Political Economy Constraints in Competition and Regulatory Regimes

Competition policy provides a framework for challenging monopolies of economic and political power. This policy brief examines whether competition policy can really live up to this promise of both economic competition and political inclusion in the governance context of developing countries and how effective implementation of competition and regulatory laws in Zambia have been affected by a number of political economy and governance constraints.

Introduction

Since the advent of economic and political liberalisation in most developing countries following the collapse of centralised economic principles, many of these countries have aimed to reduce governments' direct involvement or intervention in economic activity. This, in turn, had provided enterprises with more freedom and stronger incentives and consequently promoted a more competitive marketplace.

While there is a certain level of regulation in place, the political economy and governance constraints do often have a toll on the effectiveness of implementing competition and other regulatory laws. Competition policy, when capable of challenging political and economic monopolies, builds competitive markets and in turn reinforces political legitimacy.

The political governance approach to competition policy suggests that greater attention be paid to tackling 'tyranny of vested interests'. Competition policy must be implemented widely enough to tackle this tyranny but not be too extreme as it becomes politically unrealistic.

Most developing countries have passed the stage of deciding whether to have competition or other regulatory laws or not and are instead deciding on how best to implement an effective competition and regulatory regime within given constraints.

Competition Policy and Politics

'Politics' can de described as the process of bargaining and competition between holders of state power and organised groups in society. If this leads to managing competing interests effectively, it results in legitimate institutions and political processes serving a common purpose.

Competition is an economic concept with significant political implications; it is believed that market efficiency creates optimal choices over outcomes. Besides a theoretical construct for economic efficiency however, free market competition can be interpreted as the political economy of individualism, linking democracy, liberalism, and the system of private property rights.

Competition is politically radical, with the ability to overthrow the tyranny of vested interests. Competition policy does this by challenging monopolies of economic and hence political power. It is important to identify and overcome political economy and governance constraints to the implementation of competition law in developing countries as it enables policy analysts and legal drafters to understand and predict the environment under which they operate.

In developing countries, effective competition policy is even more politically charged, as its objective is to constrain concentrated political and economic power while helping the more diffused interests of ordinary, often poor, consumers and producers.

International competitiveness aims to deliver sustainable economic growth and the needed state effectiveness in developing countries to reduce poverty. However, competition policy adopted under international pressure, without domestic political business support or the capabilities needed to be effective might turn out to be an expensive irrelevancy that a low-income country can ill afford.

Effective competition policy must be rooted in a local political concept of the 'social contract' between citizen and state that will shape the 'level playing field' of fair competition.

Competition policy (the combination of policies, laws, and institutions designed to structure market competition) can be described as being part of a wider 'Investment Climate' aimed at improving economic growth and thereby delivering poverty reduction. Whether the enactment of competition policy and law will result in growth and/or poverty reduction is a question that most agree requires an empirical analysis. Neither competition nor competition policy however inevitably translates into the international competitiveness on which a country's long-term growth prospects depend. The political and institutional context means contestation over the aim and implementation of competition policy that may fluctuate between pro-producer policies legitimising market power and pro-consumer policies.

Governance as the Solution?

A remarkable consensus has developed in the international community in recent years that both the problem and the solution to development lie in 'governance'. Governance has two distinct qualities – intrinsic role for societal-state relations, such as respect for human rights; and functional or instrumental dimensions, including the capacity to deliver the economic growth on which poverty reduction depends.

The governance approach now interprets development as a process of continuous political experimentation to find 'what works' in local institutional context, not a technical fix of 'best practice' laws or institutions. In the context of patronage politics in developing countries with weak institutional checks and balances, effective competition policy and governance principles will struggle.

The governance challenge for effective competition policy lies in its potential for reforming political and economic power, unpicking vested interests and protecting consumers. Anti-competitive activity is linked to political manipulation of the economy from low level corruption through 'crony capitalism' to 'state capture'. Competition policy does not stand on its own but requires a supportive political climate and more insight is needed on how, in developing country contexts, the international community can support sustained political leadership.

Weaknesses of competition policy are linked to related governance challenges affecting growth, such as anti-corruption measures, judicial independence and parliamentary oversight.

Competition Policy Contributes to Economic Growth?

Whether competition policy can really live up to this dramatic promise of both economic competition and political inclusion in the governance context of developing countries demands closer attention. Econometric research in recent years on institutions has confirmed that 'politics trumps economics' but has not adequately clarified why, nor been able to identify operational implications for development.

The most important dimension of the investment climate is the least analysed or understood: the 'politics of growth' – the political blockages to economic freedom for all people whether as producers or consumers: how processes of contesting political power, including informal institutional arrangements, influence economic and legal institutions to affect growth outcomes.

In many developing countries, poverty is the product of political constraint on economic opportunity through vested interests that 'capture' the state and so curtail economic growth prospects for poor people. So all analysis must start by asking: what political context really allows growth to happen?

Since 'efficiency' and 'fairness' cannot be judged on economic grounds but politically on society's ambition for a transformational impact, competition policy must be judged by its success in breaking the monopolies of economic and political power that hold back poverty reduction in developing countries.

Competition policy, shaped by institutions and politics, is not simply a tool of economic policy. Successful competition policy promotes the credible legitimacy of the state by providing an effective, predictable, transparent and accountable framework for government objectives. It is this effect that assists economic growth.

Zambia: A Case Study

Zambia has undergone significant political economy transformations since attaining independence from the UK in 1964. During the 1960's, the world-wide appeal of socialist principles affected the young republic and from 1968, a policy shift was made. Following the introduction of competition law in Zambia, there was need for a total overhaul of all laws that affected not only business entry, but also its existence, growth and development on a sustainable scale.

While the law was passed by the Parliament in May 1994 and assented to by the President in June 1994, its effect was from February 1995. Thus, the law had no retrospective effect to redress and/or address any anti-competition matters such as preference of structural and behavioural undertakings on any anticompetitive dominant or monopoly firms that were established at privatisation or investment that occurred through mergers and acquisitions.

However, much remains to be desired for the successful and effective enforcement of competition law in Zambia is so far as the overall legal, regulatory laws or Government policies

Box 1: Political Economy and Governance Constraints in Zambia

- Exemption of the State and its enterprises from the application of the competition and other regulatory laws, which sends signals that the laws are vigorously targeted at private firms and not state-owned enterprises.
- Considerations of public interest could be anticompetitive as in the takeover case of the only cement plant in Zambia, Chilanga Cement plc by the Lafarge Group.
- Non-binding nature of Advisory opinions of competition and regulatory agencies on the Government.
- Influence of trade associations comprising among others, leading politicians, on economic policy Issues.
- Lack of sufficient financing of the operations of the competition authority constrains advocacy and enforcement endeavours.
- Maintenance or enactment of laws and other regulations that appear to be at variance with the competition law.
- Lacunas in the existing competition and regulatory laws that make enforcement problematic particularly absence of provision of fines in the Competition & Fair Trading Act, insufficient scope of natural justice and lack of transparency in adjudication at the Board of Commissioners level .
- Lack of regulations and other enforcement guidelines that have a legal force and high staff turnover.
- Fragmentation of the regulatory environment and lack of coordination of enforcement efforts makes it expensive to regulate commercial activity and creates regulatory uncertainty for business.
- Ministerial powers to hire and fire Chief Executives and Boards create insecurity.
- Exemptions from application of a law for professional associations even in matters of possible collusion make enforcement discriminatory.
- Lack of comprehensive national competition policy to raise competition awareness in all aspects of commercial activity, including that of the State.
- Independence of the competition and industry specific regulators must be protected to ensure that the rule of law is enhanced. Regulators should operate independently of policy makers.
- Regulatory capture is a constraint to the effective enforcement of the law.
- Time is of essence in decision-making but is constrained by insufficient skilled staff and lack of coordination.
- The judiciary is yet to be tested in the area of competition law and adjudication which is necessary for accountability and good governance.

remain at variance with the spirit and/or principles of competition. Few officials in the public service and political establishment would appear to have really understood what it really meant or took to have a well functioning competition authority. The effective implementation of competition and regulatory law in Zambia has been affected by a number of political economy and governance constraints.

Overall, the enforcement of competition law and policy in Zambia has peculiarly been a success story despite the financial constraints and clear lack of overt political support. The professionalism exhibited by the Commission as well as the independence in adjudication enjoyed by the Board of Commissioners is testimony perhaps of a good foundation in the governance of competition law enforcement in Zambia.

The law has to be enforced within the existing political economy and governance constraints, and results to the general public that justify the continued existence of a competition authority or regulator must be produced. Both competition authorities and regulators in developing countries must learn to walk the tight rope of professionalism in the midst of undue overt or covert political interference.

Both least and developing countries would appear to face the same competition and regulatory hurdles. Strong advocacy ought to be a priority that should be implemented concurrently with enforcement efforts. The competition authority needs to come down from a high pedestal and interact with the opinion leaders both in civil society and the political establishment. Added to this are the senior public servants who implement policy.

Conclusion

The political dimension to competition policy has been under researched. Developing countries should be supported and encouraged in institutional experimentation relevant to their own requirements. Any competition law must ensure relevance to local market failures and identity distinctive institutional challenges that may affect choice of strategies for correcting such failures.

Competition policy in developing, particularly low-income countries, must match political realities as well as governance capabilities. It must also not be overwhelmed by technocratic expertise, but must hold on to its promise for delivering competition that overthrows 'the tyranny of vested interests'.

Competition policy must be judged not by economic efficiency gains alone, but by the greater aim of breaking the monopolies of economic and political power that currently prevent poverty reduction in developing countries.

The emerging challenge for policy makers in Zambia at present, is the need to ensure that regulatory reform and the implementation of competition policy are complementary strategies for the attainment of competitiveness and economic growth, which are critical success factors to poverty alleviation.

Whilst some say that the efficacy and extent of regulatory reform is a function of the level of economic, political and institutional development in a country, others say that the cornerstone of the new development paradigm is a private sector led growth strategy. The state management of the regulatory reform process is not always free of political constraints. Government interference and corruption impact on private sector firms by increasing business risk and costs.

Entrenched business interests are likely to continue to influence government officials and politicians and probably influence public opinion against the competition and regulatory enforcement. Such influences have pressured the government to reduce the powers of the competition authority and develop a discriminatory enforcement system that favours local firms.

An example of this occurs when local firms are engaged in price-fixing to win market share against a foreign firm. The competition authority is pressured by local businesses not to stop the conduct. Such discriminatory competition enforcement is a fallacy and does not assist in developing a competitive environment.

The new role of the state must focus on building regulatory regimes within the context of its constitutional, economic, legal and political systems. Major challenges remain to be overcome. A major challenge for competition than other regulatory law enforcement in countries, such as Zambia remains the need to justify their existence and attract adequate public funding in order to effectively carry out their work.

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