

# Kluwer Competition Law Blog

## Social Justice as a Goal of Competition Policy

Saksham Malik (The Dialogue) · Friday, February 23rd, 2024

The United Nations' Sustainable Development Goals (SDG) focus significantly on reducing inequalities globally (see, for example [Goal 10 of UN SDG](#)). Social inequality across the globe is premised on various parameters, including gender, race, income, religion and ethnicity. For instance, [UN Women](#) highlighted that women globally make around 77 cents for every dollar made by men, putting the former at an increased risk of poverty. As a result, policymakers are leveraging several instruments to tackle the growing challenge of social inequality. Various public policy domains, including labour, trade, public service delivery, and education, are being utilised in this direction. Increasingly, there are also calls for aligning competition law frameworks to the goals of social equality.

Historically, the most common goals of competition policy in global frameworks have been maintaining free and fair competition, safeguarding consumer interests and protecting freedom of trade. Therefore, some academicians and government stakeholders hesitate to expand the policy framework to social equality. Echoing the Chicago School theorists, they argue that competition law should only prioritise economic efficiency and leave social justice issues to other government instruments. On the other hand, a case has also been made to consider a more expansive scope of competition policy in the prevalence of rising inequality threatening vulnerable populations. Academic research (see, for instance, [Ioannis Lianos'](#) paper on 'Polycentric Competition law) and legal frameworks are increasingly advocating for competition law to go beyond efficiency goals and emphasise redistributive justice and equality for broader consumer welfare.

International organisations and various national governments have also made efforts in this regard. [Eleanor Fox](#), in her paper 'Equality, Discrimination and Competition Law: Lessons from and for South Africa and Indonesia', succinctly highlights the efforts made by the two countries to advance social justice principles in their competition frameworks. [South African Competition Law](#) employs a significant level of affirmative action for social equality in its competition landscape, including assessing the impact on the ownership of historically disadvantaged communities while analysing the effects of mergers. The [Indonesian policy](#) is also infused with principles of equality of opportunity, fairness and equal treatment in its language. Among other things, it seeks to prevent practices that result in unfair competition and potentially harm public interest. At the international level, the OECD has been discussing the prospect of a more inclusive competition landscape, including its [Gender Inclusive Competition Toolkit](#). Its work has explored themes such as market power's gendered effects, incorporation of gendered data in market studies, and gender integration into macroeconomic industrial policies.

Despite the abovementioned efforts, integrating social justice as a goal of competition policy presents practical difficulties. Firstly, policymakers and regulators' financial and personnel capacity, especially in the Global South, to incorporate a more expansive perspective of competition policy is a potential challenge. Exploration and implementation of novel thematic areas in policy and enforcement often require undertaking multiple initiatives including market studies, stakeholder consultations, considering public comments and constituting relevant committees or units. The significant work that government stakeholders have put in over the years to tackle challenges in digital markets, including conducting reports, initiating parliamentary inquiries, constituting specialised units, and coming up with new ex-ante frameworks, is a testament to this challenge. Without sufficient financial and human resources, considering social justice as a relevant theme in competition law and policy is likely an uphill task.

However, for government stakeholders to raise and allocate resources for incorporating social justice as a competition policy objective, the need and roadmap must be routinely exhibited to them. A gap exists in this regard, presenting the second practical challenge in pursuing an equality-driven competition policy. Competition discourse, internationally and domestically, often witnesses the routine participation of large companies, trade lobbies, lawyers, economists and competition regulators. Civil society organisations, especially consumer bodies and non-profits that advocate for societal equality, currently possess limited opportunities to contribute to this discourse. The limited participation often leads to little attention to markets relevant to social equality considerations, including labour and informal markets.

Further, current research on the subject primarily explores the theoretical and legal basis of incorporating social equality in competition law. However, literature that provides actionable principles for achieving more equitable competition frameworks still needs to be developed. Research that suggests these principles while providing guidance on contextualising them to a country's domestic market realities is lacking. Competition policy approaches that focus not only on economic efficiency but also on distributive justice could be explored in this direction. This approach could include methods such as affirmative action through the exemption of certain marginalised groups, similar to the approach mentioned in Chapter 3, part C, Section 3(b) of the [South African Competition Act](#).

Further, incorporating public interest consideration in antitrust adjudication and policy, as argued by various scholars such as [Niamh Dunne](#), [Ma. Joy. V. Abrenica](#) & [Dina I Waked](#), and additional equity disclosure mandates on mergers such as disclosures on the effects of a merger on women & marginalised communities (inclusion of Gender-based disclosers in mergers were argued by [Betty Mkatshwa](#) et al., in their paper titled 'Prioritising gendered public interest considerations' at page 36) could be considered. Guidance on contextualising these public interest principles to domestic realities is further required in light of the vast differences in parameters and forms of social inequality in different countries. For instance, according to the [World Economic Forum's Global Gender Gap Report](#), countries like Iceland and Namibia fare much better in narrowing the gender gap than Afghanistan and Chad. Even the nature of social inequality can be significantly different across countries. While inequality premised on certain factors like gender and class is commonly observed in most countries, certain unique forms of social stratification, including those based on caste ([India](#)), are unique to only specific geographies.

Therefore, efforts to integrate social justice principles in competition law and policy, such as affirmative action, public interest principles and equity disclosures in mergers, require curating spaces in national and international forums for civil society organisations. Additionally, these

efforts need to include literature that can exhibit the need for this endeavour and guidance to realise it. Initiating these steps has the potential to incentivise governments to seek and allocate the required resources. These steps require concerted efforts of international forums, including the International Competition Network, UNCTAD, OECD and the WTO. At the same time, national governments and experts will need to support these initiatives in various capacities.

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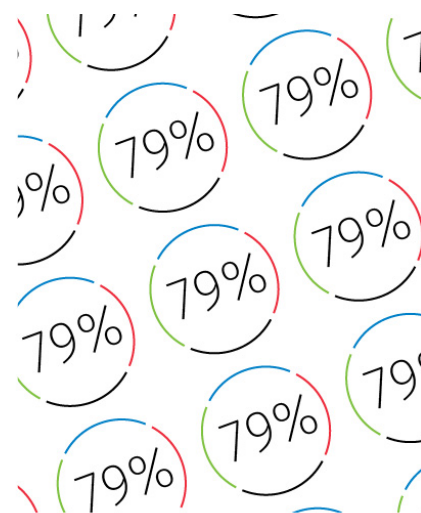
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