

Competition law: a double-edged sword

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Competition policy is not a new phenomenon in the context of international markets. Governments around the world have established such a policy to protect consumer rights, evaluate and correct market structures and regulate the operations of market participants with due diligence and efficiency. Issues such as privatisation, mergers, anti-trust concerns, collusion and deregulation/regulatory reforms are some of the key areas that are addressed with such a policy. With an ever evolving socio-economic scenario and a greater dependence on market-driven forces, it has become prevalent and imperative for authorities to ensure efficient pricing, fair competition, freedom of trade and consumer welfare.

As countries strive towards establishing a market oriented economy free from intervention and letting information and knowledge be the sole determinant affecting outcomes, the growing importance and contributing factor of having a competition policy in place to regulate markets cannot be snubbed. The government of Bangladesh has recently taken such an initiative to draft a competition policy to help ensure healthy competition and competitive pricing in the market. The efforts should be applauded, as over the years, claims of price hikes of essential commodities have been linked to misconducts of cartels or syndicate of traders, manipulation of markets through 'price fixing' and deceitful businessmen-like practices have proven to be impediments in the course of establishing a conducive business environment.

'Unusual hoarding' of essential food items by traders has also been identified by the government as a significant contributing factor towards price hikes of commodities. Anti-hoarding acts and other similar initiatives have been in practice since 1953, and have been implemented in an on-again, off-again basis, depending on when the situation calls for it. More importantly, the acts do not explain how hoarding or unfair pricing is to be determined. These are left to be determined through notification in official gazettes from time to time. This creates the provision for discretionary and variable interpretations, political biases and bureaucratic bungling. This manner of inconsistency and *laissez-faire* attitude towards market regulation may not be desirable in a developing country like Bangladesh where changes in prices of essential commodities have severe implications on the bread-basket of the majority of the population. In a study by the Consumer Association of Bangladesh, it blamed the government for its reluctance to monitor price fluctuations and the absence of a stern competition regulatory body. The interest group had rightly pointed out remedial actions that are missing in order to address such an issue. The enactment of a competition policy is not disputed and all sections of the society including the



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business sector seem to favour it. The question arises as with all initiatives in the country, at the implementation junction. It could be established that having a regulatory body or commission to oversee the country's competition scenario in different markets may not result in a desirable outcome as advocated.

In a recent study conducted by the Bureau of Economic Research on the assessment of competition in the edible oil market in Bangladesh, findings suggested that there is relatively a moderate level of competitiveness in the market. In a capital-intensive industry as such, operators seek to exploit economies of scale and produce several

essential commodities since the distribution channel for all commodities are the same, thus presenting the industry as a moderate specimen for analysis on the topic. Competition being a multi-dimensional concept which takes into consideration elements such as variation in prices, entry and exit of firms, market shares, frequent switching of purchases by consumers, sourcing of supplies, quality of products and innovation, the study had concluded that the enactment of such a policy may not result in fruition in this particular market as no evidence has been found on price fixing or collusion. This is not to suggest that there is no need for enactment of a competition policy, but rather tailoring it and enforcing it on a market specific basis may reap the desired results.

To operationalise a competition law, having competent case investigators, lawyers and judges with a high degree of knowledge of the economics of market and competition will be highly desirable. Thus it could be a legitimate concern whether highly qualified people who would undertake investigations and deliberate on any unfair competitive practices will be appointed. What is even more questionable are the practices of lower level case officers who would carry out market surveys in order to check whether producers are conforming to the competition law. With common practices of 'rent seeking' behaviour among lower level officials who would jump to the opportunity of raking in some extra cash, without fully understanding why prices of commodities may have gone up, may impose a penalty on the "culprit" for personal gain. Dysfunctional operations as such would create just another provision where bribery and corruption will take its due place.

The identification of non-competitive practices is a very difficult task. What is even more difficult is to do justice to the perpetrators of such practices. In most developed countries, the settlement of anti-competitive cases can take years, and for Bangladesh it would prove to be more difficult because of the extant of accounting practices that produce a misleading picture of the finances and transactions of a business firm.

What would be advisable for the case of Bangladesh is to set up specific regulatory bodies, and not commissions, which would undertake the responsibility of catering to specific markets of the country. It would allow these law enforcement bodies to specialise and concentrate on dealing with single markets which may have imperfections and address issues of misconduct by unscrupulous businessmen or corporations while having a detailed knowledge of market operations and enforce such a law where it is actually considered necessary.

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Is it too early to write off Rupert Murdoch as CEO?

REUTERS, New York

It looked like it was time for a changing of the guard at News Corp.

Rupert Murdoch appeared tired, close to the end of a remarkable corporate career. His son James came across as fresh, smart and eloquent, ready to deal with arguably the worst crisis at the global media empire.

But Murdoch senior, 80, made clear he wasn't ready to go yet.

"No," Murdoch firmly told a British parliamentary hearing on Tuesday, when asked if he would resign over the phone-hacking scandal that has rocked News Corp.

"I feel that people I trusted, I'm not saying who, I don't know on what level, have let me down and I think they behaved disgracefully, betrayed the company and me, and it's for them to pay."

He went on: "I'm the best person to clean this up."

The problem Rupert Murdoch faces is that his presumed heir is not in a position to take over. James Murdoch, 38, initially failed to deal adequately with the phone-hacking scandal at the company's News of the World tabloid, and he could be further implicated as police investigations pick up.

"I would have thought that after last night, that has accelerated the pace of change, rather than slowed it down," said Bruce Guthrie, former editor of Murdoch's Herald-Sun newspaper in Melbourne, Australia, between 2007-2008.

"I think the market will probably be looking in the short term for a non-Murdoch to take the reins, and then perhaps a Murdoch will take control again in the future," he told Australian radio. Guthrie won an

unfair dismissal case against the company in 2008 and wrote a book called "Man bites Murdoch."

News Corp's board does not seem ready to strip Murdoch senior of the chief executive title -- leaving him just the chairmanship -- even though Chief Operating Officer Chase Carey is widely seen as a capable CEO replacement.

Independent directors Viet Dinh and Tom Perkins have now publicly stated that the News Corp board is united in support of the senior management team.

"In no uncertain terms, the Board and management team are singularly aligned," Dinh said in a statement on behalf of independent directors of News Corp after the hearing.

Even investors who criticized Murdoch's performance at the hearing felt it was too soon to write him off.

Murdoch called it the most humble day of his life and often looked ill at ease, rarely showing the passion and aggression on which he built his business over six decades.

He answered many questions in monosyllables and left long pauses before giving short replies. When Murdoch stumbled over answers, his son frequently tried to step in, only to be told he must let his father answer the question.

At one point, Murdoch senior admitted to being out of touch with the ins and outs of News International, the UK newspaper arm at the centre of the scandal.

"James was well prepared and related his thoughts much more effectively than his father," said Keith

Wirtz, chief investment officer at Fifth Third Asset Management, which owns News Corp shares.

But he said Rupert didn't look like he was about to quit.

"Rupert is News Corp, so I do not see him stepping down any time soon," said Wirtz.

Until the phone hacking scandal exploded on July 4, James Murdoch had been expected to eventually take over from his father. But the younger Murdoch has been tainted by details that emerged on his handling of the aftermath, such as the paying off of some victims.

In the past fortnight, News Corp has lost \$8 billion in market value, closed its oldest British tabloid, and lost out on its biggest ever proposed deal, BSkyB.

News Corp's stock ended up 5.5 percent on Tuesday, with Wall Street analysts pointing to a relief rally that the hearing did not uncover anything too damaging.

"James did a sensational job, he was knowledgeable and competent," said Gabelli Multimedia Funds manager Larry Haverty, whose portfolio holds News Corp shares.

"I think the hurricanes have passed with this performance, they both did a great job. I personally believe management stability is a key thing for media properties."

A long-time shareholder in Australia said the Murdochs' appearance had cleared up uncertainty over how far up the chain responsibility rested in the hacking scandal, but he remained concerned about the potential fallout.

"I certainly wouldn't look at this issue and say that that has any bearing on whether (Rupert) Murdoch should be there or not," said Angus

Gluskie, portfolio manager at White Funds Management.

"It's a remarkably difficult situation, and I wouldn't be too harsh in judging how they've handled it."

A top 10 News Corp shareholder said he felt the senior Murdoch's performance was poor and called it "a big black eye," adding that appointing Carey as CEO would be "a good cosmetic move."

But he noted that would be a big snub to James Murdoch, and a message his father was not prepared to send. The shareholder spoke on condition of anonymity.

If the heir apparent baton passed to another Murdoch, former News Ltd editor Guthrie said daughter Elisabeth would be the most likely. News Corp recently bought her TV production company and she is expected to join News Corp's board.

"I would have thought Elisabeth is a better chance. Elisabeth is not as tainted as some of the other kids. She has proven herself as a businesswoman in her own right," he said.

"She is a longer-term proposition, if there is to be an interim period where Murdoch cedes control to someone else, an outsider, with the view of bringing one of the family back in again at a later stage."

Murdoch appeared to recover his spirits in the second half of the proceedings, answering questions more forcefully. He also got something of a sympathy vote from some observers after a surprise attack by a man with a plate of white foam.

"It made me think he's an old man, very frail, at the end of a long career," said Jennifer McDermott, media lawyer and partner at Withers Worldwide.



Front pages of Australian newspapers detail the results of the appearance of Rupert Murdoch and his son James Murdoch at a parliamentary committee hearing in London.