Public Private Dialogue on Economic Agenda for Election 2018: Suggestions for Political Parties
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Preamble
The COMPETITION COMMISSION OF PAKISTAN is responsible for ensuring the process of competition is not distorted both on the supply side via its competition powers and the demand side via its consumer protection powers. The Commission is a quasi-enforcement (in matters of §3 ABUSE OF DOMINANCE, §4 PROHIBITED AGREEMENTS, §10 DECEPTIVE MARKETING PRACTICES) and quasi-regulatory (§5 EXEMPTIONS, §11 ACQUISITIONS AND MERGERS) body.

What it does not do is protect individual competitors directly, rather the process of competition, or set prices.

“Disruptive Competition”
5th December is generally termed World Competition Day, albeit unofficially, as it was on 5 December 1980 the UN SET ON RESTRICTIVE TRADE PRACTICES was released by UNCTAD, which became the framework of most competition law. The theme for this year is disruptive competition.

Disruptive innovation in Pakistan means we can order books and food online, access financial services (easypaisa, mobicash, etc.) and ride-sharing services (CAREEM and UBER) on our phones. e-commerce is growing and websites (like OLX and PAKWHEELS) facilitate the interaction for buyers and sellers – leading to as perfect a competitive market as there can be with many buyers and sellers and lower information asymmetries.

Small companies are challenging the giants in key sectors, most notably banking and finance, where fintech companies are doing a better job in reaching out to underserved consumers with the products and services they

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need when they need it without cumbersome paperwork. With biometrically-verified SIM cards, individuals are able to open basic baking accounts in most banks from their smartphones, or acquire. They are targeting market niches and delivering quality products and services, making them more accessible and competitive.

The National e-Commerce Policy Framework is a step in the right direction that takes advantage of existing technology (3G and 4G, competitively-priced smart phones) to bring products and services to consumers. The policy should be supported by the next government. The Commission’s role in the formulation of Pakistan’s National e-Commerce Policy Framework is to ensure that consumer protection issues are adequately addressed and institutional roles and responsibilities are defined clearly. We have used this platform to lend support to the revamp of Pakistan’s data protection laws, which will be critically important as people shift to technology-based transactions.

The shift from price to data is accelerating and data is the next essential facility. Data has become a new critical resource for strategy, prompting debate on how it should be considered in competition enforcement. Algorithms and artificial intelligence can produce better outcomes by processing more data, faster. But “better outcomes” for firms may not always be “better outcomes” for consumers. This will require a much better understanding of the role of algorithms and artificial intelligence to develop an enforcement strategy that can monitor and track collusion, price discrimination, and other co-ordinated conduct. This will raise capacity challenges for many agencies, given the fast-moving nature of technology.

On the other side of the spectrum are the giants and we do see recent enforcement action against Google and Facebook as emerging challenges for us in areas of dominance, consumer protection, and data privacy issues. The challenge in all this is to ensure an economic and regulatory environment in which new business models and consumer-friendly innovations can emerge and thrive. Protecting competition becomes important.

The Collaborative Economy and Consumer Protection

The collaborative economy redefines the notion of a “consumer” and poses a set of new challenges for both consumer protection and competition.

The collaborative economy developed in the wake of the 2007-08 financial crisis and has shown steady growth. This is a challenge for policy-makers, who must rethink labour laws, competition laws, taxation, etc, to accommodate flexible nature of work and employment.

Other related challenges include the multiplicity of modes of remuneration, as well as the blurred distinction between “consumer” and “business” and the seamless transition between the two. In this context, the notion of consumer has become more complex since they not only purchase but also supply services. Will the tax regime support or stifle the individual?

While basic consumer protection laws (including unfair commercial practices and prohibition of deception) should continue to apply to these platforms, there is still lack of clarity with the roles and responsibility of the peer provider.

The unregulated nature of the Internet and its international span raises issues of jurisdiction. As most major existing platforms originate from developed countries, where could consumers from developing countries get redressal?
this context, a meaningful revamp of the TRADE DISPUTE RESOLUTION ORGANISATION is necessary. There is much need for promoting best practices on transparency; establishing dispute resolution mechanisms for online transactions; provide for accountability and responsibility for complaints after the transaction, and adjust consumer protection policies to match emerging technologies, etc.

The question for the Commission will be how provincial consumer protection regimes should adapt to the new collaborative economy, allowing consumers to also play the role of economic actors to satisfy their economic needs via multiple channels, facilitated by new technologies. vi

Albeit the existence of various consumer protection laws, the consumer does not benefit from much protection in Pakistan. The provinces have their consumer protection laws but the process of seeking relief is time consuming and financially unviable. A thorough revamp of consumer protection laws is an obvious necessity. There is also no Federal level agency designated for consumer protection. The Competition Commission of Pakistan may be considered for this role.

To Conclude

Frankly speaking, the challenges Pakistan faces requires that we adopt an innovative approach and any successful “innovation policy” nowadays requires effective co-ordination of public policies in related fields. We cannot separate competition from consumer protection from a tax regime that encourages small-and-medium enterprises and start-ups to drive growth for the next generation from an intellectual property regime that protects local innovation.

But there are other important things I feel that bear careful consideration. A WHISTLEBLOWER PROTECTION ACT at the Federal Level and similar to the KP Government’s, a CONFLICT OF INTEREST ACT. We need to have a legal framework that encourages accountability!

Although our perspective may be different, making sure that economics gains accrue to everybody in society is something we all agree on.

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data-economy-demands-new-approach-antitrust-rules-worlds-most-valuable-resource

2. Algorithms can lead to collusion in pricing (a much more invisible hand in play). Or they may facilitate co-ordinated interaction. In Virtual Competition, Professors Maurice Stucke and Ariel Ezrachi talk of “collusion scenarios.” One is multiple competitors using algorithmic pricing software by the same company. Another is that firms’ algorithms may (seemingly) independently but collectively set higher prices on their own.

In a speech on 16 March 2017, Commissioner Vestager set out in some detail how the use of algorithms could, in her view, infringe EU competition law:

- The Commission’s e-commerce sector inquiry has discovered that the use of algorithms is widespread. The inquiry “has shown that two thirds of retailers who track their competitors’ prices use automatic systems to do that. Some of them also use that software to adjust prices automatically.” Last year, the German and French competition authorities published a joint paper on data and competition, which considered the potential competition law concerns raised by algorithms.

- There is a risk that automated systems can lead to more effective cartels, for example through their ability to monitor prices.

- Algorithms can be intentionally used to engage in price-fixing or retail price maintenance.

- Businesses may be deemed to be acting in collusion as a result of the way their algorithms operate. She commented: “Illegal collusion isn’t always put together in back rooms. There are many ways that collusion can happen, and some of them are well within the capacity of automated systems.”

- “Pricing algorithms need to be built in a way that doesn’t allow them to collude.”
• Whilst the Commission’s cases to date have dealt with agreements that were established by humans (but implemented by computers), this does not mean that the Commission will not investigate automated systems that collude. “As competition enforcers, I think we need to make it very clear that companies can’t escape responsibility for collusion by hiding behind a computer programme.”

EU fines Google record $2.7 billion in June 2017. It is the biggest fine the EU has imposed on a single company in an antitrust case, exceeding a 1.06-billion-euro sanction handed down to U.S. chipmaker Intel in 2009. The fine, equivalent to 3 percent of Alphabet’s turnover, is the biggest regulatory setback for Google.

Google, with a market share in searches of over 90 percent in most European countries, had systematically given prominent placement in searches to its own comparison shopping service and demoted those of rivals in search results. The European Commission said the world’s most popular internet search engine has 90 days to stop favouring its own shopping service or face a further penalty per day of up to 5 percent of Alphabet’s average daily global turnover.

The EU competition enforcer has also charged Google with using its Android mobile operating system to crush rivals, a case that could potentially be the most damaging for the company, with the system used in most smartphones.

The German federal competition authority (Bundeskartellamt) opened an investigation into Facebook in March 2016 over what it suspects is “an abusive imposition of unfair conditions on users.” The Bundeskartellamt said they were looking into whether Facebook misused its position to collect people’s digital information. That included complicated terms and conditions that individuals had to sign to use the social network, and whether such contracts placed unfair constraints on the company’s users.

Innovation is a fragile process that can be suppressed in many ways. From a competition regulator’s perspective, it can be the behaviour of cartels, colluding to keep consumers for themselves, or larger companies abusing their size and dominant position to force out smaller challengers.

Indeed, with the emergence of what the OECD calls Peer Platform Markets (e.g. Uber), what used to be mainly C2C has now become C2B2C, where the key players today are the peer platform, the peer providers, and the peer consumers.

Questions such as how business models and consumer protection regimes can successfully adapt to the collaborative economy will need thought. Where does responsibility lie in the collaborative economy? Which best practices can be identified and how should they best be promoted? And what are the implications for international co-operation?