de la population est sortie de la pauvreté. Mais une concurrence accrue ne suffit pas : il faut aussi que des politiques adéquates soient en place en ce qui concerne les échanges, la consommation, la réglementation et l'industrie. Toutes ces politiques doivent "se conjuguer", et nous savons depuis la crise que la concurrence n'empêche pas toujours les défaillances du marché.

Des exemples de cas vont nous être donnés dans lesquels la politique de la concurrence a contribué à atténuer la pauvreté. Mais il arrive aussi que l'intensification de la concurrence, par exemple du fait de la déréglementation des prix, aggrave la situation des pauvres à court terme. Elle peut aussi conduire des entreprises inefficientes à la faillite et priver ainsi des travailleurs de leur emploi. Dans le cas des services collectifs en Amérique latine, par exemple, la libéralisation a entraîné l'interruption des fournitures pour les usagers pauvres qui ne payaient par leurs factures, déclenchant ainsi un violent rejet de la déréglementation. C'est pourquoi parallèlement au renforcement de la concurrence, il faut aussi prévoir une période de transition durant laquelle les pauvres devront pouvoir bénéficier d'une meilleure protection.

La conception du droit de la concurrence est également un enjeu. Les pays qui ont un taux de pauvreté élevé doivent-ils avoir dans ce domaine une législation différente ou une approche différente ? Le droit de la concurrence doit-il s'adapter aux circonstances ? Ce n'est peut-être pas une très bonne idée. La politique de la concurrence doit-elle se soucier de son impact sur la répartition des revenus ? En règle générale, ce n'est pas le cas ; l'accent est mis sur l'avantage qu'elle peut procurer à l'ensemble de la collectivité. Mais les questions de répartition sont très importantes dans certains pays. Existe-t-il un autre instrument plus efficace, est-il en place, et conforte-t-il la politique de la concurrence ?

2. Session plénière : Concurrence et réduction de la pauvreté

2.1 Introduction par M. Jenny

Le Président propose de diviser la discussion en six sous-thèmes, introduit chacun par un expert qui donnera ensuite la parole à l'auditoire. Les sous-thèmes sont les suivants : ce qu'on entend par pauvreté, ses causes et la relation entre politique de la concurrence et lutte contre la pauvreté ; l'impact en théorie et en pratique de la politique de la concurrence sur les consommateurs pauvres, et cet impact est-il négatif pour certains pauvres ; l'impact en théorie et en pratique de la politique de la concurrence sur les petits entrepreneurs pauvres, ou la facilité avec laquelle les pauvres peuvent créer une entreprise ; les mérites comparés des interventions publiques, par exemple sous la forme de prix réglementés ou de subventions, et du droit de la concurrence pour venir en aide aux pauvres ; l'intérêt pour les autorités de la concurrence à privilégier les mesures qui aident à faire reculer la pauvreté ; la possibilité d'envisager ou non une politique ou un droit de la concurrence au service des pauvres dans les pays où la pauvreté est un problème majeur. Le professeur Winters est invité à prendre la parole sur le premier de ces sous-thèmes.

2.2 Ce qu'on entend par pauvreté

2.2.1 Communication du professeur Alan Winters, Université du Sussex, Royaume-Uni

Le Professeur Winters fait remarquer que lorsqu'on parle de pauvreté, il est important d'en avoir une idée claire. Pour être utile, le concept doit pouvoir être défini et mesuré. La pauvreté, ce n'est pas la même chose que l'inégalité, et la pauvreté peut être absolue ou relative. Une mesure simple pourrait être un niveau minimum défini en termes d'alimentation et de logement en deçà duquel la survie n'est pas possible ou seulement dans des conditions inacceptables. Mais les pauvres ont aussi besoin de sécurité, physique et économique. Pour les pays en développement, la notion de pauvreté absolue est celle qui convient. Il est essentiel de disposer de données précises et à jour pour formuler des politiques. Une mesure synthétique de la pauvreté telle que la proportion de la population se situant au-dessous d'un certain seuil est trop approximative car elle ne dit pas quelle est la distance qui sépare en moyenne les ménages pauvres du seuil en question. L'écart de pauvreté au carré calculé pour l'ensemble de ce groupe est un meilleur indicateur.

La pauvreté frappe des individus, mais au moment de faire des choix politiques, les moyennes sont importantes. La politique de la concurrence n'a pas le même impact au niveau macroéconomique et au niveau individuel. De ce point de vue, elle ressemble à la politique commerciale. La réduction des obstacles aux échanges internationaux accélère la croissance, mais il y a des perdants, y compris parmi les pauvres. Il est impossible de dire qu'il n'y aura pas de perdants ; un choix s'impose. L'impact sur la pauvreté dépend surtout de l'emploi – qui sont ceux qui perdent ou trouvent un emploi – et, dans une moindre mesure, de l'évolution des salaires. Au niveau individuel, les salaires augmentent ou diminuent généralement dans de faibles proportions ; en revanche, on a un emploi ou on n'en a pas. Pendant la phase de transition qui conduit à des niveaux de revenu moyens plus élevés grâce à une plus grande efficience, on observe une modification de la répartition des revenus qui ne va pas nécessairement dans le sens d'une plus grande égalité.

2.2.2 Communication de M. David Lewis

M. Lewis dit que la concurrence, qu'elle soit bonne ou mauvaise, est omniprésente et qu'elle a des incidences dans tous les domaines, y compris la pauvreté. L'ouverture des marchés a permis à des millions de personnes de sortir de la pauvreté et jeté les bases de la prospérité individuelle et nationale. Mais une libéralisation rapide, comme en Russie, a entraîné des hausses de prix brutales et massives, et aggravé la pauvreté. En Chine, des millions de personnes sont sorties de la pauvreté absolue grâce à la libéralisation des marchés, mais celle-ci accroît peu à peu les inégalités. La Corée du Sud offre un exemple de capitalisme d'État florissant qui protège sur le marché national les entreprises performantes à l'étranger. En Afrique du Sud, on a fait en sorte que les prix de l'électricité restent bas pour subventionner le secteur minier, mais ils sont trop bas aujourd'hui pour justifier l'investissement dans de nouvelles installations de production. Si on laisse les prix augmenter, les ménages pauvres des zones rurales ne pourront pas bénéficier du programme d'électrification. Dans de nombreux pays à faible revenu et à revenu intermédiaire, où les prix de certains produits de première nécessité sont réglementés ou subventionnés, la concurrence a forcément des retombées négatives pour les pauvres.

Est-ce la concurrence ou l'absence de concurrence qui est à l'origine de la pauvreté et des inégalités ? Pour M. Lewis, la pauvreté est le produit de trois facteurs : le chômage et le bas niveau des salaires ; des services publics coûteux et de mauvaise qualité ; l'impossibilité d'accéder à des revenus non salariaux dans le secteur informel. La politique de la concurrence n'est pas spécifiquement axée sur les marchés du travail, mais un faible degré de concurrence sur les marchés des biens et services de base crée un plancher sous les salaires et peut se traduire par un chômage élevé. Pour des raisons analogues, l'ouverture à la concurrence des marchés publics et la privatisation des marchés de biens et services peuvent faire baisser les prix. Mais les pauvres sont extrêmement dépendants du secteur public pour la fourniture de biens et de services, par exemple dans le domaine de la santé, et à mesure que l'offre se déplace vers le secteur privé, ils perdent de leur influence politique. De même, la politique de la concurrence peut être utile pour encourager les petites entreprises du secteur informel à passer dans le secteur formel. En règle générale, dans le secteur formel, les PME sont confrontées à des difficultés d'accès au marché et à des obstacles réglementaires, mais elles souffrent aussi de la concurrence des PME du secteur informel.

2.2.3 Interventions de l'auditoire : Zambie, BIAC, Tunisie, Roumanie, Maroc

Un délégué de la Zambie évoque la situation du marché du sucre dans son pays. L'enrichissement obligatoire du sucre en vitamine A, le niveau élevé des prix et la concentration du marché font obstacle à l'entrée des importations. L'autorité de la concurrence a lancé une étude régionale sous les auspices du Forum africain sur la concurrence. Elle cherche une solution et compte surtout à cet égard sur son rôle pédagogique.

Un délégué du BIAC fait observer qu'une concurrence accrue peut aider les pays en développement à lutter contre la corruption, l'opacité de l'action gouvernementale et les relations de connivence qui peuvent exister entre les acteurs publics et les entreprises en place. Une vigoureuse politique de la concurrence est un signal qui fait comprendre aux entreprises en infraction que les acteurs marginalisés peuvent se défendre de leurs agissements. Il faut des dirigeants déterminés mais aussi le soutien des entreprises pour que la législation soit appliquée. Une plus grande transparence dans le secteur public renforcera la confiance et aidera à attirer les investissements directs de l'étranger. Le BIAC soutient l'OCDE dans sa détermination à lutter contre la corruption. C'est bon pour les consommateurs et bon pour les gouvernements.

Un délégué de la Tunisie indique que son pays doit s'affranchir du lourd héritage de corruption laissé par le précédent régime. À titre d'exemple, le Fonds de solidarité nationale censé financer des projets de réduction de la pauvreté était en fait détourné de son but. Il se caractérisait par des procédures opaques de

passation des marchés et ses résultats, s'il y en a, sont tout au plus médiocres. Le nouveau gouvernement essaye de lutter contre la corruption, qui est souvent symptomatique d'une concurrence insuffisante. La politique de la concurrence aide à combattre la corruption, et elle aide les pauvres. L'autorité tunisienne de la concurrence impose de lourdes sanctions aux entreprises qui enfreignent la législation dans ce domaine.

Un délégué de la Roumanie évoque deux affaires intéressant le secteur pharmaceutique. L'autorité de la concurrence avait mené une enquête sur des soupçons de collusion dans l'attribution de marchés publics portant sur la fourniture d'insuline et de produits de dialyse. Dans les deux cas, il n'y avait pas eu d'appel d'offres au niveau national après l'arrivée à expiration d'un précédent contrat ; la situation était justifiée par l'argument de la sécurité des approvisionnements, mais les obstacles à l'entrée qui en ont découlé ont été jugés abusifs. Le développement de la concurrence conduit à faire baisser les prix, ce qui est bon pour les consommateurs pauvres. Les autorités roumaines ont adopté le *Manuel pour l'évaluation de la concurrence* mis au point par l'OCDE. Il est important que les autorités de la concurrence interviennent à un stade précoce face à un éventuel problème de concurrence, mais elles ne peuvent le faire que si leurs services sont sollicités. L'autorité roumaine de la concurrence s'efforce de procéder à des évaluations d'impact sur la concurrence lors du processus d'élaboration des politiques publiques et, le cas échéant, de proposer d'autres solutions que les mesures envisagées.

Un délégué du Maroc déclare qu'il est difficile d'expliquer comment la concurrence peut contribuer à lutter contre la pauvreté. Dans son pays, le taux de pauvreté absolue est d'environ 8.9 % et le taux de pauvreté relative, de 28 %. La pauvreté s'exprime aussi dans le fait que les citoyens les plus défavorisés éprouvent du ressentiment à l'égard des riches à cause de leur mode de vie, et ont le sentiment d'être victimes d'une discrimination. Beaucoup estiment que la concurrence et les mécanismes de marché n'ont pas aidé les pauvres. Une étude a montré que les dispositifs de soutien des prix profitaient surtout aux plus aisés, mais les réformes proposées se sont avérées impopulaires parce que les gens étaient convaincus qu'il y aurait de toute façon des financements illicites et que les aides directes en faveur des démunis étaient nécessaires.

2.3 Effet de la concurrence sur les consommateurs pauvres

Le Président rappelle que la relation entre concurrence et pauvreté est éminemment complexe, que les politiques visant à réduire la pauvreté peuvent avoir une incidence sur la concurrence et *vice versa*, que l'application du droit de la concurrence peut créer de nouvelles poches de pauvreté même si ses effets à long terme sont bénéfiques, et que la politique de la concurrence n'est donc pas un instrument permettant de lutter directement contre la pauvreté. Les autorités de la concurrence ont du mal à expliquer aux ministres et à l'opinion publique comment la politique de la concurrence peut atténuer la pauvreté.

Le Président invite ensuite Mme Cécile Fruman, de la Banque mondiale, à prendre la parole devant les participants au Forum.

2.3.1 Communication de Mme Fruman

Mme Fruman déclare que la lutte contre la pauvreté est un thème central des activités de la Banque mondiale. Le pari à relever est de permettre à des milliards de personnes de sortir de la pauvreté en créant des emplois et en encourageant une croissance des revenus au bénéfice des plus démunis. D'après les simulations effectuées par la Banque, cet objectif pourrait être atteint dans 15 à 50 ans, ce qui peut paraître très long. Il est important de chercher à rendre les marchés fréquentés par les pauvres plus efficients en favorisant la concurrence, et l'innovation est un facteur clé à cet égard. Le secteur privé, y compris les microentreprises du secteur informel, est vital pour la création d'emplois, mais s'il y a des avantages à le promouvoir, il y a aussi des inconvénients tels que les risques de collusion.

La concurrence n'est pas en soi une "arme magique", elle fait partie de toute une palette de politiques de soutien. Mais il est vrai que les travailleurs bénéficient de la levée des barrières à l'entrée. Les marchés anticoncurrentiels sont préjudiciables aux consommateurs pauvres, surtout pour les produits qui représentent une lourde charge dans leur budget. Prenons par exemple le marché du sucre au Kenya. Les pratiques anticoncurrentielles qui y ont cours sont particulièrement dommageables pour les pauvres dont la demande est peu élastique et qui dépensent une bonne fraction de leur revenu pour acheter du sucre. Toujours au Kenya, le marché du pyrèthre est un autre exemple : il est contrôlé par le secteur public à travers un fournisseur unique. De ce fait, le pays a vu sa part du marché mondial diminuer de 75 % depuis 30 ans. La politique de la concurrence et son application devraient se concentrer sur les secteurs clés de l'économie, s'accompagner d'évaluations rapides et s'articuler avec les autres politiques. La pédagogie et la communication, dans le but de montrer que les interventions des autorités de la concurrence sur les marchés de certains biens essentiels ont des retombées positives pour les pauvres, sont importantes pour rallier le soutien des gouvernements et de l'opinion publique.

2.3.2 Communication de Mme Susan Lonie, consultante spécialisée dans les systèmes de paiement mobile

Mme Lonie explique qu'elle a participé à la mise en place de services de transfert de fonds via le téléphone portable dans le contexte du développement des applications de la téléphonie mobile, d'abord au Kenya avec M-PESA puis dans d'autres pays. Des services comme M-PESA sont spécialement conçus pour les populations pauvres des pays émergents. Il ne s'agit pas de services bancaires mobiles ; au contraire, la clientèle visée est la population qui n'a pas de compte en banque, qui n'a souvent pas de revenus réguliers et qui ne possède pas les papiers nécessaires pour ouvrir un compte. Beaucoup d'utilisateurs vivent dans des zones rurales reculées, alors que les succursales des banques se trouvent généralement dans les villes. Il n'est pas facile de vivre dans une économie où les règlements se font en liquide, et c'est en plus très risqué, surtout pour les femmes en milieu urbain et pour les ruraux. Auparavant, lorsqu'on voulait envoyer une petite somme à quelqu'un dans son village d'origine, il fallait parfois confier l'argent à un conducteur de bus en espérant qu'il s'arrêterait bien à l'endroit indiqué. Aujourd'hui on peut transférer de l'argent avec son mobile en Afrique, parce qu'une grande majorité de la population possède un téléphone portable ; ainsi, les deux tiers des adultes au Kenya sont abonnés à des services de paiement mobile.

Le modèle économique repose sur la mise en place d'un réseau d'agents, par exemple des stations-service ou des points de vente, qui débitent le payeur et créditent le bénéficiaire des fonds, le transfert se faisant par message sécurisé au moyen d'une application. L'opérateur prélève une petite commission sur chaque transaction. Les services de paiement mobile ont connu un très grand succès ; on compte aujourd'hui 170 opérateurs et une centaine d'autres devraient rejoindre le réseau. La concurrence entre les opérateurs de téléphonie mobile fait pression sur les prix, mais il y a des problèmes d'interopérabilité.

Le déploiement des services de transfert de fonds sur mobile s'est heurté à l'opposition des banques au Kenya, mais le ministère des Finances n'est pas intervenu et la banque centrale a donné son feu vert. Aujourd'hui, certains banques kenyanes sont devenues partenaires du réseau M-PESA et remplissent la fonction d'agent. Dans d'autres pays aussi il a fallu faire face à l'hostilité du secteur bancaire, pour la raison principalement que les paiements mobiles sont perçus par les banques comme des services bancaires qui échapperaient à la réglementation. Au Nigeria, seules les banques sont autorisées à offrir des services de transfert de fonds par mobile, et leur introduction en Inde est différée depuis quatre ans. À plus long terme, la concurrence entre opérateurs mobiles et avec les banques bénéficiera aux consommateurs. La réglementation est nécessaire, mais elle doit être bien conçue.

2.3.3 Communication du Mexique

Un délégué du Mexique dit que les monopoles entravent la concurrence, mais peuvent aussi nuire à l'équité. Les ententes se traduisent par des majorations de prix de 20 % ou plus, et par des pertes statiques de bien-être qui peuvent représenter jusqu'à 13 % du PIB. L'absence de concurrence réduit aussi les incitations à l'efficience et à l'innovation, et elle bride la croissance. Ses effets sur la répartition des revenus ont été moins étudiés. En 1975, Comanor et Smiley ont conclu que l'existence passée et présente de monopoles avait eu un impact majeur sur la répartition du patrimoine et du bien-être des ménages. Une étude récente de Carlos Urzia, de la Commission fédérale mexicaine de la concurrence, met également en évidence des effets négatifs importants sur l'équité. À propos des effets redistributifs et des effets régionaux du pouvoir de monopole sur les marchés des produits alimentaires de base et des médicaments, le délégué indique que les pertes de bien-être découlant du pouvoir de monopole sont plus marquées pour les ménages à faible revenu au niveau régional. En outre, plus la région est pauvre, plus les effets négatifs sont importants. Ces résultats aident à orienter la politique de la concurrence de manière à lutter contre la pauvreté. Dans le cas des produits pharmaceutiques, les réformes ont permis de faire une économie de 30 milliards USD sur l'argent du contribuable en l'espace de trois ans. Dans certaines régions, les producteurs de volaille et de *tortillas* ont dû payer de lourdes amendes. Mais d'autres politiques publiques, par exemple les obstacles au commerce, les subventions et les procédures de passation des marchés publics mal conçues peuvent avoir des effets négatifs.

Le Président pose la question de savoir si les autorités de la concurrence devraient s'intéresser plus spécialement aux marchés locaux dont dépendent les consommateurs pauvres. Il invite David Lewis, de Corruption Watch (Afrique du Sud), à prendre la parole sur ce sujet.

2.3.4 Intervention de M. David Lewis

M. Lewis précise tout d'abord, comme il est indiqué dans la contribution écrite de l'Afrique du Sud, que la politique de la concurrence est le reflet d'un contexte national particulier, d'un héritage historique et de choix collectifs concernant les mécanismes du marché, et qu'elle doit être en accord avec les objectifs nationaux. C'est l'exercice d'une forme d'autonomie inscrite dans l'environnement sociétal : l'organisme qui en a la charge est intégré dans la société et il répond à ses besoins, tout en étant indépendant des intérêts particuliers.

En Afrique du Sud, les politiques publiques ont pendant longtemps servi à protéger le secteur minier, lui permettant ainsi de dégager des rentes aux dépens du reste de l'économie. Elles visaient aussi à limiter la concurrence de façon générale. Il en a résulté une baisse du niveau de vie des pauvres, et la pauvreté s'est transmise de génération en génération, principalement du fait de l'absence de possibilités d'emploi. Dix-huit années se sont déjà écoulées depuis la fin de l'apartheid et près de la moitié de la population a encore un revenu d'à peine 3 à 4 dollars par jour. Il est difficile d'isoler l'impact de la politique de la concurrence sur la pauvreté : il y a des effets à court et à long terme, et de multiples facteurs contribuent à la formation des prix, dont certains n'ont rien à voir avec la concurrence. Il est rare que les autorités de la concurrence étudient spécifiquement l'impact de la politique de la concurrence sur la situation des pauvres.

La politique de la concurrence a pour but de renforcer la concurrence et d'améliorer l'emploi en permettant aux PME de pénétrer sur le marché. Une concurrence plus vive permet aussi de rendre les exportations plus compétitives. Mais eu égard au contexte national et au niveau de pauvreté, l'autorité de la concurrence sud-africaine privilégie les interventions qui ont une incidence sur le revenu des pauvres, par exemple sur les marchés agricoles, notamment dans le domaine des intrants. Une analyse de la filière du blé a montré que celle-ci était entre les mains d'une poignée d'entreprises en situation dominante. Des amendes leur ont été infligées et elles ont réduit leurs prix. Les prix du pain ont baissé pendant un certain temps, mais ils ont de nouveau augmenté avec la hausse des cours mondiaux du blé.

En Afrique du Sud, le taux de chômage est proche de 70 % dans le décile des revenus les plus bas, et les politiques publiques mettent l'accent sur la création d'emplois. L'affaire Walmart témoigne de cette préoccupation. L'arrivée de la chaîne américaine dans le secteur de la distribution devait renforcer la concurrence, faire baisser les prix et permettre l'ouverture de magasins d'alimentation dignes de ce nom dans des zones jusque-là mal desservies. Mais les éventuelles retombées négatives sur l'emploi informel et la concurrence des importations à laquelle allaient être confrontés les producteur nationaux suscitaient des inquiétudes. L'opération a finalement été autorisée sous réserve de certaines clauses de sauvegarde de l'emploi et de conditions de financement d'autres arrivants.

On voit par là que l'application de la politique de la concurrence fait des perdants et des gagnants, surtout à court terme, et que certains des perdants sont des pauvres. Le problème qui se pose est celui de savoir comment gérer la transition vers le long terme pour que les pauvres ne perdent pas leurs moyens d'existence. Les ONG et la société civile souhaiteraient que les autorités de la concurrence fassent davantage pour combattre la pauvreté, tandis que les entreprises préféreraient les voir se concentrer uniquement sur les questions de consommation. La politique de la concurrence n'est qu'un instrument parmi d'autres pour lutter contre la pauvreté ; il faut aussi améliorer les qualifications et l'accès aux services financiers.

2.3.5 Intervention de CUTS[747]

Un délégué de CUTS estime que la politique de la concurrence n'est qu'un instrument pour stimuler la croissance et créer des emplois, et que son utilisation ne se limite pas aux pays riches. On observe aussi des situations de concentration du pouvoir économique, parfois délictueuses, dans les pays en développement, par exemple dans le secteur des transports. La politique de la concurrence peut apporter des solutions, mais elle a des effets à court et à long terme ainsi que des effets directs et indirects. Les filets de sécurité et les bons d'achat peuvent aider à faire reculer la pauvreté, et ils ont l'avantage de ne pas être liés à un système de distribution public. Il faut aussi bien comprendre qu'inégalité et pauvreté sont deux choses différentes, et que l'éradication de la pauvreté ne fera pas nécessairement disparaître les inégalités.

L'existence d'une position dominante sur le marché fait obstacle à l'entrée de petites entreprises du secteur informel. On peut citer à titre d'exemple le projet de fusion entre deux producteurs de volaille en Zambie, qui risque d'évincer les vendeurs au bord des routes, ou encore le cas du fabricant de chaussures Bata, en Inde, qui interdit à ses petits fournisseurs de vendre leurs produits directement aux clients ou à des concurrents. Dans de très grands pays comme l'Inde ou le Mexique, il faut en matière de concurrence une législation et des autorités au niveau local ; un organisme unique ayant son siège dans la capitale n'est pas la meilleure solution. La pédagogie peut être très utile en présence de pratiques qui ne sont pas véritablement illégales, mais qui entravent malgré tout la concurrence.

Les objectifs de la politique de la concurrence ne sont pas tout à fait les mêmes dans les pays en développement et dans les pays avancés, où l'accent est davantage mis sur le bon fonctionnement des marchés. Dans les pays en développement, la dimension du développement doit nécessairement être prise en compte, et les autorités de la concurrence doivent vendre leurs idées aux gouvernements et aux parlements en mettant en avant le potentiel de gains en termes de revenu ainsi que les importantes pertes de bien-être causées par l'insuffisance de concurrence. CUTS prévoit de lancer une étude consacrée aux effets de la concurrence sur la répartition des revenus, afin de dresser un bilan des gains et des pertes susceptible d'être utilisé pour défendre le dossier de la concurrence auprès des ministères des finances, de la planification et du budget.

Le Président invite les experts du panel à faire part de leurs commentaires.

[747] Consumer Unity & Trust Society.

2.3.6 Commentaires des membres du panel : M. David Lewis, le Professeur Fox, le Professeur Winters

M. David Lewis fait remarquer qu'il y a une interaction entre le marchés des produits et du travail. En Afrique du Sud, les prix élevés des produits alimentaires de base mettent un plancher sous les salaires et cela se traduit par du chômage. Le marché de la bière est monopolisé et les salariés y sont bien payés, mais ils sont peu nombreux du fait de la mécanisation. Certains monopoles publics, par exemple dans les transports et les télécommunications, partagent les rentes avec leurs salariés sous la forme de sureffectifs. Dans ces cas-là, les salariés ont intérêt à préserver le monopole. Les marchés des biens de consommation courante se caractérisent eux aussi par une faible concurrence, et il serait bon que les autorités de la concurrence les considèrent comme un domaine d'action prioritaire.

Le Professeur Fox (Faculté de droit de l'Université de New York) dit que les restrictions publiques qui pèsent sur les échanges et les réglementations anticoncurrentielles sont les principales causes des prix élevés et qu'elles limitent les possibilités offertes aux pauvres, mais de nombreuses autorités de la concurrence les considèrent comme ne relevant pas directement de leur action. Dans un contexte différent, il y a des limites à ce que peut faire la politique de la concurrence contre les concentrations excessives, et l'égalisation des règles peut se traduire par une baisse d'efficacité. Il y a un équilibre à trouver.

Le Professeur Winters demande en quoi consiste exactement le domaine d'application de la politique de la concurrence. Pour lui, les autorités de la concurrence devraient s'occuper uniquement de concurrence. Elles peuvent être sensibles à l'impact de cette politique sur l'emploi et le développement, mais elles n'ont pas à en tenir compte. Si la politique de la concurrence a des retombées négatives pour certains pauvres, c'est à d'autres politiques qu'il convient de faire appel pour y remédier.

Le Président note que dans les pays développés, les autorités de la concurrence peuvent se concentrer sur la concurrence, mais que dans les pays en développement, elles doivent avoir une légitimité par rapport à un plan d'ensemble pour que leur avis soit pris en compte. Ainsi, dans certains pays en développement, le gouvernement a décidé que si l'autorité de la concurrence ne pouvait rien faire contre le prix élevé du blé, il imposerait des mesures de contrôle des prix ou des exportations. Dans les pays où l'application du droit de la concurrence n'a pas une longue histoire, il est indispensable que l'action des autorités de la concurrence soit perçue comme étant utile.

2.3.7 Interventions de l'auditoire : Île Maurice, États-Unis

Un délégué de l'Île Maurice note que selon la Banque mondiale, il est possible que la concurrence ait des effets négatifs à court terme, or les hommes politiques sont très intéressés par le court terme, et beaucoup moins par le long terme. Les autorités de la concurrence ne peuvent pas s'occuper de tout, et la pédagogie est importante pour expliquer aux gouvernements et aux citoyens quels sont les avantages de la concurrence. Si chacun s'employait à faire ce pour quoi il est le plus compétent, le monde se porterait mieux.

En réponse à un commentaire formulé précédemment, un délégué des États-Unis dit que le Congrès consulte parfois la FTC (Federal Trade Commission) lorsque les prix de l'énergie sont élevés ou sujets à des fluctuations, et que les spécialistes de la FTC se penchent alors sur le secteur de l'énergie à la recherche d'éventuelles distorsions susceptibles de gonfler les prix. En 1979, des restrictions ont été adoptées et de longues queues se sont formées. La suppression du contrôle des prix du gaz naturel dans les années 80 a permis d'accroître l'offre et de faire baisser les prix.

2.3.8 Résumé de la discussion du matin et nouvelles interventions de l'auditoire : Kenya, République tchèque, États-Unis

Après le déjeuner, le président rappelle l'un des thèmes du matin, à savoir que les autorités de la concurrence devraient s'attacher à faire respecter le droit de la concurrence et non chercher à réduire la pauvreté, et qu'il y a eu des cas où l'application des règles a permis l'innovation ou eu des avantages directs pour les consommateurs. Mais d'autres délégués étaient convaincus qu'il est possible d'appliquer le droit de la concurrence de manière à répondre aux préoccupations suscitées par la pauvreté. De plus, en matière de concurrence, il est arrivé que l'application de la législation aggrave la situation des pauvres, par exemple lorsque le contrôle des prix sur les logements a été aboli en République tchèque. Il donne la parole à la salle pour de nouvelles interventions sur ce point.

Un délégué du Kenya dit que son pays effectue actuellement une étude, en coopération avec la Banque mondiale, pour quantifier l'impact du droit de la concurrence, en particulier dans les domaines qui concernent les pauvres. Au Kenya, par exemple, le transport routier de voyageurs est assuré par des bus et par des minibus. Ces derniers, appelés "matatus", sont très largement utilisés par les pauvres, qui s'en servent aussi pour transporter leurs marchandises, et ils appartiennent généralement à de petits entrepreneurs pauvres. Un matatu coûte environ 5.000 dollars à l'achat. Au début des années 70, les grandes compagnies de bus ont accusé les matatus de concurrence déloyale, mais leurs arguments ont été rejetés, et l'on compte aujourd'hui environ 40.000 de ces minibus. Dans un premier temps, les matatus étaient en concurrence les uns avec les autres, mais leurs propriétaires se sont peu à peu regroupés pour augmenter les prix, se répartir les itinéraires et empêcher l'accès au marché. Suite à l'intervention de l'autorité de la concurrence, les tarifs se sont modérés, de nouveaux concurrents sont arrivés et cela a amélioré la situation des pauvres.

Un délégué de la République tchèque reconnaît que l'application du droit de la concurrence peut entraîner une détérioration pour les pauvres, comme cela s'est produit, par exemple, dans son pays après la suppression du contrôle des loyers en 2006. La République tchèque ne se considère pas comme un pays pauvre, mais la libéralisation du marché du logement aurait pu se faire différemment si l'autorité de la concurrence avait été consultée.

Un délégué des États-Unis cite une étude du McKinsey Global Institute, qui a duré 12 ans et dont la conclusion est que la croissance dépend de la concurrence ; en l'absence de concurrence, les entreprises inefficaces restent en place au lieu d'être éliminées au profit d'entreprises plus efficaces. De même, un *Rapport sur le développement dans le monde* fait la constatation que les marchés aident les pauvres à vendre leur travail et leurs produits pour financer l'investissement. L'important n'est pas seulement l'application de la loi, c'est aussi d'avoir une culture de la concurrence dans l'économie. Dans leur contribution écrite, les États-Unis évoquent des interventions sur le marché qui ont été bénéfiques pour les pauvres dans le domaine des soins hospitaliers, des produits pharmaceutiques et de l'énergie.

2.3.9 Questions et réponses concernant les services de paiement mobile : Namibie, Bénin, Congo

Un délégué de la Namibie voudrait savoir quel a été le rôle de Mme Lonie dans la mise au point du cadre réglementaire des paiements mobiles, car ce type de réglementation n'existe pas dans plusieurs pays. Un délégué du Bénin demande si des critères ont été appliqués pour le choix des pays dans lesquels les services de transferts de fonds sur mobile ont été déployés, et un délégué du Congo indique que le système est désormais disponible dans son pays. Mais comment les fournisseurs de microcrédit ont-ils réagi à l'introduction des paiements mobiles ?

Mme Lonie répond qu'elle-même n'intervient pas en tant que régulateur, mais elle sait comment le système fonctionne et elle a rencontré des régulateurs pour leur donner des conseils. Les pauvres

économisent beaucoup de temps et d'argent grâce aux virements par SMS, et comme il s'agit le plus souvent de petites sommes d'argent, les risques sont faibles ; il n'est donc pas nécessaire de mettre en place une réglementation très contraignante, comme cela serait le cas pour des établissements bancaires classiques. Elle a récemment rencontré un opérateur de télécommunications béninois qui projette de lancer un service de paiement mobile dans son pays. S'agissant de la microfinance, l'objectif initial de M-PESA au Kenya était de permettre aux gens de rembourser des microcrédits, mais on s'est aperçu que beaucoup d'autres applications étaient possibles. Certaines institutions de microfinance utilisant des technologies avancées proposent des services de paiement mobile pour attirer une nouvelle clientèle et développer leurs activités de prêt. D'autres estiment qu'il est trop difficile d'exploiter en parallèle un système papier et un système électronique.

2.4 Impact de la concurrence sur les petits entrepreneurs pauvres

2.4.1 Communication de M. Qaqaya

M. Qaqaya présente tout d'abord les activités de la CNUCED dans les domaines de la politique de la concurrence et du développement. Pour la CNUCED, le développement économique et la réduction de la pauvreté sont les objectifs ultimes et la concurrence est un objectif intermédiaire. La politique de la concurrence couvre un champ plus vaste que le droit de la concurrence. Du fait des caractéristiques des marchés, des contraintes juridiques et des problèmes pratiques, la politique et le droit de la concurrence sont plus difficiles à mettre en œuvre dans les pays en développement, où ils sont particulièrement nécessaires, que dans les pays avancés. Les marchés informels sont plus développés, la taille des marchés est plus réduite, les coûts de transaction et les barrières à l'entrée sont élevés, il n'y pas de culture de la concurrence et de graves problèmes d'économie politique. Il retient que la discussion a porté jusqu'ici sur l'extrême pauvreté, c'est-à-dire sur le milliard et quelque de personnes dont le revenu est inférieur au seuil de 1,25 dollar par jour. Une approche fondée sur le marché a peu de chance d'aider vraiment les plus pauvres qui vivent dans une large mesure en dehors de l'économie de marché et qui n'ont pas toujours un revenu monétaire. Pour eux, les politiques traditionnelles de lutte contre la pauvreté sont plus importantes. Mais il y a aussi environ 4 milliards de pauvres dans le monde dont le revenu est compris entre 2 et 4 dollars par jour, qui ne sont pas intégrés dans les marchés mondiaux et qui payent cher pour les communications, les transports et d'autres biens et services. Ceux-là bénéficieraient d'une approche de la lutte contre la pauvreté fondée sur le marché dans laquelle la politique de la concurrence pourrait jouer un rôle majeur.

Les pauvres sont aussi des producteurs, souvent dans le secteur informel, où les marchés sont probablement inefficaces et non concurrentiels. Ces marchés bénéficieraient de l'arrivée d'entreprises du secteur formel et cela rehausserait le bien-être des consommateurs. L'accès aux soins de santé de base et aux produits pharmaceutiques est aussi un facteur de bien-être. La téléphonie mobile et l'innovation financière peuvent accroître la productivité, les salaires et l'emploi en facilitant les remises de fonds des migrants et en créant des emplois dans l'industrie du tourisme.

2.4.2 Interventions de l'auditoire : Pakistan, Papouasie-Nouvelle-Guinée, Bénin, Maroc, Pakistan

Un délégué du Pakistan dit qu'il est nécessaire d'établir un lien entre le programme de lutte contre la pauvreté et le droit de la concurrence ainsi que la façon dont il est appliqué dans son pays. Il y a trois catégories de pauvres : les indigents, qui sont incapables de subvenir à leurs besoins les plus élémentaires ; ceux qui se trouvent dans une situation transitoire de pauvreté à cause d'un revers de fortune, et ceux qui sont relativement pauvres parce que leur revenu est inférieur à une certaine proportion du revenu national moyen et qu'ils n'ont pas accès dans des conditions satisfaisantes aux services de santé, à l'éducation et aux possibilités de mobilité verticale.

Pour les plus pauvres d'entre les pauvres, M. Amartya Sen insiste sur l'importance des programmes qui créent un environnement dans lequel les gens mènent une vie valorisante et ont des possibilités de changement. La politique de la concurrence peut compléter d'autres politiques en luttant contre la corruption et la recherche de rente, par exemple contre la constitution d'ententes sur les marchés des biens de première nécessité, les soumissions concertées ou les techniques de vente qui forcent les gens à acheter des produits dont ils n'ont pas besoin. Au Pakistan, la législation de la concurrence résulte d'accords passés avec le FMI et la Banque mondiale sur un programme de lutte contre la pauvreté axés sur une croissance largement partagée, une meilleure gouvernance, le capital humain et le ciblage des pauvres et des catégories vulnérables. L'autorité de la concurrence est intervenue en 2008 pour défendre les petits épargnants contre la fixation des taux d'intérêt par les banques. Dans un autre cas, elle a contraint une université qui obligeait tous les nouveaux étudiants à acheter un type particulier d'ordinateur portable à faire cesser cette pratique.

Un délégué de la Papouasie-Nouvelle-Guinée dit que l'introduction de la téléphonie mobile dans son pays a été le fruit d'une campagne active menée par le Trésor et la Commission indépendante chargée de la consommation et de la concurrence. C'est un bienfait pour la population rurale, car les producteurs de fruits et de légumes ont pu accroître ainsi leur pouvoir de négociation avec les intermédiaires, mais toute la population profite aussi des nouvelles possibilités d'activité rémunératrice offertes par cette technologie, ainsi que d'un meilleur accès aux services bancaires de base. Eu égard aux effets positifs de la concurrence sur le développement, les donateurs devraient peut-être envisager de financer directement les autorités de la concurrence pour les aider dans leur travail.

Un délégué du Bénin estime que si la concurrence est un outil de développement, c'est aussi une arme à double tranchant. Avant d'ouvrir les marchés à la concurrence et de mettre en place de nouvelles règles dans ce domaine, il faut donner le temps aux petits producteurs existants de faire la chasse aux facteurs d'inefficience, car ils sont moins à même que les grandes entreprises de faire face à une baisse de la demande ou à des retards de paiement de la part de leurs clients, et ils ont un accès limité au crédit. S'ils perdent leur revenu, ils ne pourront plus nourrir leurs familles. Les encourager à se regrouper pour acheter des équipements à moindre coût et étaler les remboursements sur de plus longues périodes serait une solution. Les pouvoirs publics pourraient aussi offrir des possibilités de formation.

Un délégué du Maroc reconnaît qu'en abaissant les barrières à l'entrée, la concurrence aide les PME, mais celles-ci ont tout de même du mal à affronter la concurrence des grandes entreprises. On pourrait envisager d'augmenter les aides publiques en leur faveur pendant un certain temps.

Un délégué du Pakistan déclare que la remarque du délégué du Bénin montre bien que la question de savoir si la politique de la concurrence contribue à réduire la pauvreté peut être envisagée sous deux angles différents. Il ajoute que la concurrence doit aussi s'exercer dans le secteur public, et que si les autorités de la concurrence élargissent trop leur point de vue, en s'intéressant aux questions de redistribution et de pauvreté, elles risquent de se disperser. Les pouvoirs publics doivent agir sur de nombreux leviers, par exemple les marchés de capitaux, le secteur privé, le cade réglementaire, les filets de sécurité, la santé, l'éducation, chacun correspondant à un point de vue particulier, pour obtenir les meilleurs résultats possibles.

2.4.3 Intervention de l'Organisation mondiale du commerce

Un délégué de l'OMC précise que la question des rapports entre réduction de la pauvreté et politique de la concurrence est importante, mais pas aussi compliquée que certains le laissent penser. La politique de la concurrence doit tenir compte des besoins des producteurs pauvres ainsi que des consommateurs pauvres, et les producteurs sont aussi des consommateurs d'intrants. Dans les pays en développement, les marchés des intrants font souvent l'objet d'ententes, y compris au niveau international, et les autorités de la

concurrence peuvent jouer un rôle positif en concentrant leurs efforts sur ces marchés, ainsi que sur les marchés des transports ou des infrastructures. Les marchés publics, eux aussi, sont souvent limités à un petit nombre d'entreprises, seules autorisées à soumissionner. C'est ainsi que les services publics de santé, de transport et d'éducation deviennent plus coûteux. S'il est vrai que l'application de la politique de la concurrence dans des secteurs jusque-là protégés peut faire des perdants, ainsi que des gagnants, et que certains des perdants sont des pauvres, ou vont le devenir, la solution consiste à renforcer les filets de protection sociale, pas à remettre en question les principes de la concurrence. La politique de la concurrence n'est qu'un instrument parmi d'autres pour lutter contre la pauvreté, mais c'est un instrument important.

2.4.4 Interventions du Sénégal, de la Corée et du Brésil

Un délégué du Sénégal dit que même si l'intensification de la concurrence avantage parfois les riches, l'absence de concurrence a un impact négatif. Au Sénégal, par exemple, les grandes banques font payer des taux d'intérêt prohibitifs aux petits producteurs. L'absence de concurrence dans le secteur a donc des effets négatifs pour les producteurs pauvres. Le délégué mentionne aussi plusieurs exemples d'effets positifs d'une concurrence accrue sur la situation des pauvres. Sur le marché de l'arachide, l'une des grandes cultures du pays, les prix étaient fixés par l'État, mais ils ont été déréglementés, ce qui a permis aux petits planteurs pauvres de vendre leur production aux prix du marché mondial, plus élevés. De même, la concurrence entre les opérateurs de téléphonie mobile a créé des revenus pour les vendeurs de cartes prépayées. Les services de paiement mobile ont fait baisser le coût des transferts de fonds, et grâce à la concurrence, les hommes d'affaires peuvent tirer parti des possibilités d'arbitrage.

Un délégué de la Corée dit qu'il peut y avoir un lien entre concurrence et réduction de la pauvreté en cas de délocalisation de la production d'un pays avancé vers un pays en développement pour des raisons de compétitivité. Certains travailleurs perdent leur emploi dans le pays avancé, mais celui-ci est doté de dispositifs de protection sociale efficaces et peut-être aussi d'un marché du travail flexible. Ainsi, malgré la controverse qu'elles suscitent, les délocalisations peuvent contribuer à réduire la pauvreté dans les pays à faible revenu. Néanmoins, les autorités de la concurrence devraient se concentrer sur la concurrence, et laisser la lutte contre la pauvreté à d'autres secteurs de l'action publique. Il serait souhaitable que des travaux théoriques ou empiriques analysent l'impact de la politique de la concurrence sur la situation des pauvres. Si une entreprise est déjà efficace, elle ne changera pas de comportement et ne modifiera pas ses effectifs en cas d'intensification de la concurrence. Si elle ne l'est pas, elle sera peut-être obligée de licencier des travailleurs, mais pas nécessairement les moins bien payés.

La mondialisation appelle une plus grande coordination des politiques de la concurrence entre les pays. Une politique de la concurrence bien conçue est à même de créer un environnement ordonné qui sera lui-même propice à une croissance durable à long terme et à la réduction de la pauvreté.

Un délégué du Brésil dit que même si on ne dispose pas de données concernant l'impact de la politique de la concurrence sur les petits entrepreneurs pauvres, on estime que la concurrence leur est certainement bénéfique au moins à certains moments. La concentration des marchés s'atténue au Brésil, mais elle existe encore et donne lieu à des barrières à l'entrée pour les entrepreneurs pauvres, qui pâtissent aussi de coûts de transaction élevés et d'asymétries de l'information. Les autorités de la concurrence brésiliennes concentrent leur action sur les pratiques abusives, sans se limiter nécessairement aux situations de position dominante.

2.5 Réduction de la pauvreté et intervention publique

Les mesures de contrôle et les interventions "pro-pauvres" des pouvoirs publics sont-elles préférables aux marchés concurrentiels pour combattre la pauvreté, et y a-t-il là une source possible de conflit ?

2.5.1 Communication du Professeur Winters

Le Professeur Winters fait remarquer à titre préalable qu'il faut comprendre les causes de la pauvreté pour pouvoir la combattre avec efficacité et que ces causes varient d'un pays à l'autre.

La libéralisation des échanges peut contribuer à faire reculer la pauvreté parce qu'elle permet d'accélérer la croissance, mais il y a des perdants et des gagnants. Pour les pauvres, la hausse des prix de certains biens ou services aura des retombées négatives, mais la perte de leur emploi sera catastrophique. La concurrence stimule la productivité dans les pays en développement, mais les canaux de distribution sont importants. Si le réseau de distribution se caractérise par un faible niveau de concurrence, la libéralisation de la production n'aura probablement pas beaucoup d'effet sur la pauvreté. En outre, si l'application du droit de la concurrence fait pression sur les entreprises dans les pays en développement, elles risquent de réagir en faisant à leur tour pression sur les salaires. Lorsque la concurrence est faible, les entreprises publiques ou privées peuvent en principe partager les rentes avec leurs salariés défavorisés. Toutefois, il ne semble pas que cela soit vraiment le cas dans les grandes entreprises, quel que soit le discours sur les dangers de la concurrence ou des privatisations.

La politique de la concurrence s'apparente à la politique des échanges ; elle a des effets négatifs très importants pour quelques-uns, qui font tout pour empêcher son application, et des effets positifs plus limités pour le plus grand nombre. La bonne approche est de ne pas cacher qu'il y aura des perdants, et que des mesures compensatoires seront nécessaires, notamment en matière de reconversion professionnelle, de santé et d'éducation, ainsi que pour faciliter la mobilité géographique des travailleurs. Les réformes de la réglementation peuvent aussi aider à créer des emplois pour ceux qui ont perdu le leur parce qu'ils travaillaient dans des entreprises inefficaces. Les politiques industrielles qui permettent à certaines entreprises de déroger au droit de la concurrence au motif qu'elles seront un jour compétitives méritent d'être examinées à la loupe. La perspective qu'elles seront un jour rentables n'est pas un argument suffisant, il faut aussi qu'elles le soient assez pour pouvoir rembourser les soutiens dont elles ont bénéficié.

Une exception peut être faite pour les politiques industrielles horizontales qui visent à atténuer les défaillances du marché dans le secteur financier ou à aider les entreprises nouvelles, ce en quoi elles s'apparentent à la politique de la concurrence puisque le but est de favoriser l'entrée de nouveaux acteurs sur le marché. Les autorités de la concurrence peuvent intervenir en ayant à l'esprit l'objectif de réduction de la pauvreté, mais elles doivent s'occuper avant tout des cas où la situation en matière de concurrence laisse le plus à désirer. Il convient de prévoir l'impact de toute décision sur la pauvreté et de prendre des mesures préventives pour amortir ses éventuels effets négatifs. La protection des pauvres relève des politiques générales de lutte contre la pauvreté, tels que les programmes de transferts monétaires, quelle que soit la cause de leur pauvreté.

Le Président dit que dans de nombreux cas, les autorités de la concurrence ne sont pas chargées de la politique de la concurrence et qu'il se peut très bien que personne ne le soit. C'est pourquoi la pédagogie est parfois la seule arme dont elles disposent en l'absence de solutions économiquement efficientes fondées sur le marché. Il invite M. David Lewis à faire part de ses observations sur les questions soulevées par le Professeur Winters.

2.5.2 Intervention de M. David Lewis

M. Lewis dit que la discussion est délicate pour les raisons indiquées par le professeur Winters. D'un côté il y a ceux qui croient que les politiques de la concurrence peuvent et doivent contribuer à la réduction de la pauvreté, de l'autre, ceux qui appliquent ces politiques et qui pensent qu'elles doivent s'attacher essentiellement à procurer des gains de productivité et d'efficience. Mais il y aussi la question de la légitimité. Or, eu égard au rôle majeur de la politique de la concurrence du point de vue social et

économique, les autorités qui sont chargées de cette politique ne peuvent pas se désintéresser totalement des grands objectifs nationaux. Si ces objectifs sont multiples, par exemple renforcer la concurrence et réduire la pauvreté, alors il faut des instruments multiples.

Il ne faut pas oublier que la politique de la concurrence a été conçue pour contrer le pouvoir de marché des entreprises et du secteur public en faveur des consommateurs. Accès au marché, intensification de la concurrence, gains en efficacité et redistribution de cette richesse entre producteurs et consommateurs au bénéfice de ces derniers, c'est ainsi que la transition doit s'opérer. Il faut être prudent avant de faire quoi que ce soit dans une optique égalitariste. Mais le droit de la concurrence est capable d'arbitrages ; il en fait du reste en permanence. Trouver un équilibre entre droits et intérêts est au cœur du droit de la concurrence, et les économistes, les avocats et les juges savent comment faire pour parvenir à ce résultat.

2.5.3 Intervention de la Banque mondiale

Mme Fruman dit que la discussion a montré qu'il y a eu des situations où la politique de la concurrence a permis de faire reculer la pauvreté, et il est encourageant que l'Afrique du Sud et le Mexique aient entrepris d'étudier en profondeur les relations en jeu. Elle ajoute que les avis concordent sur le fait qu'il faut prendre des mesures compensatoires pour protéger les pauvres lorsque l'application du droit de la concurrence a des retombées négatives pour eux, que celles-ci soient prévues ou non. Enfin, Mme Fruman estime comme le Professeur Winters que les exemptions au droit de la concurrence pour des raisons de politique industrielle ne devraient pouvoir être consenties et obtenues qu'à des conditions extrêmement rigoureuses, et que les autorités de la concurrence devraient tout faire pour qu'il n'y en ait pas.

2.5.4 Intervention de l'Australie

Un délégué de l'Australie note que la politique de la concurrence n'est pas une fin en soi mais un moyen pour parvenir à une fin, en l'occurrence relever le niveau de vie en faisant baisser les prix et en augmentant la productivité. Par conséquent, il ne devrait pas y avoir de conflit entre la politique de la concurrence et la lutte contre la pauvreté. Ce n'est pas vrai que les liens entre politique de la concurrence et réduction de la pauvreté sont trop difficiles à comprendre, mais il n'existe pas de formule unique à même de mettre un pays sur une trajectoire auto-entretenue de réduction de la pauvreté. Il y a des distorsions qui maintiennent les prix artificiellement bas, c'est certain. Et lorsque l'on met en œuvre le droit de la concurrence, on constate des pertes dans certains secteurs, mais d'autres enregistrent des gains. En Australie, une analyse a montré que la politique de la concurrence avait augmenté le PIB par habitant d'environ 2.5 %. L'emploi a diminué dans les secteurs soumis à la concurrence, mais les gains réalisés ailleurs ont été plus importants. Beaucoup dépend de la rapidité avec laquelle les ressources rendues disponibles peuvent être redéployées. En Australie, les marchés fonctionnent bien, donc le redéploiement est rapide. Dans les pays où les marchés ne fonctionnent pas bien, le redéploiement sera lent ou risque même de ne pas se produire. En réponse à une question posée par le Président, le délégué reconnaît que le redéploiement des ressources dans les économies dominées par une seule industrie soudain confrontée à la concurrence internationale est sans doute difficile.

2.5.5 Intervention de M. Qaqaya

M. Qaqaya déclare que dans le cas des pays en développement, l'ouverture à la concurrence prend souvent la forme d'un désengagement de l'État dans l'économie, plutôt que d'une intensification de la concurrence sur un marché particulier. La disparition des biens et des subventions fournis par le secteur public a un impact direct sur la situation des pauvres. Il faut qu'un cadre d'action cohérent soit en place au moment où on lance les réformes économiques, afin d'anticiper leur impact. Des politiques adoptées séparément les unes des autres sont à éviter.

2.5.6 Intervention du Professeur Fox

Le Professeur Fox dit que l'efficacité est devenue un mantra. Sa définition et son usage font uniquement référence à l'entreprise. Pourtant, donner du pouvoir à ceux qui n'en ont pas est aussi un aspect important de l'efficacité, et aucune société ne peut être efficace tant qu'elle n'utilise pas pleinement ses ressources humaines.

2.5.7 Intervention du Professeur Winters

Le Professeur Winters estime que si la politique de la concurrence a vu le jour pour combattre le pouvoir de marché, cela ne signifie pas qu'elle doit être le seul instrument permettant de régler les problèmes de position dominante ou d'équité. Dès lors qu'une législation, une institution ou un système fonctionne correctement, il est inutile de lui faire porter une charge beaucoup plus lourde. Bien sûr qu'il y a toujours des arbitrages à faire, mais une autorité de la concurrence ne devrait pas décider d'ignorer une pratique anticoncurrentielle particulièrement abusive simplement parce que de nombreux travailleurs pauvres en bénéficient. Il faut réfléchir à d'autres moyens pour aider ces personnes.

Le Président répond qu'aucune autorité de la concurrence n'a jamais exprimé le souhait d'être un acteur majeur dans la lutte contre la pauvreté ; l'intention est plutôt d'avoir conscience du problème et de ne pas perdre une occasion d'y remédier, tout en maintenant l'accent sur la politique de la concurrence.

2.5.8 Intervention de M. David Lewis

M. David Lewis dit que si on a la possibilité de mener une politique de la concurrence favorable aux pauvres et à l'équité, il ne faut pas hésiter à le faire. Le pouvoir discrétionnaire de la poursuite peut être utilisé en faveur des pauvres. Dans l'affaire du pain (voir ci-dessus la section 2.3.4), par exemple, le succès des poursuites a conforté l'image de l'autorité de la concurrence, mais l'entente était par définition instable et les preuves faciles à obtenir. M. Supachai a dit que les marchés des TIC étant soumis à l'évolution des technologies, il n'est pas nécessaire de les faire surveiller étroitement par les autorités de la concurrence. Mais si un marché est dominé par un opérateur historique, la technologie ne se diffusera pas et des gains potentiels considérables seront perdus en termes de recherche d'emploi et de partage d'informations sur les marchés. C'est pour cela qu'il vaut mieux s'attaquer aux abus de position dominante sur le marché des TIC que poursuivre les ententes stables sur les marchés des biens et services essentiels. Un certain pouvoir d'appréciation doit également être exercé en ce qui concerne les fusions. À titre d'exemple, si une fusion dans le secteur de l'assurance maladie est à même d'empêcher l'apparition de nouveaux produits et une baisse des primes, il faut alors être plus vigilant que sur un autre marché où les enjeux sociaux ne sont pas aussi importants.

Lorsque les délégués parlaient des petites entreprises, on se demandait dans certains cas s'ils faisaient référence aux petites entreprises à faible productivité qui luttent pour survivre ou aux entreprises dynamiques du type startup de la Silicon Valley. Ce sont deux mondes différents auxquels doivent s'appliquer des considérations différentes du point de vue de la politique de la concurrence. Dans les pays en développement, un grand nombre de personnes vivent des activités qu'elles exercent dans des entreprises à très faible productivité. Lorsque l'on est en présence d'un marché dépourvu d'obstacles technologiques évidents ou d'autres barrières apparentes à l'entrée, mais où les grandes entreprises occupent quand même une position dominante, il faut examiner attentivement la situation. Plus souvent qu'autrement, il s'exerce un pouvoir de marché dissuasif pour les concurrents potentiels.

Le moyen le plus courant de permettre la prise en compte de considérations extérieures à la concurrence consiste à inclure une clause relative à l'intérêt général dans la législation sur la concurrence. En Afrique du Sud, un projet de fusion peut être jugé acceptable sur le plan de la concurrence, mais rejeté

en raison des pertes d'emplois qu'il risque d'entraîner. La décision n'est pas facile à prendre : on peut conditionner la fusion au maintien de l'emploi ou l'empêcher et maintenir deux entreprises distinctes mais plus faibles, avec à la clé des pertes d'emplois bien plus importances à long terme. Le cas de Walmart, en Afrique du Sud, illustre bien cette situation. Son projet de rachat de Massmart, une grande enseigne locale de la distribution, ne posait pas de problèmes de concurrence, mais le gouvernement, estimant que Walmart allait vendre des produits importés de Chine plutôt que des biens fabriqués localement, craignait de voir l'opération se solder par des pertes d'emplois. D'où les recours adressés de façon répétée à l'autorité de la concurrence, organisme indépendant, pour qu'elle interdise la fusion ou qu'elle impose un quota de production locale. Pour finir, le tribunal a débouté le gouvernement en faisant valoir que l'objectif était d'obtenir les prix les plus bas possibles pour les consommateurs, pas de protéger les producteurs, même si une obligation d'approvisionnement local a quand même été imposée. Il est politiquement difficile pour les autorités de la concurrence de s'opposer à des décisions qui donnent la préférence aux petits producteurs locaux en matière de marchés publics, mais au moins peuvent-elles informer le public de ce que coûte le soutien ainsi accordé aux petits entreprises.

Dans les pays en développement, les barrières à l'entrée sont plus souvent le résultat de mauvaises réglementations publiques que des comportements d'acteurs privés. Beaucoup de grandes entreprises sont entre les mains de l'État et soumises à des contraintes réglementaires, ou du moins l'étaient encore il y a peu, de sorte que les autorités de la concurrence ne peuvent pas s'attaquer à elles directement ; elles peuvent toutefois avoir recours à des actions d'information et de sensibilisation pour promouvoir une réforme de la réglementation qui facilitera l'accès au marché.

Enfin, les consommateurs – surtout les pauvres – n'ont généralement pas de pouvoir et ne sont pas organisés. Ce sont donc les autorités de la concurrence qui défendent leurs intérêts auprès des pouvoirs publics. Il est indispensable que cette action soit visible. La population doit se rendre compte que la justice est en marche, que la loi s'applique à tous, y compris aux intérêts commerciaux les plus puissants. Cela n'a peut-être pas d'effet direct sur la pauvreté et les inégalités, mais c'est un pas sur la voie d'une société plus égalitaire. De cette façon, l'application du droit de la concurrence est aussi un moyen d'améliorer la gouvernance d'entreprise.

2.5.9 Intervention de Mme Lonie

Mme Lonie dit que la concurrence dans le secteur de la téléphonie et des paiements mobiles était certainement une chose souhaitable. Dans le cas de M-PESA, au Kenya, le service de paiement mobile est financé par une petite commission prélevée sur chaque transaction. Cette commission est soumise à une taxe qui va bientôt passer à 10 %. M-PESA la répercutera sur ses clients. C'est une faible somme, mais pas pour les consommateurs pauvres. Un autre service de paiement mobile ne fait pas payer de commission, ce qui est bon pour la concurrence et les consommateurs, mais le gouvernement voudrait maintenant qu'il en facture une, sans doute pour pouvoir la taxer.

2.6 Existe-t-il une politique de la concurrence favorable aux pauvres ?

2.6.1 Communication du Professeur Fox

Le Professeur Fox précise qu'elle va parler davantage du droit de la concurrence que de la politique de la concurrence. Comment concevoir ce droit dans une société qui compte une large proportion de pauvres ? Faut-il se poser des questions différentes ? Quelles conséquences ce droit va-t-il avoir pour les exclus ? D'après les autorités de la concurrence des pays en développement, ce qui est le plus préjudiciable à la fois pour leurs pays et pour les pauvres, ce sont les restrictions imposées par l'État (et parfois aussi par le secteur privé) qui ont pour effet d'empêcher l'entrée sur le marché et de faire monter les prix. Faut-il en conclure que le droit de la concurrence doit s'appliquer aux agissements anticoncurrentiels de l'État ? Cette

question a été posée aux autorités de la concurrence dans le cadre d'un projet de la CNUCED. Il est évident que le droit de la concurrence doit s'appliquer aux entreprises publiques, mais les avis sont plus partagés face au problème des agents publics qui se rendent complices d'infractions, ce qui est important s'agissant des marchés publics et d'entente préalable. Si des poursuites pouvaient être engagées contre un fonctionnaire de l'État dans une affaire de concurrence, ce serait une évolution positive qui aiderait à lutter contre la corruption. Les autorités de la concurrence devraient avoir le pouvoir de contester les actions indûment anticoncurrentielles de l'État. Les activités réglementées posent des problèmes ; elles font courir un danger de captation réglementaire, c'est pourquoi elles doivent également relever de la compétence des autorités de la concurrence.

La propriété intellectuelle échappe parfois au droit de la concurrence, alors que l'utilisation abusive des droits de propriété intellectuelle est un problème fréquent dans les pays en développement. Le droit de la concurrence devrait aussi s'appliquer aux agissements extraterritoriaux car ils portent préjudice aux pauvres. Le cartel de la potasse, qui pénalise les agriculteurs des pays importateurs, en est un exemple.

La question de la procédure doit être soulevée. L'action privée est-elle un droit ? Les pauvres ont-ils accès à la justice de la même manière que les riches ?

Dans les pays en développement, pour des raisons historiques liées à la législation et à l'octroi de privilèges, l'abus de position dominante est l'infraction la plus fréquente. Le droit de la concurrence devrait permettre d'engager des actions dans ce domaine, mais bien souvent cette possibilité n'existe pas.

Le Professeur Fox mentionne quatre autres points permettant de juger si un droit de la concurrence est bon ou non pour les pauvres ou les exclus. Premièrement, les entreprises ne doivent pas pouvoir faire obstacle à la pratique des remises. Deuxièmement, la façon dont on définit le marché dans les cas particuliers est importante ; elle peut être plus ou moins favorable aux pauvres. Le troisième point a trait à la puissance de marché, par exemple lorsqu'une grande entreprise accorde des remises de fidélité afin d'évincer un petit concurrent innovant. C'est un point épineux parce que les remises en question ont des aspects proconcurrentiels et que la grande entreprise est parfois plus efficace que son concurrent. On peut considérer qu'il y a violation du droit de la concurrence uniquement en cas d'éviction de concurrents efficaces. Quatrièmement, les prix excessifs, illustrés en l'occurrence par l'affaire du producteur d'acier Mittal en Afrique du Sud. Mittal était en position de monopole sur le marché intérieur mais il exportait de l'acier au cours mondial. Le tribunal a décidé d'autoriser les importations d'acier dans le pays, une règle simple qui n'exigeait pas de données détaillées sur les coûts et sur les prix. Cette décision a toutefois été invalidée. De façon plus générale, les pays en développement ont besoin de règles plus simples que celles qui s'appliquent dans les pays avancés parvenus à maturité, où des escouades d'économistes et d'avocats peuvent travailler des mois durant sur des dossiers particuliers.

Enfin, il est important de promouvoir la concurrence, notamment face aux pratiques de certains pays qui seraient jugées illégales chez eux mais qui portent préjudice à d'autres, comme les ententes à l'exportation, contre lesquelles les victimes risquent d'être sans recours. Il est indispensable de faire prendre conscience de l'impact que peut avoir la politique de la concurrence pour les pauvres.

2.6.2 Intervention de M. David Lewis

M. David Lewis regrette que la question des poursuites éventuelles contre les agents de l'État pour infraction au droit de la concurrence ait été soulevée à la fin de la journée plutôt qu'au début. C'est là que se situe le point de rencontre entre corruption et concurrence. Certains projets de génie civil sont tellement énormes et tellement complexes qu'il est inconcevable qu'il n'y ait pas une certaine collaboration. En Afrique du Sud, aucun agent de l'État ni aucune entreprise n'ont jamais été poursuivis pour des pratiques

anticoncurrentielles, y compris lorsque l'autorité de la concurrence produisait des preuves évidentes d'infraction. Peut-être le gouvernement n'a-t-il pas voulu aggraver le désagrément déjà causé aux contrevenants par l'autorité de la concurrence ou peut-être a-t-il préféré s'entendre d'une façon ou d'une autre avec eux sur certains objectifs de politique industrielle.

2.6.3 Intervention des États-Unis et réponse du Professeur Fox

Un délégué des États-Unis se demande dans quelle mesure la communication du Professeur Fox se voulait vraiment polémique. Dans les situations décrites, on a peut-être simplement appliqué comme d'habitude le droit de la concurrence, et les pauvres en ont bénéficié. Par exemple, aux États-Unis, lorsque la FTC s'est penchée sur des projets de fusions d'établissements hospitaliers, elle a estimé que les hôpitaux en situation de monopole servaient mieux les intérêts des pauvres. Une politique de la concurrence favorable aux pauvres qui tiendrait spécialement compte des intérêts d'un segment particulier de la population aboutirait-elle à des résultats différents d'une politique soucieuse d'efficacité et se préoccupant du bien-être des consommateurs ? Si tel était le cas, il s'agirait alors d'une politique de redistribution promue par le droit de la concurrence.

En réponse, le professeur Fox déclare qu'il ne faut voir aucune intention polémique dans ses propos ; son souhait est que les marchés soient solides, innovants et concurrentiels. Elle n'a fait référence à aucun arbitrage supposant qu'une mesure particulière serait bonne pour le marché mais qu'une politique favorable aux pauvres s'y opposerait. Le droit offre une grande souplesse. Il permet de se poser la question de l'impact sur les pauvres et de trouver une réponse compatible avec la politique habituelle.

2.7 Résumé de la journée

Le Président constate que le débat, émaillé de nombreux exemples pris dans différents pays, a été très enrichissant. Il est difficile de définir la pauvreté et encore plus compliqué de faire le lien entre réduction de la pauvreté et politique de la concurrence. D'exemples de politiques de la concurrence ayant un impact sur la pauvreté, on est passé à un débat sur la possibilité de tenir compte de la pauvreté dans le cadre du modèle classique de la concurrence axé sur l'efficacité des marchés. Les avis semblent s'accorder sur le fait que, sans perdre de vue cet impératif d'efficacité, les autorités de la concurrence peuvent très bien se préoccuper des questions de pauvreté lorsqu'elles fixent l'ordre de priorité des dossiers, par exemple dans le cadre de leurs études de marché ou de l'examen, le cas échéant, de clauses d'intérêt général.

Le Professeur Fox a abordé la question sous un angle intéressant en montrant que s'inscrire dans une perspective favorable aux pauvres n'est pas une démarche qui nécessite de transformer le droit, mais plutôt un état d'esprit : il s'agit tout simplement de se poser une série de questions élémentaires sur des choses que les autorités de la concurrence doivent évaluer : définition du marché, préjudice causé par certaines pratiques, période visée ou profondeur du marché. Il n'y a pas encore eu beaucoup de débats sur le sujet ; celui d'aujourd'hui revêt donc à l'évidence un caractère expérimental. Nous avons appris que des questions analogues seront abordées dans d'autres enceintes, en particulier à la CNUCED.

2.8 Allocution de M. Angel Gurria, Secrétaire général de l'OCDE

Le Secrétaire général souligne le fait que les travaux de l'OCDE dans le domaine de la concurrence ont une grande influence sur les politiques nationales, ce qui est la meilleure preuve de la pertinence de l'Organisation. Au Mexique, les habitants paient un surcoût de 30 % à 40 % pour les biens et services essentiels qu'ils consomment à cause de l'insuffisance de la concurrence, et ce sont les plus pauvres dans les régions les plus déshéritées qui en souffrent le plus. Les services de paiement mobile et la téléphonie mobile en général sont deux domaines où la concurrence aide les pauvres en leur donnant accès à peu de frais à l'information, avec des retombées qui sont en train de révolutionner les marchés agricoles et ceux de

la pêche. Le secteur des transports en Papouasie-Nouvelle-Guinée est un autre exemple des bienfaits de la concurrence : en y faisant baisser les prix, elle a permis aux pauvres de bénéficier de l'industrie du tourisme. La mise en œuvre du droit de la concurrence revêt une importance capitale ; c'est pourquoi il conviendrait que les ministères des Finances augmentent les budgets alloués aux autorités de la concurrence.

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