

HOW TO REFLECT CONCERNS OF ECONOMIC INEQUALITY AND POVERTY IN EFFICIENCY-BASED COMPETITION LAWS: A DEVELOPING COUNTRY PERSPECTIVE

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**Should Wealth and Income Inequality
be a Competition Law Concern?**

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RELEVANCE OF DEVELOPING COUNTRIES' COMPETITION LAW

Competition law in developing countries as inspiration as to how to reflect distributional concerns

Interplay: Poverty x economic development x competition

- Alleviation of poverty crucial enabler to inclusive economic development
- Increased competition may aggravate poverty and hence economic inequality

Recommendations of the competition law and development scholarship

- Appropriate blend of competition and cooperation more suitable
- Economics-based model with efficiency-driven approaches needs to be tailored to better reflect distributional concerns

GENERAL APPROACHES TO REFLECTING DISTRIBUTIONAL CONCERNS

- i. Disregard distributional consequences
- ii. Actively address concerns of economic inequality and poverty
- iii. Tailor the applicable standards so that distributional concerns are reflected

CASE STUDY: COMPETITION LAW IN VIETNAM

Relevance of Vietnam's experience

- Lower-middle income country
- Previous experience with the application of competition law
- Competition law partly based on jurisdictions following the economics-based model

Relevant legislation

- Vietnamese Law on Competition, Law No. 27/2004/QH11 of December 3, 2004, in force from 1 July 2005
- Vietnamese Law on Competition, Law No. 23/2018/QH14 of June 12, 2018, in force from 1 July 2019

RESULTS OF THE CASE STUDY I

- I. Competition law actively addresses distributional concerns
 - Goals (improvement of social welfare, fairness-related considerations)
 - Abstention from promotion increased competition in markets where detrimental to state or public interests
 - Exemption from prohibition from anti-competitive agreements where the agreement is found to remedy market imperfections related to Vietnam's developmental status
 - Developmental concerns to be taken into account in evaluating potential positive effects of economic concentrations

RESULTS OF THE CASE STUDY II

- II. Economics-based model used or tailored so that distributional concerns are reflected
 - Extensive list of "hard core" cartels prohibited *per se*
 - Effects-based approach to vertical agreements
 - Presumption of dominance based on 30% market share threshold
 - Irrebuttable nature of the presumption of dominance
 - No defenses available to justify conduct regarded as abusive
 - Notification obligation where economic concentration involves parties with a combined market share of 20%
 - Sectoral focus of enforcement: agricultural, building, energy, communications, pharmaceutical sectors

TRANSFERABILITY OF VIETNAM'S EXPERIENCE

Limitations

- Socialist market economy
- Implied distributive justice model

Transfer to other developing countries vs developed countries

Transfer of specific rules vs methodology

- Main drivers of economic inequality identified > selection and combination of appropriate rules > facilitate enforcement against manifestly harmful conduct
- Transition from rules-based to effects-based approach
- Affording greater protection to a specific economic group, however defined, recognized as deserving preferential treatment from a redistributive perspective

Q&A

Thank you for your attention!