

JAMES H. BOCKING

MEMORIAL AWARD ESSAY

GETTING TO THE ROOT OF INDIA'S FARMERS' PROTESTS: REFLECTIONS FOR CANADIAN COMPETITION POLICY

Shruti Ramesh

Competition policy issues in major global economies abroad can be instructive when considering the renewed interest in the role of antitrust policy in Canada and other “developed” countries. One competition policy debate is currently materializing in India, where the “farmers’ protests” organized in response to proposed deregulation of the agricultural sector have been said to be the largest organized protests in human history. India’s farmers see deregulation and the potential removal of agricultural subsidies as fatal to their livelihood and ultimately believe stronger competition regulation is necessary to address India’s inequality crisis. Growing concern with inequality in developed countries makes India’s farmers’ protests a useful case study in considering what ought to be the goals of competition policy domestically. This paper uses the farmers’ protests to examine the potential role of competition law to address broader policy goals such as inequality, while outlining key limitations in evaluating proposed policy reform.

L'étude des enjeux entourant les politiques de concurrence dans les grandes économies de la planète peut être instructive lorsque l'on considère l'intérêt renouvelé pour le rôle des politiques antitrust au Canada et dans les autres pays dits développés. Un débat sur les politiques de concurrence prend forme actuellement en Inde, où les « manifestations d'agriculteurs » organisées en réaction au projet de déréglementation du secteur agricole seraient les plus grandes manifestations organisées de l'histoire de l'humanité. Les agriculteurs de l'Inde considèrent le projet de déréglementation et d'élimination des subventions agricoles comme fatal pour leur moyen de subsistance et croient que la crise des inégalités en Inde exige une réglementation plus rigoureuse de la concurrence. Alors que l'inquiétude à l'égard des inégalités grandit dans les pays développés, le cas des agriculteurs indiens peut nous aider à déterminer quels devraient être les objectifs des politiques nationales en matière de concurrence. Cet article s'appuie sur les manifestations des agriculteurs indiens pour examiner le rôle potentiel du droit de la concurrence dans l'atteinte d'objectifs politiques plus larges comme la réduction des inégalités, tout en soulignant les principales limites de l'évaluation du projet de réforme.

1. Introduction

At the time of writing,¹ India is in the midst of what has been referred to as the largest organized protests in human history.² The protests (hereinafter the “farmers’ protests”) have been organized by farmer unions and their representatives in response to three acts pertaining to farming passed by the Parliament of India early in the Fall of 2020.³ Broadly, the new bills are supported by India’s Prime Minister Narendra Modi and the Bharatiya Janata Party (BJP), who claim these policies for agriculture reform will liberalize the industry both domestically and internationally, and will impose national standards on the currently state-segregated agriculture market.⁴ Conversely, Indian farmers see deregulation and the potential removal of longstanding agricultural subsidies as fatal to their livelihood, primarily due to mounting levels of debt and limited alternative ways to earn a living faced by literally millions of farming families.⁵ While these laws were passed with the intention of bolstering competition in the market, they impact over half of India’s labour force, leading to perceptions of exacerbated income inequality and debt burden to the point that that India’s farmers currently face both an economic crisis, and a crisis of high suicide rates.⁶

With the protest happening in India, the natural assumption may be that the farmers’ protests have little relevance to competition law and policy in countries in the Global North like Canada and the United States. However, the rationale for considering an international competition policy case study is twofold: first, the forces of globalization and deregulation accompanied by rapid technological advancement have all played a role in shaping how markets are (re)defined, and the scope of conduct which competition and antitrust law may seek to regulate. These changing demands of the competitive landscape of how commerce is facilitated demand effective responses from competition enforcement agencies such as Canada’s Competition Bureau. Indeed, there is currently significant pushback against the status quo of competition and antitrust law in Canada, in part due to a variety of non-competition concerns (e.g. inequality, privacy, and the democratic process).⁷ The same dynamic appears to be on display in India, with the protests taking place in response to pro-competitive agricultural policy reforms; although the reforms may be motivated by a focus on economic efficiency, they are recognized as having implications beyond efficiency, and this has catalyzed mass civil unrest.

The secondary rationale for studying the farmer’ protests is that competition policy issues in major global economies abroad can be instructive when

considering the renewed interest in the role of antitrust policy in Canada and other “developed” countries. Increased deregulation and globalized markets make it increasingly important for domestic enforcement agencies such as Canada’s Competition Bureau to be appraised of market reform happening with Canada’s major trading partners. India in particular is a member of the BRICS⁸ block of countries, projected to experience rapid economic growth, predicted to become one of the dominant global suppliers of manufactured goods and services in the next 2-3 decades.⁹ The Competition Bureau has articulated as a goal strengthening and collaboration with BRICS competition enforcers in order to advance their respective competition policy and enforcement goals.¹⁰

At its core, this paper uses India’s farmers’ protests as a case study to consider whether the current dominant focus of competition policy on efficiency and consumer welfare is too narrow, and whether competition policy ought to be re-oriented from the dominant consumer welfare standard to deal with broader policy goals such as protecting small suppliers and dealing with issues of inequality. To be clear, this paper does not seek to argue that antitrust law should aspire towards an equitable redistribution of wealth and income, but rather seeks to examine whether antitrust law may contribute to exacerbating existing inequalities that have led, in part, to the farmers’ protests. As noted above, the new agriculture bills were motivated by a focus on economic efficiency; it is the effect of deregulation beyond economic efficiency that has led to the mass organized protests.

This discrepancy between intent versus perceived impact of the farming bills highlights one of the central questions this paper aims to address; whether competition enforcement authorities can remain credible and relevant if they maintain a narrow focus on efficiency without regard to how competition policy can have transition effects on smaller producers. By extension, the paper considers whether competition policy should be reformed so that stronger enforcement may have the externality of addressing issues of economic inequality. Whether or not it ought to be the role of antitrust regulators such as Canada’s Competition Bureau to factor in non-economic policy goals is a highly divisive question given rising concerns about inequality in the Global North. It is important to note, however, that this paper is intended to serve as an exploratory exercise using a case study involving live issues concerning competition policy, rather than provide a definitive answer to these complex policy questions.

The paper will proceed by providing a brief background and overview to the farmers’ protests, including an explanation of the contentious laws

pertaining to competition and deregulation of the agriculture industry. This background will illustrate the potential deleterious impacts that exacerbated inequality and deregulation can have on small producers, and society generally. The paper will then proceed to a discussion of economic inequality in Canada and the United States, and examine the arguments that have been made in the literature about the connection between inequality and market power. This discussion will set the stage for evaluating the possibility and merits of competition policy as an intervention for addressing inequality. Limitations and concerns with proposed competition policy reform will be addressed briefly before concluding. Notably, the limitations section will consider the arguments raised in the Competition Bureau's recent "Competition and Growth" summit, which dealt with the question of how to best facilitate inclusive economic growth in Canada's post-pandemic economy. Much of the discussion at the Competition and Growth summit advanced the argument that deregulation is in fact necessary to bolster competitiveness, an important consideration when evaluating what lessons can be taken from India's farmers' protests.¹¹

2. Background and Overview of the India Farmers' Protests: A Case Study

India is the world's largest democracy, with a population of approximately 1.5 billion people.¹² The Indian diaspora, consisting of over 18 million people, is the largest diasporic population in the world.¹³ Over two million Canadians are of South Asian descent, many of whom are from India's agriculture states such as Punjab, Haryana, and Madhya Pradesh.¹⁴ For this reason, the topic of India's farmers protests is one of deep economic and personal significance for many Canadians. The protests are well-poised to be a case study to consider the impacts of deregulation and promoting a market economy based on free-market principles, and whether such promotion is underpinned by outdated competition policy. Before delving into the policy discussion, it is important to first situate the economic and political climate that led to the farmers' protests.

a) Setting the Stage for the Farmers' Protests: Examining India's Post-independence Agriculture Market and the Green Revolution

India's independence from Britain in shortly after World War II was immediately followed by years of drought, famine,¹⁵ and political turmoil due to ongoing conflict with the newly formed and divided nations of Pakistan and Bangladesh. Many of India's poorest did not have sufficient

access to food.¹⁶ In early 1969, then president of the Rockefeller Foundation, George Harrar called a meeting with leaders of the world's major foreign assistance agencies to address the problem of global food scarcity.¹⁷ The subsequent mobilization of plans to develop the world's agricultural systems and increase overall food production was termed the "Green Revolution" and was initiated in India in late 1969.¹⁸ The Green Revolution emphasized providing developing countries with access to scientific advancement in farming techniques, as opposed to supporting them with food supply through aid organizations.¹⁹ Working closely with noted plant scientist Normal Borlaug, the Green Revolution had the impact of introducing new varieties of seeds that were "stocky, disease resistant, and highly responsive to fertilizer".²⁰ With the introduction of these genetically modified seeds and high yielding crop varieties, and the use of more advanced farming technology, India's food shortage was ameliorated. Although the use of pesticides and fertilizers led to land degradation that reduced the diversity of crops that were able to be planted,²¹ improved rural infrastructure greatly increased the efficiency of rural farmers production capacities, and led India to produce to a surplus of wheat and rice that addressed the food security concerns of the nation.²²

The Green Revolution also led to the establishment of a nation-wide agricultural marketing system. The purpose of this system was to ensure fair prices for small-scale farmers, given the cost and uncertainty of the new farming technologies introduced. The central government began to offer farmers subsidies in the form of Minimum Support Prices (MSP)²³ for various crops such as wheat and rice, which would generally be significantly higher than the international price.²⁴ Practically, this worked through the central government creating a complex procurement system by stationing government agents in the wholesale markets known as *mandis* to buy the crops for which an MSP was established.²⁵ The *mandis* are run by committees of commission agents who act as middleman by brokering sales and financing transactions. In theory, the *mandi* system guaranteed farmers an income, particularly where the open market price is less than the production cost incurred, while ensuring food production would be sufficient to meet the subsistence needs of India's growing population.²⁶

In brief, this newly industrial system worked well initially; the early days of the Green Revolution yielded significant economic prosperity for the Indian economy through greatly increasing the agricultural output and efficiency of major farming states like Punjab and Uttar Pradesh.²⁷ The increases in agricultural output from states like Punjab were able to greatly increase the incomes of farmers that comprised more than 80% of India's workforce at

the time.²⁸ Notwithstanding this short-term economic prosperity, the Green Revolution was not met without criticism. For instance, the loss of indigenous crop varieties due to excessive use of pesticides and fertilizers led to a significant loss in biodiversity of agriproducts.²⁹ It was concerns for the farmers' economic sovereignty and lack of sufficient income generation for smaller-scale farmers that led to subsequent calls for reform in the agriculture sector.

b) After the Green Revolution: Calls for Reform and the Disputed Farming Acts

During the onset of the Green Revolution, Indian agriculture as noted above accounted for approximately 80% of the workforce, and just over 50% of the Gross Domestic Product.³⁰ At present, agriculture continues to comprise over 50% of India's workforce. However, the sector's contribution to the country's GDP has seen a sharp decline, to less than 20% of the GDP.³¹ Put simply, the money in farming is disintegrating—the decline in agriculture's contribution to India's GDP is largely driven by an increasingly globalized and technology-driven economy and a fast-growing service sector. Despite employing a large segment of the labour force and overall increases in agricultural output following the Green Revolution, the value of this output is falling.³²

Economic concerns with the Green Revolution stemmed from the lack of sustainability that the newly industrialized farming practices had for marginal (or smaller scale) farmers. First, farmers faced high costs of continuing to sow high-yielding seed varieties due to their pesticide and irrigation needs, and they had limited alternatives available due to land degradation from pesticide use. Many farmers faced periods of stagnation in production due to vast mono-cropping, combined with increased input costs of cultivation to invest in labour and farming technologies.³³ As costs of farming mounted, the government subsidies in the form of MSPs, although adjusted biannually, did not account for this increased cost burden. This is particularly relevant because the vast majority (over two thirds) of India's farmers are considered marginal, owning less than one hectare of land—and although there is an MSP set by the government, the majority of them do not actually receive it at the *mandi*.³⁴

The increased expenses, repeated stagnation, and diminishing profit margins resulted in many rural farmers to take out loans to help sustain their livelihoods.³⁵ These loans were often given at high interest rates, and as costs spiralled, crushing debt for millions of small farmers and an accompanying

epidemic of suicides amongst farmers resulted across the country. According to the most recent *Accidental Deaths and Suicides Report* by India's National Crime Reports Bureau, an average of 28 farmers in India are dying by suicide per day due to this financial precarity –amounting to over 10,000 farmer suicides per year,³⁶ with the suicide rate projected to continue growing given the impact of the new farming laws. One farmer named Nirmal Singh who lost his father, son, and sister to farming debt-related suicide, said of the crisis “we are left with no tears, it has turned our hearts into stone”.³⁷ Taking one's life with the pesticide Sulfas has become so commonplace in India that the brand name itself has become synonymous with taking one's life.³⁸

Due to these widespread struggles with debt, farmers have been calling for reform since the 1990s. Asks have included terms such as government support in reducing production of monocultures of certain crops that deplete groundwater and require high volumes of pesticides,³⁹ subsidies for diesel for agricultural use, and having the MSPs, currently informally set and not legally enforceable, become a codified legal right for farmers. The central government was also of the mind that it was time for reform, but the farming bills that were introduced diverged significantly from the asks of the farmers.

c) The Contentious Farming Bills: Background and Overview

In 2017, the central government of India introduced a number of “model” farming acts for states to adopt. For context, India's Constitution contains a similar division of powers as the Canadian Constitution, assigning different responsibilities or “heads of power” to different levels (*i.e.*, the federal or state level) of government. The domains of “agriculture”, “markets and fairs”, and “trade and commerce within a state” are responsibilities assigned to state governments under the constitution.⁴⁰ The central federal government is responsible for promoting “freedom of trade, commerce, and intercourse” through regulating inter-state and international trade. Historically, laws regulating the agriculture market have been enacted by states, with the regulatory framework varying and being enacted by a state-level Agricultural Produce Marketing Committee (APMC).⁴¹ The APMC is responsible for issuing the licenses to commission agents who played a mediating role to enable farmers to sell to buyers via closed tenders and auctions.⁴² The central government was finding that APMCs had not in fact implemented their recommendations, and more urgently, that there was widespread corruption and collusion within the *mandi* system that was

harming competition and ultimately damaging the agricultural sector.⁴³ This was the context in which the three farming acts were introduced.

The first of the new farming laws is the *Farmer's Produce Trade and Commerce Act, 2020*.⁴⁴ This Act seeks to limit APMC oversight and jurisdiction and allow agricultural produce transactions to take place outside of the *mandi* system. This is done in tandem with providing a “facilitative framework” to allow electronic trading and e-commerce of farmers’ produce and prohibiting state governments from imposing levies on farmers for trade conducted in an “outside trade area”.⁴⁵ The second Act is the *Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020*.⁴⁶ This Act aims to create a framework for contract farming between farmers and buyers before the production of farming produces, allowing “sponsors” to engage with farmers via written contracts, and frees downstream players in the supply chain from state APMC regulations by permitting them to operate outside the purview of any state legislation.⁴⁷ This Act also contains a dispute resolution mechanism aimed at protecting farmers if terms of deals set with farmers are not followed. Finally, the third Act is the *Essential Commodities (Amendment) Act, 2020*.⁴⁸ This final Act amends an existing Act that allowed the central and state governments to impose limits on stockpiling certain goods to prevent hoarding and subsequent market manipulation.⁴⁹ The amendment allows for the removal of some of these restrictions in exceptional circumstances such as war or famine.

While the above is a simplified explanation of the proposed agricultural reform, collectively the new Acts lead to a deregulated agricultural market with reduced barriers to entry for new competitors. The primary provisions of the proposed legislation had the aim of assisting smaller farmers who lacked the countervailing power to negotiate better prices for produce or invest in technology to improve their productivity, by allowing them to sell outside of their designated markets and earn fairer prices. However, farmers believe that the three Acts will result in a fragmented and deregulated market that could lead to volatile prices for farmers due to their vulnerability to large corporate competitors;⁵⁰ these concerns, and frustration with the central government for not responding to the farmers’ asks for regulatory reform, ultimately catalyzed the farmers’ protests.

d) The Farmers’ Protests: 2020—present

When the farming Acts were first announced in July 2020, smaller-scale protests began in the farming states of Punjab and Haryana. Once the Acts

received Royal Assent in September 2020, farm unions across the country mobilized in protest.⁵¹ When the local protests were not garnering government response, in late September 2020 farm unions all over India called for a *Bharat Bandh*, or nation-wide shutting down, to protest the new farming laws.⁵² On November 26, 2020, a nation-wide general strike was held organized by 10 trade unions across the country, in which an estimated 250 million people participated, making it arguably the largest strike in human history.⁵³ Millions rallied from Punjab, Haryana, Uttar Pradesh, Karnataka, Kerala, and Tamil Nadu amongst other states in the 24-hour general strike which resulted in several states being completely shut down, including public transport and other essential services. In the more prominent agricultural states, railway and other transportation services were suspended for more than two months due to the protests leading up to and following the general strike.⁵⁴

The strike was followed by the infamous *Delhi Chalo* mobilization on November 30, 2020 (literally, “let’s go to Delhi”),⁵⁵ in which upwards of 40,000 protesting farmers and their supporters marched to the nation’s capital, setting up camps and demonstrations on major roadways and neighbouring towns.⁵⁶ Support for the protestors mounted, with media outlets estimating that the number of farmers in the encampments to be in the hundreds of thousands. On India’s Republic Day January 26, 2021, many of the protesting farmers held a parade in which they drove a large convoy of tractors into Delhi to protest.⁵⁷ Today, nearly three months after the Republic Day demonstrations, there are still many tens of thousands of farmers camped outside of New Delhi, engaging in peaceful protest in an attempt to get the government to listen to their demands and to draw public attention to the dire circumstances of millions of India’s small-scale farmers. Their demands echo the calls for reform farmers have been making for decades, and include a repeal of the laws, formalizing agricultural subsidies, and assurances that the market will not become liberalized and the current procurement system will remain in place.⁵⁸

By way of legal response, in January 2021, the Supreme Court of India issued a stay order on the implementation of the farm laws in order to facilitate talks between the protestors and the government.⁵⁹ As of today, a dozen rounds of talks have taken place between the central government and the farmers’ union representatives, all of which were inconclusive, escalating tensions between the two parties. The crux of their disagreement is that the central government maintains that the new laws will promote competition in the agricultural industry, which is ultimately beneficial. In contrast, the farmers maintain that this increased competition will render

their livelihoods vulnerable and exacerbate existing inequality between the wealthier segments of the population and the half of the labour force that continues to work in agriculture and largely live in poverty. The stay order remains today, although the Supreme Court of India has established a committee⁶⁰ to carry out tasks related to the law's eventual implementation.⁶¹ In addition, although several state governments have tabled counter-legislation against the farm acts in light of the farmers' concerns, none of these acts have been passed by their respective state governors due to pressure from the central government. Further, farmers have maintained that they will settle for nothing less than the full repeal of the farm laws, leaving all parties at a stalemate, with tensions rising. Most recently, the Lakhimpur Kheri massacre on October 3, 2021 in Uttar Pradesh resulted in eight deaths and several injuries, as protestors were run over by an SUV from the convoy of the Union Minister of State for Home Affairs.⁶² Authorities closed schools and cut internet and cellphone service in the region while attempting to diffuse the situation. The massacre is a symptom of the cycle of acrimony between farmers and the central government over the past year, and the increased political polarization this issue has brought—particularly ahead of several important state elections slated to take place in the next year.⁶³

The response of other actors to the farmers' protests has been highly divisive. The Indian central government and its supporters maintain that farmers are ill-informed and their calls for the government to regulate the agricultural industry in a way that explicitly protects small suppliers and addresses the regressive economic effects they shoulder is too much government intervention. The central government is preferring a less interventionist approach with an aim of promoting a more liberalized market economy.⁶⁴ The farmers conversely argue that it is government intervention that led to the mounting debt faced they are facing, and it is not merely desirable but necessary for any agricultural reform to address issues of inequality and financial precarity affecting smaller-scale farmers.

The tension between farmers and the state has led to peaceful protest giving way to violence. At every turn, protestors have been met with a heavily militarized police response, in which police have employed tear gas and water cannons, in addition to constructing barriers in attempts to stop protestors.⁶⁵ Police violence has been the direct cause of at least five protestor deaths. The persistence of the protest movement has led to the Indian government on more than one occasion shutting down cellular and internet access near protesting camps to prevent them from communicating. Media outlets controlled by allies of the government have been criticized for showing skewed portrayals of the protests,⁶⁶ and journalists willing to

be critical of the central government's actions have been subject to sedition charges, which are punishable by life imprisonment.⁶⁷ In this sense, the protests have snowballed into larger discussions about rights to dissent and fears that unchecked economic and political power of corporations influencing government and media threatens faith in the very fabric of India's democracy.⁶⁸

It is this connection between competition policy, economic inequality, and inequality's potential to threaten democracy that has drawn the attention of prominent public figures such as singer-entrepreneur Rihanna and climate activist Greta Thunberg, whose social media posts about the protests have elevated the farmers' struggles to a global platform.⁶⁹ Canada's Prime Minister Justin Trudeau was the first international politician to voice concerns about the Indian central government's mishandling of the farmers' protests.⁷⁰ Solidarity movements have been organized across Canada and the United States with members within and outside the Indian diaspora voicing concern neoliberal economic reform and insufficient competition enforcement renders vulnerable small producers who are already economically marginalized.⁷¹

This is where the policy question arises. In pursuing agriculture deregulation, the Indian government is aiming to implement pro-competitive free market policies to increase economic efficiency in a sector that is languishing. Although the reforms have the aim of increasing competition in the market, the removal of agricultural subsidies and perceived lack of safeguards in place for small producers is perceived as fatal to their livelihood, as they are vulnerable to large corporations exercising their market power. The harsh economic circumstances of India's farmers is unquestionable; what remains in contention is whether antitrust policy is in fact the proper forum to address non-economic policy objectives such as inequality.

This paper will now move to examine economic inequality in the local context and how it has been linked to market power, before considering the varying perspectives (and tensions therein) on what policy objectives ought to be captured within the scope of competition and antitrust law. These tensions, as will become clear, are also demonstrated by the struggle between the farmers and the central government in India's farmers' protests.

3. Economic Inequality and its Connection to Market Power

India's farmers' protests have been described as "laying bare the dire reality" of what significant income and wealth inequality can do to society,

particularly against the backdrop of the ongoing COVID-19 pandemic.⁷² This reality is not unique to the developing world. In fact, economic inequality has received increased attention in the developed world in a highly politicized way. This increased concern around inequality unsurprising in the context of developed nations' recovery from the financial crisis of 2007-2008, in which many observed for the first time that "the rising tide has not lifted all boats".⁷³ The pandemic has only sharpened the global focus on inequality; COVID-19 has been described as a "social x-ray"⁷⁴ of sorts, highlighting previously unseen problems in our body politic and globally. In India and Canada alike, poorer workers who subsist on seasonal labour or agriculture disproportionately bear the cost of the pandemic, exacerbating existing inequalities stratified by race, class, and caste.⁷⁵ Conversely, Canada's top 20 billionaires gained an average of \$2 billion dollars each since the start of the pandemic, widening the wealth gap between richest and poorest, with the former being criticized for "pandemic profiteering" while large segments of the population struggle to meet their basic needs.⁷⁶

To be clear, inequality is not in and of itself a bad thing. Scholars of anti-trust law such as Baker & Salop have pointed out that a degree of inequality is a natural by-product of a market economy. It is the very existence of inequality that attracts investment, innovation, and incentivizes participation in the market—because for there to be the possibility of "winning" in a market economy, there also by necessity needs to be the possibility of "losing".⁷⁷ Inequality as an inherent feature of capitalism is not a new idea; French economist Thomas Piketty had as his central thesis in "Capital in the Twenty-First Century" that a trend towards increased economic inequality has been decades in the making as a feature (albeit an undesirable one in Piketty's framing) of free market capitalism.⁷⁸ Without attempting to tackle the question of at what level inequality becomes undesirable, the fact remains that economic inequality is growing, both in magnitude and visibility, and it is affecting Canadians across the country.

The fact of growing inequality can be attributed to a range of factors, including globalization resulting in the off-shoring of certain jobs,⁷⁹ the development of labour-saving technologies,⁸⁰ and a related reduction in bargaining power for workers.⁸¹ Canadian economist Carolyn Wilkins in her remarks at the 2018 G7 symposium in Montebello Quebec noted that while technological progress has, and will continue foster economic growth, it has also driven rising economic inequality.⁸² Recent commentators on antitrust policy Khan & Vaheesan have sought to establish the impact of market power (defined as a firm's ability to drive prices and returns above competitive levels) on economic inequality, arguing that market power not

only gives firms “tremendous political clout”, but also enables regressive redistribution in the market place.⁸³ Recent research from the Organisation for Economic Co-operation and Development (OECD) using data from Canada and seven other high-income economies provides some empirical support for market power contributing to economic inequality: the OECD report found that market power, stemming from a lack of competition, increases the wealth of the richest 10% of the population by between 12% and 21% while reducing the income of the poorest 20% by between 14% and 19%.⁸⁴ Scholars of antitrust populism (also referred to as Neo-Brandeisian or, pejoratively, as “Hipster” antitrust theorists) argue that notwithstanding the inevitability of inequality, “even bracketing its moral undesirability, *extreme* economic inequality subverts political equality and threatens ... democracy [*Emphasis added*]”.⁸⁵ This threat to democracy in the face of extreme inequality is precisely what we are seeing in the aftermath of India’s farmers’ protests.

The connection between market power and inequality is not undisputed, however. The existing body of literature linking market power to inequality is primarily driven by “evidence of increasing corporate concentration and mark-ups, declining business dynamism and investment, and the rise of superstar firms in digital markets with winner-take-all characteristics”.⁸⁶ The International Monetary Fund (IMF) recently published a chapter investigating macroeconomic trends in advanced economies over the past three decades.⁸⁷ The chapter did in fact find a modest rise in market power across the economies studied,⁸⁸ and that an uneven rise in corporate market power could contribute to wage inequality between firms, as well as an overall rise in wealth inequality in some advanced economies.⁸⁹ However, the chapter makes clear that the precise macroeconomic implications of rising market power have not yet been firmly established, and the broad market concentration usually used as a measure of market power is likely oversimplified, leading to potentially overbroad conclusions being drawn. In a similar vein, antitrust scholars such as Daniel Crane have argued that the nature of the relationship between market power and economic inequality is misunderstood.⁹⁰ At the core of this rebuttal of “monopoly regressivity” is the claim that exercises of market power have “complex crosscutting effects” and therefore cannot be generalized as being economically regressive in a robust and meaningful way.⁹¹ However, populist antitrust scholars have countered this argument with examples from different industries such as agriculture, airlines, and telecommunications, demonstrating that the accumulation and exercise of market power by dominant firms cannot be unilaterally neutral, and is likely to have some “regressive income and wealth effects”.⁹²

Market power, while by no means the exclusive cause of income and wealth inequality, is more likely than not a contributor. Nobel Prize laureate Joseph Stiglitz noted that the creation and exercise of market power can contribute to the development and proliferation of inequality because the creation and exercise of market power tends to raise the return to capital.⁹³ Technological change has created more markets with intellectual property protections facilitating firms achieving market power.⁹⁴ Scholars have also observed that more permissive antitrust regimes in recent decades have also more likely than not increased the prevalence of market power, and subsequently increased economic inequality.⁹⁵ Looking to the farmers' protests, while their response to deregulation was pre-emptive, it was not baseless; both domestically and abroad, deregulation of the agriculture sector both in India and in other countries has seen the small farmer's share "dramatically decreasing, while consumers pay largely the same... price".⁹⁶ While the relationship between market power and inequality is not yet understood with precision, there is undoubtedly a correlation between the two. It is the rise of market power, the rise of inequality, and the concerns of the relationship between the two trends that underpins the current challenge to antitrust orthodoxy.

As noted earlier in this section, inequality itself is not the problem; it is extreme inequality that raises concerns about the welfare of society's most disadvantaged, and of the state of our democracy as a whole. While the extreme example of the India's farmers' protests may seem far away from the reality of economic inequality in Canada, it is important to note that regulatory reform in markets such as agriculture and subsequent civil unrest are not unprecedented; many economies in developed and developing countries (including Canada and the United States) undertook similar agricultural reform in the late 20th century to encourage private sector participation, with similar concerns raised about the welfare of small producers.⁹⁷ In light of exacerbated inequality during the pandemic, we cannot dismiss the circumstances of India's farmers as an issue unique to a "developing country" and instead take it as a lesson to prevent similar civil unrest from occurring closer to home. The connection between market power and inequality has become a point of increased discussion amongst competition law scholars, as has debate about whether competition law and policy is a suitable intervention to deal with these concerns. These perspectives will be considered in the next section as we discuss whether, and to what extent, Canadian competition policy can and ought to consider addressing goals beyond the dominant consumer welfare standard such as ameliorating economic inequality.

4. Should Competition Policy Address Issues of Inequality?

Thus far in our discussion we have used the farmers' protests in India as a case study to illustrate not only the moral undesirability of such extreme economic inequality, but also the possible impacts that market power, and antitrust enforcement could theoretically have in promoting more progressive (or regressive) economic outcomes. Although the agricultural reform in India is intended to be pro-competitive, farmers concerns stem from the longstanding economic precarity they have been experiencing, and they perceive the new farming laws will exacerbate existing economic inequality for small farmers; they argue that agriculture reform should do the opposite, and aim to ameliorate economic inequality. Now we will consider the question of whether the pursuit of outcomes unrelated to economic efficiency *should* be a formalized part of our own competition policy regime in Canada.

We are currently experiencing an “antitrust counter-revolution”⁹⁸ of sorts, with the role of antitrust policy receiving renewed interest in jurisdictions such as the United States, the European Union, and by extension, Canada. Of primary concern is whether competition law should retain its current focus on consumer welfare and economic efficiency or should seek to achieve a broader subset of goals, including tackling progressive issues of wealth and income inequality, and implementing safeguards around the growing political power of large corporations. Although addressing the economic power of large corporations has always been a goal of antitrust law, there is a growing sentiment that a merger review process that is overly focused on economic efficiencies may not adequately safeguard society from firms' achieving significant market power. For example, Canada's Commissioner of Competition Matthew Boswell gave remarks on October 20, 2021 at the Canadian Bar Association at the Canadian Bar Association Fall Symposium of the Competition & Foreign Investment Group urging for the repeal of the efficiencies defense in section 96 of the *Competition Act* to achieve a more robust and less permissive antitrust enforcement regime.⁹⁹

The body of scholarship addressing the purpose of antitrust law is immense. Scholars of different vintages and political leanings have offered accounts either advancing or problematizing the consumer welfare standard that animates contemporary competition law policy in Canada. Rather than exhaustively summarizing the literature on the schools of thought, we will provide a brief discussion of the key points before returning to the farmers' protests and considering what lessons we can glean for Canadian competition policy.

a) Considering the Status Quo of Competition and Antitrust Policy: the Chicago School

It is uncontested that modern competition policy in Canada and the United States is premised on the Chicago School in that it focuses solely on promoting competition, defined by reference to the “effect of corporate behaviour on consumers, especially in terms of impact on product quality, and ... price”.¹⁰⁰ The Chicago school views markets as naturally competitive, with relatively little need for state intervention to promote competition. As a result of the Chicago School’s dominance for the past several decades, non-competition factors have been of mostly marginal significance in domestic and international competition law enforcement frameworks. Of course, relative to the United States, Canada’s economy remains small.¹⁰¹ Nonetheless, the Chicago School has been the prevailing influence on Canadian competition policy since the enactment of Canada’s *Competition Act* in 1986.¹⁰²

While focused primarily on efficiency, Canada’s *Competition Act* appears to leave some room for consideration of additional policy goals beyond the consumer welfare standard. The *Competition Act*’s purpose clause states:

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices. [*Emphasis added*].¹⁰³

The Federal Court of Appeal in *Canada (Commissioner of Competition) v Superior Propane Inc.*¹⁰⁴ provides some additional discussion of the purpose clause of the *Competition Act*. The Court emphasized that the Competition Tribunal erred in law by adopting a “total surplus standard” in considering the efficiency defense under section 96.¹⁰⁵ The Court noted that the total surplus standard only considers the “deadweight loss of wealth to the economy”, and that this cannot correctly be the standard by which efficiencies are measured under section 96, as by using this standard “an anti-competitive merger is allowed to proceed when efficiency gains are greater than and offset this deadweight loss to the economy.”¹⁰⁶ Rather than limiting analysis of efficiencies to deadweight loss, having regard to the purposes set out in section 1.1 of the *Act*, the Court found that a wider range of effects should be considered in balancing the interests of producers and consumers.¹⁰⁷ A unique feature of Canada’s competition

regime seems to be the explicit incorporation of additional public policy goals, making room for “enforcement decisions that do more than protect consumers from price increases”.¹⁰⁸ That Canada’s regime is not divorced from broader industrial policy objectives has been the basis for arguing that Canada’s competition policy is in a “more advantageous position to adapt to new political challenges compared with its U.S. and EU counterparts”.¹⁰⁹ These include challenges to the Chicago School’s purist consumer welfare approach and subsequent calls for policy reform.

b) Antitrust Populism and Concerns with Growing Inequality

The Chicago School has not been without significant criticism from the antitrust community, particularly after the late 2000’s financial crisis.¹¹⁰ As discussed earlier in this paper, burgeoning concern about economic inequality during the post-recession recovery period led to calls for a “more sophisticated form of capitalism, one imbued with a social purpose”.¹¹¹ European scholars such as Anthony Atkinson have argued that economies in developed countries, particularly the United States, have erred in deviating from the *Sherman Act*’s original focus on preventing economic concentration in the American economy by keeping a large number of small competitors in business to an unadulterated consumer welfare standard.¹¹² Growing political pressure for competition policy reform has contributed to the popularity of the Neo-Brandesian antitrust movement, which is also referred to as “antitrust populism”.

Antitrust populism is not entirely new—in many ways, it signifies a return to the original policy intentions behind establishing antitrust laws in the first place. Competition and antitrust policy began as an explicitly political agenda to limit the political power of trusts.¹¹³ Scholars of the Neo-Brandesian antitrust movement are concerned with issues such as income inequality, unemployment, stagnant wage growth, and the danger that growing economic and political power of large firms poses to these public policy goals. It is these concerns that lead proponents of this movement to see antitrust policy as an avenue for intervention to address perceived symptoms of unchecked (or rather, insufficiently checked) market power beyond higher prices paid by consumers.

Prominent commentators of the antitrust populist movement Lina Khan and Sandeep Vaheesan speak to how powerful corporate actors can “inflict major damage on the ... economy, society, and democracy”, which we see very clearly in the case of India’s farmers’ protests.¹¹⁴ The corollary of this potential for harm is that a revived antitrust enforcement movement can

play an important role in reversing the dramatic rise in economic inequality and other perceived effects of market power. Khan and Vaheesan actually use the example of the agriculture sector in one of their papers, demonstrating how after decades of mergers, food retail and agricultural inputs have become highly concentrated, resulting in an industry “shaped like an hourglass”, with millions of consumers and farmers on either end “connected through a few large companies”.¹¹⁵ Consolidation along the supply chain has led to worse outcomes for farmers, and for consumers, “transferring wealth from both farmers and consumers to processors, distributors, and retailers in the middle”.¹¹⁶ In this example, the authors demonstrate how more stringent antitrust enforcement would have promoted the interests of smaller producers and consumers alike, while promoting more progressive economic outcomes even where economic progressivity is not a specific goal. Panelists at the Competition Bureau’s recent “Competition and Growth Summit” also discussed the regressive impacts of Canada’s supply management system, and the implicit tax imposed on poor households as a result of rising costs *e.g.* of dairy, that is “nearly five times greater than rich households as a percentage of income”.¹¹⁷

In that vein, it is important to note that arguments in favour of antitrust enforcement having broader policy aims do not purport that the consumer welfare standard is wholly bad; in fact, the consumer welfare standard also helps to address inequality because it prevents conduct that would harm consumers to the exclusive benefit of shareholders.¹¹⁸ Neo-Brandesian scholars merely argue that “consumer welfare” as defined by short-term price effects alone is “unequipped to capture” the effects and architecture of market power in the modern economy.¹¹⁹ The reasons they give for this vary, but include the fact that there is no price in certain markets such as technology (*e.g.* to use services like Facebook), and that traditional conceptions of market power, and relatedly, that measuring market power in a comprehensive and robust way is challenging. In the previously referenced IMF report,¹²⁰ the difficulty in measuring market power was underscored, with different potential definitions of market power being proffered in order to address the ambiguity presented by exclusively focusing on market power as it relates to consumer welfare.¹²¹

It is with these critiques of antitrust populists in mind that we can approach the question of Canadian competition policy reform.

c) Reform Possibilities and Limitations for Canadian Competition Policy

Neo-Brandeisian or populist members antitrust scholars generally concede that their arguments are vulnerable to empirical criticism;¹²² what cannot be disputed however, is the increased awareness and engagement with antitrust policy amongst non-practitioners, and the increased importance of public confidence in enforcement agencies such as Canada's Competition Bureau. Conversely, the now-dominant Chicago school was backed by empirical scholarship,¹²³ a fact noted even by notable Chicago School critics such as Frederick Scherer.¹²⁴ However, the Chicago school is not without its limitations—notably in its exclusive focus on price theory. For instance, Robert Pitofsky was known for criticizing the Chicago school for relying more on over-simplified theory than facts.¹²⁵ Richard Posner further noted that where the Chicago School is particularly vulnerable to criticism is “the assumption that price discrimination is on the whole socially beneficial because it moves the monopolist's output closer to the competitive level and hence reduces the misallocative effects of monopoly.”¹²⁶ Arguably, the Chicago School model and its animating assumptions are somewhat oversimplified, cutting “across market structures” and ignoring “details of different industries and individual firm behaviour”.¹²⁷

Despite its vulnerability to criticism, the Chicago School became the dominant framework for antitrust policy. While the impact of the Chicago School is undisputable, arguably it was a political victory rather than a purely empirical one that led to the dominance of the consumer welfare standard.¹²⁸ Antitrust policy increasingly relied on an “incomplete, distorted conception of competition” by adopting simplifying assumptions of self-correcting markets composed of “rational, self-interested market participants”.¹²⁹ Both schools involve simplifying assumptions, and both require political will to be exerted in favour of their respective policy aims. That the Neo-Brandeisian school of antitrust has less economic support should not be fatal to its argument against the Chicago school's exclusive focus on price and economic efficiency; rather, its theories should be put to the test to see if they can be empirically verified.

What do the imperfect options presented mean for Canadian competition policy reform? An explicit focus on equality has been critiqued by scholars such as Carl Shapiro, who argues for more stringent antitrust enforcement, but cautions advocates of the Neo-Brandeisian school that “the role of antitrust in promoting competition could well be *undermined* if antitrust is called upon or expected to address problems not directly

related to competition”.¹³⁰ Returning to India’s farmers’ protests, consider that agricultural subsidies and other interventions to incentivize agricultural surpluses were not just present in India, but also in countries like Canada and the United States.¹³¹ In thinking about the agricultural reform that took place in the Green Revolution, the primary objective was efficiency in farming; however, a number of other reforms unrelated to farming efficiency were also introduced, in order to ensure, for example, that farmers were able to earn a stable income. That these reforms were all undertaken in tandem seems to illustrate that policies with one objective (*i.e.*, efficiency) can ostensibly be affected by social and political pressure unrelated to that objective, and policy can be reformed to accommodate the needs of society beyond consumer welfare.

Perhaps the most significant misconception about antitrust populism is that arguments in favour of heightened antitrust enforcement to combat wealth inequality are arguing that antitrust is the sole solution for advancing progressive economic goals. This is not the case; most Neo-Brandeisian scholars purport that antitrust is but one additional regulatory tool, along with stricter corporate and securities regulation, progressive taxation, and strengthened employment policy, to ultimately tackle wealth inequality, and advance the cause of social justice.¹³² This is precisely the middle ground found by scholars such as Baker and Salop, who argue for increased budgets for enforcement agencies and transitioning towards more interventionist antitrust regulatory standards; this way, progressive economic goals can be advanced without raising concerns about inconsistency and unpredictability that comes with a nebulous “public interest” standard of review.¹³³ It is this middle ground that Canada will likely find the greatest potential for competition policy reform: focusing on expanding enforcement capacity, while maintaining a commitment to predictable conduct review to ensure the end goal of promoting competition is still animating Canada’s competition policy regime.

In the Competition Bureau’s recent “Competition and Growth Summit” referenced above,¹³⁴ the Bureau notes that even prior to the COVID-19 pandemic, there were concerns of “deeper inequality in advanced economies” such as Canada. As such, competition policy has been identified as a “lever” governments can, and ought to use to promote inclusive growth.¹³⁵ This does not involve abandoning consumer welfare standard; when consumer welfare is threatened, it is often the poorest and most vulnerable in society that are most affected by higher prices and reduced quality of choice that results from anticompetitive markets.¹³⁶ Further, as discussed above, welfare loss as a result of monopolized markets disproportionately affects

lower-income households, and on the global stage, disproportionately affects lower income countries.¹³⁷ The takeaways from the Competition and Growth Summit were a general consensus that governments should: eliminate or reduce unnecessary regulatory barriers to competition; address any significant gaps in competition law enforcement frameworks; and, ensure that competition authorities are adequately resourced to protect and promote competition in their jurisdictions.

Rather than abandoning the consumer welfare standard altogether, the approach that perhaps ought to be taken is twofold: first, as noted by panelists as the Bureau, increased competition enforcement through increased capacity (*i.e.* through budgetary allocations), will facilitate innovation and greater productivity, a connection that is already well-documented.¹³⁸ Simply promoting more interventionist standards is, of course, not competition policy reform, nor will increasing competition enforcement capacity necessarily result in reducing inequality. As a second step, the Bureau can play a role in competition policy not being considered in a silo, by encouraging regulators and other policymakers to consider a competition lens in implementing their respective mandates. The Bureau has already taken a step towards this, having published a toolkit last year to assist regulators voluntarily undergoing competition assessments.¹³⁹ I would argue that this could be taken a step further, and have Bureau consultation as a step in certain regulatory spaces, particularly those where pervasive inequality has already been flagged as an issue. An example flagged earlier in this paper was the regressive impacts of Canada's supply management system; to address this issue in a pro-competitive, but also pro-equality way could be to specifically target supply management (*i.e.* of dairy, poultry), as well as agriculture for competition assessment to see how regulatory barriers and anticompetitive conduct can be better addressed. Targeting the Bureau's efforts in areas where inequality is an issue, and approaching policymaking in tandem with regulators rather than in a silo, can help bridge the gap between competition policy's impact on economic efficiency, and the broader impact increased enforcement can have on the lives of Canadians including, and beyond consumer welfare. This "tag-team" approach could take the form of the Bureau working with regulators to cut domestic barriers to entry in non-manufacturing industries; it can work to ease barriers to entry relating to rapid technological development; further, it can make explicit a policy priority to address issues beyond consumer welfare. Incremental steps are already being taken in this direction, but the Competition Bureau like any other regulatory body is tasked with allocating scarce resources and setting priorities. By making explicit an expanded scope of activity that the Bureau seeks to regulate, it can better work in tandem with regulators to

address both issues of competition enforcement, but also broader social/political issues that exist within industries.

Returning to the farmers' protests, this could look like the central government assisting with providing transition funding to farmers who were reliant on the subsidies to survive; smaller-scale farmers could be provided with assistance to improve the efficiency of their farming practices, *e.g.* through the use of improved farming technologies. While this is by no means a comprehensive solution to a complex and longstanding issue of socioeconomic equality, this paper argues that competition policy and enforcement do not operate in a vacuum; it can be affected by social/political concerns that are not traditionally "competition" concerns. A pro-competitive agricultural reform that results in the mass suicides of small-scale producers is not, in good faith, policy that improves the economic or social welfare of a country. Ultimately, the farmers' protests are a lesson for Canada to reflect on our own issues of inequality, and how competition policy reform needs to be undertaken in a more holistic, and less siloed way.

5. Concluding Thoughts: Takeaways for Canada from the Case of the Farmers' Protests

In Canada and abroad we are experiencing unprecedented levels of economic inequality, particularly in light of the COVID-19 pandemic. When we see examples of mass civil unrest stemming from inequality such as the case study of India's farmers—the suicide crisis, the protests, and the attempts at government censorship—we are provided with a salient example why extreme inequality is something to be fastidiously avoided.

In the introduction for this piece, I stated my reason for choosing India's farmers' protests as a case study to consider the proper role of antitrust policy was twofold; globalization, deregulation and rapid technological advancement have played a role in shaping markets and are impacting the scope of conduct which competition and antitrust law may seek to regulate and how. The second rationale is that debates about competition policy in major global economies abroad can be instructive when considering anti-trust policy in Canada. In concluding, I will aim to make this connection more salient.

The world's largest protest in the world's largest democracy is undoubtedly the result of a failure in government regulation of the agriculture sector. I sought to use an extreme example of the economic *and* political outcomes of neoliberal policy reform to illustrate precisely why we cannot simply dismiss small producers in an economy as merely being too weak to

compete—they are also people trying to earn a livelihood; it is irresponsible policy to liberalize the agriculture market without supporting farmers in India in finding alternative ways to make a living.

In terms of lessons to be learned from the farmers' protests; although the agricultural reform in India was predominately motivated by increasing economic efficiency, the public, both locally and internationally is recognizing that the reforms have implications beyond efficiency. Notably, that this efficiency is coming at the cost of the economic stability of small-scale farmers. A markedly similar dynamic appears to be on display in developed countries such as Canada and the United States, which we see in the ongoing debates about the rightful role of competition and antitrust policy. Just as we can't dismiss small farmers in India as inefficient actors who should exit the industry, we cannot dismiss concerns about inequality, and democracy in Canada.

Accepting that we cannot be complacent in the face of extreme inequality brings us to a cascade of questions. Can competition enforcement authorities remain credible and relevant if they maintain a narrow focus on efficiency? If not, how should they go about incorporating other policy goals in a way that ensures reliability and predictability in the enforcement regime? Put in other words, should the answer be more stringent antitrust enforcement of monopsony and abuse of dominance issues, or do enforcement agencies need to broaden their scope? Globally, the antitrust community is considering answering these very questions. These discussions are being reflected in increased attention being given to antitrust enforcement agencies. For instance, in Part II of the new Federal Budget released on April 19, 2021, the Government of Canada has outlined as an explicit goal to promote a fair and competitive marketplace through "empowering the Competition Bureau through increased capacity and new digital tools that will help ensure a competitive marketplace".¹⁴⁰ Specifically, the Budget 2021 proposes to provide \$96 million over five years, starting this year, and \$27.5 million ongoing to enhance the Bureau's enforcement capacity.¹⁴¹

Antitrust populist sentiments will likely play a contributing role in empowering agencies like Canada's Competition Bureau in terms of continuing to expand its enforcement capacity. Canada's Competition regime in particular, with its explicit prioritization of ensuring equitable opportunity for small and medium-sized enterprises has the potential to expand its policy scope beyond a strict adherence to the consumer welfare standard. In the absence of progressive wealth distribution measures such as taxation,

however, more stringent antitrust enforcement in itself will more likely than not have a role in reducing income and wealth inequality. This paper is subsequently arguing not that competition/antitrust regulators should neglect concern for economic efficiency altogether in favour of a nebulous public interest standard, but rather, that the Bureau should work in tandem with regulators to promote a more cohesive approach to policy-making. The Bureau has already begun this progression by encouraging regulators to undertake competition assessments; this is the first step in a long march towards a more comprehensive competition policy that can have within its scope broader social and policy issues.

Antitrust cannot and ought not to be considered a silver bullet solution to inequality. We see precisely from the example of the farmers' protests that the factors contributing to the extreme inequality in India that has led to mass civil unrest are complex and multifaceted. These issues demand similarly multifaceted solutions; tax policy, employment policies and job creation initiatives, are all avenues that need to be considered in tandem with economic and trade policy. It is understandable that "if all you have is a hammer, everything looks like a nail"—but we have many more tools in our toolkit beyond antitrust policy reform to address such complex policy issues as inequality.

ADDENDUM

On Friday November 19, 2021, Indian Prime Minister Narendra Modi announced he would repeal the three farming laws discussed in this paper in the new parliamentary session starting in late November. Farmers see this as a hard-fought victory after over a year of protests. The central government's concession on this issue shows both the power of collective action, and the vulnerability of economic reform to the social and political realities of people on the ground; the law cannot operate in a vacuum. With the farming laws repealed, the inefficiencies of the agricultural subsidies and widespread anticompetitive conduct in the government regulated wholesale markets remain live; these issues will undoubtedly be at the forefront of the rapidly approaching elections in several grain-belt states. Returning to Canada, the repeal of pro-competitive agricultural reform in the face of mass political pressure reinforces the need for a re-visiting and re-articulation of the goals of our own competition and antitrust policy, and to what extent efficiency ought to be its animating goal.

ENDNOTES

- ¹ This essay was last reviewed on November 7, 2021.
- ² Simran Singh, “The Farmers’ Protests are a Turning Point for India’s Democracy—and the World Can No Longer Ignore that”, *Time Magazine* (11 February 2021), online: <<https://time.com/5938041/india-farmer-protests-democracy/>>.
- ³ “Why are Indian Farmers Protesting?”, *The Economist* (5 February 2021), online: <<https://www.economist.com/the-economist-explains/2021/02/05/why-are-indian-farmers-protesting>>.
- ⁴ *Ibid.*
- ⁵ Salimah Shivji, “Burdened by Debt, and Unable to Eke out a Living, Many Farmers in India turn to Suicide”, *Canadian Broadcasting Corporation*, (30 March 2021), online: <<https://www.cbc.ca/news/world/india-farmers-suicide1.5968086#:~:text=But%20over%20the%20years%2C%20problems,to%20crushing%20debt%20for%20many>>.
- ⁶ Karandeep Singh, “The Lockdown Killed my Father’: Farmer Suicides Add to India Virus Misery”, *The New York Times* (8 September 2020), online: <<https://www.nytimes.com/2020/09/08/world/asia/india-coronavirus-farmer-suicides-lockdown.html>>.
- ⁷ This policy debate is exemplified by the discussions that occurred at the Competition Bureau’s recent (June 2021) “Competition and Growth Summit”. See “Canada Needs Competition: takeaways from the Competition and Growth Summit” online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04595.html>>.
- ⁸ The others being Brazil, Russia, China, and South Africa.
- ⁹ See e.g. O’Neil et al., “How Solid Are BRICS?”, *Goldman Sachs* (1 December 2005), online: <http://www2.goldmansachs.com/hkchina/insight/research/pdf/BRICs_3_12-1-05.pdf>. Note that although the specific numeric claims have been adjusted since the publication of the original Goldman Sachs report, the term “BRICS” is still used by competition enforcement agencies to denote countries of rapidly increasing global economic growth and power—see e.g. *infra* note 10.
- ¹⁰ Competition Bureau Canada, “Competition Law in a Global Economy—A Canadian Perspective”, *BRICs International Competition Conference* (21 November 2013), see notes online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03631.html>>.
- ¹¹ See *supra* note 7 for the Executive Summary of the Summit’s discussion topics.
- ¹² United Nations Department of Economic and Social Affairs, “World Population Prospects 2019” (2019), online: <https://population.un.org/wpp/Publications/Files/WPP2019_Highlights.pdf> at 12.
- ¹³ United Nations Department of Economic and Social Affairs, “International Migration 2020 Highlights” (2020), online: <https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undes_a_pd_2020_international_migration_highlights.pdf> at 2.
- ¹⁴ Statistics Canada, “Immigration and Ethnocultural Diversity Highlight Tables”

online: <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hltfst/imm/index-eng.cfm>>.

¹⁵ Mishra et al., “Drought and Famine in India, 1870-2016”, (2019) *Advancing Earth and Space Science* 46:4 2075 at 2076.

¹⁶ See Mervyn Piesse, “Hunger Amidst Scarcity: The Indian Food Security Enigma”, *Future Directions International* (19 March 2019), online: <<https://www.futuredirections.org.au/wp-content/uploads/2019/03/Hunger-Amid-Abundance-The-Indian-Food-Security-Enigma.pdf>>.

¹⁷ Lowell S. Hardin, “Meetings that Changed the World: Bellagio 1969: The Green Revolution” (2008) 455 *Nature* 470.

¹⁸ Kathryn Sebby, “The Green Revolution of the 1960s and its Impact on Small Farmers in India” (2010) 10 University of Nebraska Environmental Studies Thesis, online: <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1027&context=enstudtheses>>.

¹⁹ *Supra* note 16.

²⁰ *Ibid.*

²¹ Nelson et al., “The Impact of the Green Revolution on Indigenous Crops of India” (2019) 6:8 *J of Ethnic Foods* 1.

²² Thulsasiraman et al., “Need for balance between short food supply chains and integrated food processing sectors: COVID-19 takeaways from India” (2021) *Journal of Food Science and Technology*.

²³ Nives Dolsak and Aseem Prakash, “Fights over Indian Farm Laws Ignore Green Revolution’s Climate and Economic Problems” *Forbes Magazine* (16 February 2021), online: <<https://www.forbes.com/sites/prakashdolsak/2021/02/16/fights-over-indian-farm-laws-ignore-green-revolutions-climate-and-economic-problems/?sh=43e88ccf3b36>>.

²⁴ For more in-depth consideration of the mandi system and India’s regulated wholesale markets, see Krishnamoorthy, “Understanding Mandis: Market Towns and the Dynamics of India’s Rural and Urban Transformations” *CASI Working Paper Series* (October 2014) online: <<https://casi.sas.upenn.edu/sites/default/files/research/Understanding%20Mandis%20-%20D.%20Kapur%2C%20M.%20Krishnamurthy.pdf>>.

²⁵ *Supra* note 5.

²⁶ *Supra* note 21.

²⁷ Jashandeep Sandhu, “Green Revolution: A Case Study of Punjab” (2014) 75 *Proceedings of the Indian History Congress* 1192.

²⁸ *Supra* note 20.

²⁹ *Supra* note 19. See also *ibid.*

³⁰ *Supra* note 20.

³¹ *Ibid.*

³² Swarup Dutta, “Green Revolution Revisited: The Contemporary Agrarian Situation in Punjab, India” (2012) 42:2 *Social Change* 229.

³³ *Ibid.*

³⁴ Soutik Biswas, “What has brought India’s farmers to the streets?” *British*

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³⁵ *Supra* note 30.

³⁶ National Crime Reports Bureau, “Accidental Deaths and Suicides” (2019) online: <<https://ncrb.gov.in/en/accidental-deaths-suicides-india-adsj>>.

³⁷ *Supra* note 6.

³⁸ “The Suicide Crisis Hiding Behind India’s Farmer Protests” *Canadian Broadcasting Corporation* (18 March 2021) online: <https://www.youtube.com/watch?v=ReTYb9riALc&ab_channel=CBCNews%3ATheNational/>.

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⁴² *Ibid.*

⁴³ “India’s Huge Farmer Protests, Explained”, *Vox* (30 December 2020), online: <https://www.youtube.com/watch?v=iHpZV7ro7lU&ab_channel=Vox>.

⁴⁴ *Farmer’s Produce Trade and Commerce Bill, 2020*, ACT NO. 21 OF 2020.

⁴⁵ *Supra* note 36.

⁴⁶ *Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020*, ACT NO. 20 OF 2020.

⁴⁷ *Supra* note 36.

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⁴⁹ *Supra* note 36.

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⁵⁶ *Supra* note 2.

⁵⁷ Mujib Mashal, “Why are the Farmers Protesting in India?”, *The New York Times* (27 January 2021), online: <<https://www.nytimes.com/2021/01/27/world/asia/india-farmer-protest.html>>.

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⁶⁶ *Supra* note 2. See also Hannah Ellis-Petersen, “Indian Journalists Face Criminal Charges over Police Shooting Reports” *The Guardian*, (1 February 2021), online: <<https://www.theguardian.com/world/2021/feb/01/indian-journalists-face-criminal-charges-over-police-shooting-reports>>.

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⁶⁸ *Ibid.*

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- ⁷⁸ Thomas Piketty, *Capital in the Twenty-First Century* (Harvard University Press, 2014).
- ⁷⁹ *Supra* note 68 at 10.
- ⁸⁰ Joseph Stiglitz, “Towards a Broader View of Competition Policy” (June 2017), presented at the BRICS International Competition Conference in Durban, South Africa, online: <http://rooseveltinstitute.org/wp-content/uploads/2017/06/durbanbricscompetition_FinalClean.pdf>.
- ⁸¹ *Ibid.* See also *supra* note 68 at 10.
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- ⁸³ Lina Khan & Sandeep Vaheesan, “Market Power & Inequality: The Antitrust Counterrevolution and its Discontents” (2017) 11 *Harvard L & Pol Rev* 235 at 236.
- ⁸⁴ Sean Ennis & Chris Pike, “Inequality: a hidden cost of market power” Organisation for Economic Co-operation and Development (2017) at 23.
- ⁸⁵ *Ibid.*
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- ⁸⁸ *Ibid* at 57.
- ⁸⁹ *Ibid* at 58.
- ⁹⁰ Daniel A. Crane, “Antitrust and Wealth Inequality” (2016) 101:5 *Cornell L Rev* 1171 at 1184.
- ⁹¹ *Ibid* at 1186.
- ⁹² *Supra* note 76 at 238.
- ⁹³ *Supra* note 74.
- ⁹⁴ *Supra* note 68 at 11.
- ⁹⁵ *Ibid.* See also Jonathan B. Baker, “Economics and Politics: Perspectives on the Goals and Future of Antitrust” (2013) 81 *Fordham L Rev* 2175 at 2184.
- ⁹⁶ *Supra* note 76 at 256.
- ⁹⁷ See *supra* note 66.
- ⁹⁸ See *e.g. supra* note 76.
- ⁹⁹ Commissioner Boswell’s full remarks can be found online: <https://www.youtube.com/watch?v=_UOlFyFDCQs>.

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- ¹⁰¹ *Ibid* at 61.
- ¹⁰² *Competition Act*, RSC 1985, c C-34.
- ¹⁰³ *Ibid* at s 1.1
- ¹⁰⁴ 2003 FCA 53 [*Superior Propane II*].
- ¹⁰⁵ *Ibid* at para 13.
- ¹⁰⁶ *Ibid*.
- ¹⁰⁷ For the effects considered by the Court in *Superior Propane II*, see *ibid* at para 21.
- ¹⁰⁸ *Supra* note 87 at 62. See also the discussion of the purpose of the *Sherman Act* in *Von’s Grocery*, 384 US 270 (1966).
- ¹⁰⁹ *Ibid* at 65.
- ¹¹⁰ Maurice E. Stucke, “Reconsidering Antitrust’s Goals” (2012) 53:2 Boston College L Rev 551 at 612.
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- ¹¹² Anthony B. Atkinson, *Inequality: What can be Done?* (2015, Harvard University Press) at 126-127.
- ¹¹³ *Supra* note 74 at 3.
- ¹¹⁴ *Supra* note 76 at 275.
- ¹¹⁵ *Ibid* at 254.
- ¹¹⁶ *Ibid*.
- ¹¹⁷ See the Summit overview *supra* note 7. The studied referred to by the panelists is Ryan Cardwell, Chad Lawley, & Di Xiang, “Milked and Feathered: The Regressive Welfare Effects of Canada’s Supply Management Regime” 41:1 Canadian Public Policy 1.
- ¹¹⁸ *Supra* note 68 at 16.
- ¹¹⁹ Lina M. Khan, “Amazon’s Antitrust Paradox” (2017) Yale LJ 710.
- ¹²⁰ *Supra* note 87.
- ¹²¹ *Ibid* at page 58.
- ¹²² See e.g. Crane, *supra* note 78. See also Wright et al., “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust” (2018) Arizona LJ.
- ¹²³ See e.g. Frank H. Easterbrook “Vertical Arrangements and the Rule of Reason”, Antitrust LJ 125 at 151.
- ¹²⁴ See Christopher S. Yoo, “The Post-Chicago Antitrust Revolution: A Retrospective” (2020) Faculty Scholarship at Penn Law, 2146 at 2149, citing F.M. Scherer “Some Principles for Post-Chicago Antitrust Analysis” (2001) 52 Case W L Rev 5 at 7.
- ¹²⁵ Robert Pitofsky, “Introduction: Setting the Stage”, in *How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust* (Oxford University Press, 2008) at 5. See also Yoo, *ibid* at 2146. Pitofsky’s collection of essays providing critique of the Chicago School were

largely positioned as concerns with oversimplified economic analysis and a flawed unilateral focus on economic efficiency.

¹²⁶ Richard M. Posner, “The Chicago School of Antitrust Analysis” (1979) 127 U Penn L Rev 925 at 934.

¹²⁷ *Supra* note 124.

¹²⁸ *Supra* note 68 at 280.

¹²⁹ *Supra* note 93 at 556.

¹³⁰ Carl Shapiro, “Antitrust in a Time of Populism” (2018) 61 International J of Industrial Organization 714 at 716.

¹³¹ See e.g., Douglas D. Hedley, “The Evolution of Agricultural Support Policy in Canada”, *Canadian Agricultural Economics Society* (2015), online: <<https://caes-scae.ca/wp-content/uploads/2018/11/2015-Hedley-Evolution-Ag-Policy-Fellows-Paper-RI.pdf>>.

¹³² See e.g. Sandeep Vaheesan, “The Evolving Populisms of Antitrust” (2015) 93:3 Nebraska Law Rev 371.

¹³³ *Supra* note 68.

¹³⁴ *Supra* note 7. The Summit took place from June 1 to June 3, 2021.

¹³⁵ *Ibid* at Section 2.

¹³⁶ See for instance the OECD factsheet on how competition policy affects macro-economic outcomes (2014) online: <<https://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>>.

¹³⁷ *Ibid* at 25.

¹³⁸ See the OECD report at *supra* note 84. See also the Competition and Market’s Authority, “Productivity and Competition: a Summary of the Evidence” (9 July 2015), online: <<https://www.gov.uk/government/publications/productivity-and-competition-a-summary-of-the-evidence>>.

¹³⁹ Competition Bureau (2020), Strengthening Canada’s economy through pro-competitive policies: A step-by-step guide to competition assessment, online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04546.html>>.

¹⁴⁰ Government of Canada, “Federal Budget 2021: Part 2: Creating Jobs and Growth” (2021), online: <<https://www.budget.gc.ca/2021/report-rapport/p2-en.html>>.

¹⁴¹ *Ibid*.