Politics Trumps Economics
- A Brief Summary -

In the past, most developing economies were characterised by significant government involvement marked by dominance of large state-owned enterprises (SOEs). Since the economic liberalisation started during 1980s and 1990s, there have been considerable policy changes, with increased reliance on market forces. Along with policy changes, several developing and transition economies have adopted competition laws as a follow up to their market oriented economic reforms. Additionally, most of these countries have adopted regulatory laws in several sectors, opened up for private players, which were hitherto reserved for public sector only. This upsurge in interest in competition and regulatory laws in developing economies reflects the substantial changes that have been taking place in their economic governance system.

But, how important has this new form of economic governance been for growth and other developmental objectives? The answer to this question is unfortunately patchy. China, for instance, approved a competition law in June 2006, almost 30 years after it began economic reforms, yet the country has moved at extraordinary speed from low to middle-income status. Neither of the two major success stories on growth, Botswana and Mauritius, had a formal competition law until Mauritius passed its Competition Act in April 2003. By comparison, Kenya passed the Restrictive Trade Practice, Monopolies and Price Control Act in 1989 but has been nowhere near the same economic success.

Existing evidence suggests that other dimensions of governance, such as government's commitment to growth as a political objective and overall political climate in a country, may matter much more.

'Political will' turns out to be a key factor that determines successful adoption and effective implementation of competition and regulatory laws. In Malawi, although the government claimed to support competition, the enactment of relevant laws was not followed with the establishment of institutions. It took the country eight years to establish the Competition Commission! Worse, in Bangladesh, the Monopolies and Restrictive Trade Practices Ordinance remains on the legislative books, but neither the government nor the private sector has apparently attempted in earnest to invoke this law.

In Zambia, the political will to get rid of the financially drained SOEs overshadowed other economic priorities. The focus appeared uni-dimensional as the government appeared to be in a hurry in privatising the SOEs without bothering to put in place concurrent laws, required to monitor, control and prohibit anti-competitive practices. Though the Competition and Fair Trading Act was passed in May 1994 following donor insistence, the competition authority itself was operationalised only in May 1997. In contrast, it took only a few months to draft and enact the Privatisation Act, as well as establish the Zambia Privatisation Agency!

Functioning of regulatory regimes in telecom and banking sectors in Vietnam provides an interesting insight. In banking, the functioning of central bank has been constrained by government intervention in various ways. In contrast, functioning of the Ministry of Posts and Telematics (MPT, also the telecom sector regulator) has done wonders. In telecom, government objectives are clearly laid down in various government documents, which have provided necessary guidance for MPT to facilitate orderly growth of telecom services. However, in banking, there are conflicts in policy objectives – objectives of government are at variance from the goals set for the State Bank of Vietnam.

Political will to create a strong regulatory agency from the outset is crucial for future success, as a strong regulator will be able to balance the demands of various interest groups, among other challenges. Unfortunately, in most cases, the state may try to further its interests by creating a weak regulatory institution over which it can continue to exert control.

Since regulatory reforms are largely concentrated in public utilities where there is a strong public interest factor, and therefore political sensitivity to both policy reforms and to regulatory practice, it is difficult to envisage how regulatory reforms would be insulated from overriding political considerations. It appears to be a matter of 'Common Practice' that a regulator is made to consider public interest in its decision making process. The inherent conflict between the objectives of economic efficiency and public interest often leads to situations of trade-off, which are politically quite sensitive.

In South Africa, competition law explicitly includes public interest objectives alongside efficiency objectives. Anyhow, the number of cases where public interest considerations have made a material difference is small. Interestingly, the most important issue is that explicit inclusion of public interest objectives has raised the profile of these policy imperatives, which seek to ensure policy coherence across diverse policy areas. In addition their inclusion has put these issues on the agenda of firms.

Nonetheless, governance challenges are likely to arise when competition authorities assess explicit non-competition criteria without transparent processes for doing so. In such cases, administrative discretion in interpreting concepts such as 'fair' competition is often the starting point for corruption in developing countries.

One needs to acknowledge and appreciate that a democratic set up requires politicians and their parties to win elections to reach to policy-making positions. Therefore, they must satisfy aspirations of their electorates whom they have to go back, at intervals, to seek a fresh mandate. Reasons for politicians not allowing implementation of competition principles are well known (e.g. fear of losing certain powers, which they had been using to satisfy certain vested interests). However, little efforts have been made to identify potential gains for politicians out of promoting competition measures i.e. how competition regime outcomes could help them retain/enhance their public image/support-base.

Implementation of competition and regulatory laws also faces roadblocks in the form of opposition from various constituencies. Even those who are expected to benefit from open markets and competition, in particular consumers and new businesses are reluctant towards reforms.

Civil servants are closely defensive of their acquired rights and consider competition/regulatory law as an attempt to reduce their existing prerogatives. They usually oppose, or extend lukewarm response towards market-oriented economic reforms. Moreover, bureaucracy tends to perpetuate itself in regulatory roles, for which it may not have the necessary acumen.

Business and their associations generally oppose competition regimes as they feel that it would reduce their market share and hence business profits. Hence, adoption and implementation of competition regime may easily be captured or sidelined by powerful vested interests. In Thailand, though the government enacted a competition law in 1999, till date it has had very limited impact due to the unholy nexus between politicians and businessmen and cronyism.

Rampant political capture is another principal obstacle to the creation of effective competition and regulatory regimes in developing countries. Competition law may covertly protect politically well-connected companies from 'fair' competitive forces, guaranteeing monopoly rents without efforts to innovate. Garnering support from such players is essential to ensure effectiveness of regulatory reforms. A government that is committed to competition law, and any regulator that is entrusted with the task of enforcing that law, must not only direct advocacy efforts towards consumers, but also towards the influential industry participants.

In most developing countries, competition and regulatory laws are entirely new concepts. In several cases, such laws have been adopted due to external pressure (e.g. Zambia Competition Act). Consequently, very few officials in the public service and political establishment appear to have understood what the new regime means and what it takes to have a well functioning regulator.

While the cornerstone of the new development paradigm is a private-sector led growth strategy, implementing economic reforms in developing countries becomes quite a challenging task also due to lack of rule of law and property rights, weak judicial institutions, and ineffective or non-existent commercial codes and bankruptcy laws.

There are a host of political economy and governance constraints that frustrate successful implementation of regulatory laws in developing countries. At present, most developing countries have passed the stage of contemplating whether they would want to have a competition or regulatory law or not, and have reached the stage where the debate is on how to structure their laws, and how best to implement an effective enforcement regime within given constraints. The CUTS Competition, Regulation and Development Research Forum (CDRF) is an initiative in this direction to stimulate research and deliberations on such issues and identify better solutions, suitable to the requirements of developing countries.

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