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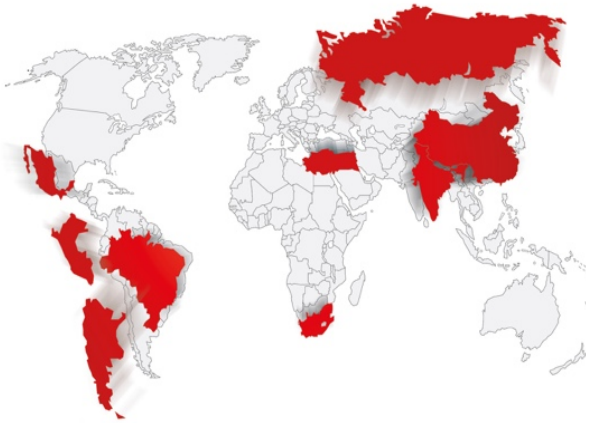

ANTITRUST AND DEVELOPING AND EMERGING ECONOMIES

COPING WITH NATIONALISM, BUILDING INCLUSIVE GROWTH

ANTITRUST AND DEVELOPING AND EMERGING ECONOMIES

Interview with Joseph Stiglitz
Nobel Prize-Winning Economist | Professor, Columbia University

Joseph Stiglitz (Columbia University) has been interviewed by **Eleanor Fox** (NYU Law) in view of the **Antitrust and Developing and Emerging Economies** conference which took place in New York on October 26, 2018.

Professor Stiglitz, you have given a great deal of thought to competition policies in developing countries and you have been very important in helping many of them frame their policy objectives. You also have been a leader in thinking about globalization and its impacts.Thank you for agreeing to share your thoughts on these important topics.

What do you think are the greatest impacts of globalization on developing countries, and, to the extent that they are harmful, can competition policy help and how?

The impacts of globalization differ depending on the country—from opening up trade opportunities, to investment and the transmission of ideas. One of the concerns is that firms in developing countries are, almost by their nature, small, new, and less experienced. One of the problematic aspects of globalization is that you confront these new firms with some very powerful global companies that have a large capital base and long experience.

At a fundamental level, it's a David and Goliath kind of story. In the absence of some form of regulation or competition policy, the firms in developing countries risk being squashed. The failure of those firms will in turn impede the growth of the developing country's economy. This risks turning developing countries into producers, the factory shop of the world—a term that was used in the context of China at one time—but lacking the sources of wealth that a real domestic entrepreneurship would have created.

Competition policy can partially level the playing field. In particular, it can make sure the "Goliaths" don't engage in extremely anticompetitive practices or take undue advantage of the benefits they already have. In the best-case scenario, you can have an outcome like that in South Africa, where competition policy has been used to take a more affirmative stance on levelling the playing field. When Walmart wanted to come into the country, South Africa required Walmart to help assist small, African producers who could be part of the supply chain—rather than replacing and destroying the prospects of small producers—in the hope that it would enhance them.

Some would say that leveling the playing field is a dangerous concept because it means handicapping the efficiencies of these global firms. What is the answer to that?

People make this argument based on the premise or presumption that markets are naturally efficient and that the unfettered outcome of market processes will be efficient both in the short and long run. But we know that's not true. The example I always use in my class is if Korea had had to rely on the static comparative advantages of 1965, it would have remained a rice grower rather than becoming the industrial country that it has become, and its standards of living would be a fraction of what they are today.

The market has imperfections that are associated with imperfect capital markets where the developed, large firms, have a market advantage over developing countries. Walmart can take advantage of its size to get goods at a lower price, which is a kind of unfair competition. There are lots of other examples where you can clearly see that the unfettered working-out of the market would not lead to efficient outcomes. In some sense, all governments recognize this. The United States has a Small Business Administration to help small businesses because we don't believe that the unfettered markets left to themselves will give a fair chance to small businesses.

In a broader sense, if you look across many markets in our economy, they are already distorted. We have concentrated market power in telecom, subsidies in agriculture, and government-provided research in many of the pharmaceuticals, all of which gived Western firms an advantage in those sectors. So the idea of this magical, efficient, competitive market left on its own is really just a myth.

Many developing countries suffer from longtime exclusions of a majority of the population from the economic mainstream. Is this an economic as well as social problem and should it be a factor in formulating principals of competition law in these countries?

It's obviously a problem—an economic, social, and political problem. It's an economic problem because if you believe that in a market economy, markets have advantages, then excluding them from the market is in effect not using its most important resource efficiently—its people. Unfortunately, because of the intergenerational transmission of advantages and disadvantages, those who are marginalized and excluded today will have children who are also marginalized and excluded. The problems get perpetuated and extended. To me, this is a very serious problem.

Good competition law must be construed broadly to advance societal well-being. It requires judgment. My own feeling is that, in the United States, we have successfully narrowly construed competition law. South Africa, for instance, has a broader mandate to that. To go back to the Walmart case, the use of competition policy to help promote African entrepreneurship and to integrate African entrepreneurs into the supply chain is a way to use competition to increase the likelihood that globalization will have a positive impact—and to avoid what otherwise might have been harmful effects from globalization in South Africa.

Should developing countries competition law be sensitive to issues of equality and inclusive growth. If so, how? Are you worried that attention to these factors will dilute efficiency and make everyone worse off?

Let me begin my response by saying that implicit in the last part of the question is an idea that has been propagated by the Chicago School of economics, but has been thoroughly discredited in advances in economics over the last 35 years. This fallacious idea is that you can separate issues of equity from efficiency. It's sometimes referred to as the Second Welfare Theorem. We now know that those two issues can't be neatly separated in that way.

Going beyond that, one of the reasons for the original interest in antitrust and competition law was not a search for more efficiency, but rather a reaction at the end of the Gilded Age to the growth of inequality, and the political power that was associated with that concentration of economic power. The very roots of competition policy go back to a concern about equity as well as efficiency.

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Interview with Xianlin Wang*
Professor, Shanghai Jiao Tong University

Xianlin Wang (Professor, Shanghai Jiao Tong University) has been interviewed by **Daniel Rubinfeld** (Professor, NYU School of Law) in view of their panel "**BRICS: A Competition Agenda?**" They joined the **Antitrust and Developing and Emerging Economies** conference that took place in New York on October 26, 2018 at the NYU School of Law.

Early this year, China announced a major restructuring of its competition enforcement authorities, combining the National Development and Reform Commission (NDRC), the State Administration for Industry and Commerce (SAIC), and the Ministry of Commerce (MOFCOM), into one super agency, the State Administration for Market Supervision (SAMS).

It is necessary to first clarify the exact nature of the restructuring. The State Council Institutional Reform Plan, passed at the 13th session of the National People's Congress in March 2018,

> *integrate[s] the responsibility and duty of the State Administration for Industry and Commerce (SAIC), the responsibility and duty of General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the responsibility and duty of the China Food and Drug Administration (CFDA), the responsibility and duty of price supervision and anti-monopoly law enforcement of the National Development and Reform Commission (NDRC), the responsibility and duty of anti-monopoly law enforcement on concentration of undertakings of the Ministry of Commerce (MOFCOM), and the responsibility and duty of the Office of the Anti-Monopoly Commission of the State Council so as to establish the State Administration for Market Regulation which is subordinate to the State Council.*

The official name of the newly established ministry is thus 'State Administration for Market Regulation' (SAMR). The SAMR is mainly based on the whole SAIC, includes the Price Supervision and Anti-Monopoly Bureau of the NDRC (not the whole NDRC) and the Anti-Monopoly Bureau of MOFCOM (not the whole MOFCOM). This means a major change in China's anti-monopoly law enforcement system: ten years after implementation of the Anti-Monopoly Law (AML), the situation that three anti-monopoly law enforcement agencies co-exist in China comes to an end. The unity of the anti-monopoly law enforcement agencies is conducive to regulating monopolistic behaviors.

How do you believe SAMR will be structured administratively to handle merger and non-merger activities?

Since the newly established SAMR is responsible for all anti-monopoly affairs (price monopoly investigation, non-price monopoly investigation, and undertaking concentration review), and the agency staff members come from the former three anti-monopoly agencies, the agency will better address the whole gamut of anti-monopoly responsibilities, including merger and non-merger activities.

Do you expect SAMR to issue a revised Anti-Monopoly Law (AML). If so, what revisions do you expect? If not, how do you expect the new agency to manage the current AML procedurally?

In China, making or amending law is the duty of the National People's Congress or its standing Committee. In accordance with practice, the concerned departments of the State Council may be entrusted with drafting laws. So the SAMR may organize drawing up the revised draft of AML. In fact, the Office of Anti-Monopoly Commission of the State Council has organized the researching and drafting of AML since 2015. So far, contents to be modified are more extensive, include both substantive and procedural rules, both merger and non-merger affairs, and may include some articles concerning new economy. Besides, by amending AML, the basic position of competition policy and fair competition review system may be established in the law.

Will SAMR be able to effectively reduce the uncertainty that market participants currently face when dealing with three distinct agencies?

In the past ten years, there were three anti-monopoly enforcement agencies in China, so market participants really did face some uncertainty. For example, the three agencies took different ways of delegation of authority to corresponding institutions at the provincial level; NDRC adopted a general delegation of authority, SAIC adopted a delegation of authority on a case-by-case basis, and MOFCOM delegated approval authority. Similarly, NDRC and SAIC developed different rules on leniency. With the 'Three in One' restructuring, great changes will take place in this aspect. In fact, the SAMR has been preparing to make and amend some relevant enforcement rules. This change is worth looking forward to.

*** This interview has been edited for clarity.**