

UNCTAD Research Partnership Platform, 6th Meeting
Geneva, 10 July 2015

The Economic Characteristics of Developing Jurisdictions: Their Implication for Competition Law

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

Three Points to discuss

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- ❑ A joint research project on “Competition Law in Developing Countries“
 - ❑ The publication on “The Economic Characteristics of Developing Jurisdictions: Their Implication for Competition Law”
 - ❑ Main Conclusions of the Publication

A joint project on “Competition Law in Developing Countries“

- ❑ The publication is part of a joint research project initiated by Michal Gal (University of Haifa), David Gerber (Chicago-Kent College of Law), Josef Drexl (Max-Planck-Institute, Munich) and Eleanor Fox (NYU)
- ❑ The overarching objective of the project is to discuss the issue of a *competition law/policy orientation adapted to the economic, political and cultural situation of developing jurisdictions*
- ❑ Some issues we focus on: The socio-economic, political and social characteristics of developing jurisdictions, the *goal (s) of the law, the design of the enforcement institutions, drafting the law, the enforcement of the law etc...*

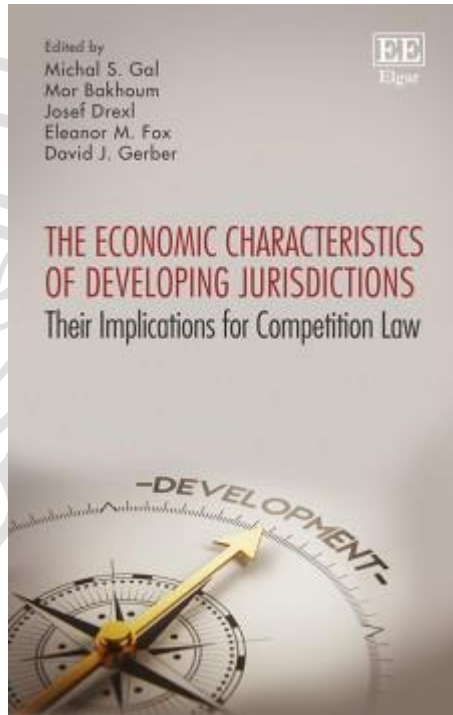
A joint project on “Competition Law in Developing Countries“

Competition Policy and Regional Integration in Developing Countries, Edward Elgar (2012)



Comparative study of regional competition law of
WAEMU, ECOWAS, SADC,
The Andean Community, ASEAN, Caricom,
COMESA

The Economic Characteristics of Developing Jurisdictions: Their Implication for Competition Law



Second volume in the framework of the joint project on
The Economic Characteristics of Developing Jurisdictions: Their Implications for Competition Law, Edward Elgar (2015)

The book undertakes to provide a **better understanding of overarching socio-economic features of developing jurisdictions** and draw conclusions on how **the law should be designed and applied**

The Economic Characteristics of Developing Jurisdictions: Their Implication for Competition Law

The questions we ask...

- ❑ The project started from the assumption that **transplanting competition law “models” from developed to developing jurisdictions without due regard to their socio-economic context** is not a convincing approach
- ❑ What are the **main (overarching...) economic characteristics of developing jurisdictions** that are relevant for competition law?
- ❑ How should those **economic characteristics inform the design and enforcement of competition law** in developing jurisdictions?

The Economic Characteristics of Developing Jurisdictions: Their Implication for Competition Law

Approach of the book: two track approaches

Combination of two inter-related and complementary areas of expertise

- ❑ **First:** development economists which discuss the key economic features that characterize most developing jurisdictions and influence competition law and policy

Contributors: Simon Evenett, Oliver Budzinski, Ping Ling, Diego Petrocolla etc...

- ❑ **Second** aspect is legal and focuses on competition law. Against the backdrop of the economic characteristics of developing jurisdictions, it puts forward conclusions on how the law should be designed and applied.

Contributors: Michal Gal, Josef Drexler, Eleanor Fox, David Gerber, Simon Roberts

Main Conclusions of the Publication...

Identifying the Main Economic Characteristics of Developing Jurisdictions

- ❑ The importance of the agricultural sector in the contribution to the GDP
- ❑ The spending patterns of consumers which are concentrated on essential goods such as food, housing, energy, clothing and medicine
- ❑ The importance of the informal (shadow) economy
- ❑ The existence of high entry barriers in addition to barriers to import
- ❑ Inefficient transportation infrastructures
- ❑ Of course, those characteristics are not uniform in all developing jurisdictions, they differ from country to country

Main Conclusions of the Publication...

Identifying the Main Economic Characteristics of Developing Jurisdictions

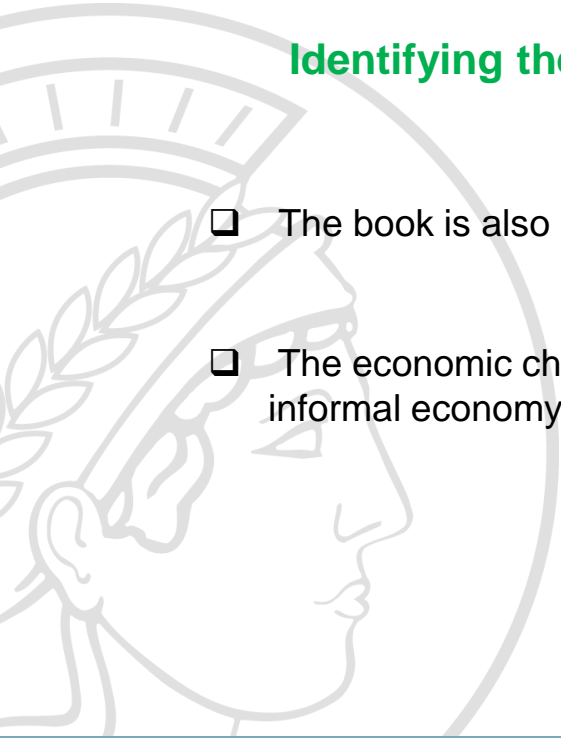
- ❑ Given its importance in developing jurisdictions, the agricultural sector is explored in more detail in the book
- ❑ The book relies on three studies conducted by UNCTAD: the **tobacco cultivation in Malawi**, the **rice production in Nicaragua** and the **Corn production in Mexico**

- Characteristics:** - **Fragmented markets** with few large or medium size producers and a score of small farmers
- **High level of concentration in the downstream market**, in contrast to the fragmented upstream production market for agricultural goods
 - **High level of concentration in the market for input such as seeds and fertilizers**
 - As a consequence, **agricultural producers face a double bottleneck upstream and downstream** (subject to buyer power and supplier power)

Main Conclusions of the Publication...

Identifying the Main Economic Characteristics of Developing Jurisdictions

- ❑ The book is also issue and jurisdiction specific
- ❑ The economic characteristics of selected jurisdictions (regions), Latin America, China, the informal economy have been discussed



Main Conclusions of the Publication...

Implications of the Economic Characteristics on Drafting and Enforcing Competition Law

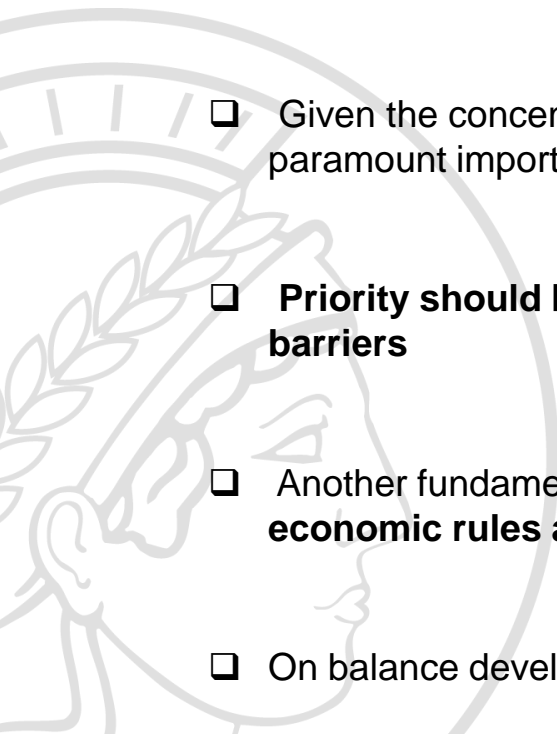
Economic Characteristics and goals of Competition Law

- ❑ Given the characteristic of lack of competitiveness of their markets, developing jurisdictions should strive to **“generate competition” in the first place** (before or protecting it...). The book stresses the importance of making markets work for the benefits of consumers
- ❑ The book also delves into the issue of the suitable goal of competition law in developing jurisdictions: ***efficiency and consumer welfare*** and/or ***non economic goals***?
- ❑ An interesting distinction is made between **“equity economic goals”** and **“equity non-economic goals”** (Fox/Gal)
- ❑ The importance of the objective of an **“efficient inclusive development”** is also stressed in the book.

Main Conclusions of the Publication...

Economic Characteristics and Substantive Law

- ❑ Given the concentration of their markets a **swift enforcement of rules on dominance** is of paramount importance
- ❑ **Priority should be given to sectors with high levels of economic power and high entry barriers**
- ❑ Another fundamental issue in term of design is how to **balance the tension between complex economic rules and the interest in effective enforcement of the law and legal certainty**
- ❑ On balance developing jurisdictions need **simpler rules, easy to apply**



Main Conclusions of the Publication...

Economic Characteristics and Enforcement

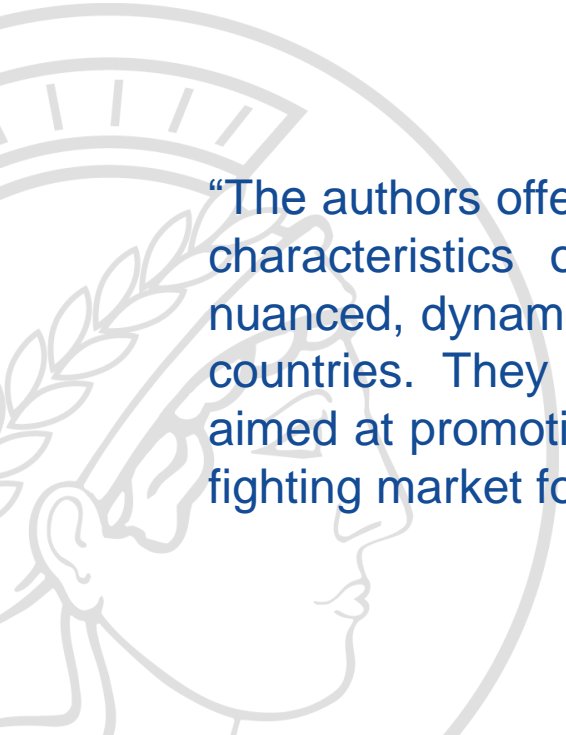
- ❑ The book reinstates the conclusions of the previous book on **the potential of regional integration to help developing jurisdictions better enforce their laws**
- ❑ As to the use of economics, it is recommended that developing jurisdictions **narrow the use of industrial organisation economics**
- ❑ They should **rely more on development economics and institutional economics** when applying competition law (David Gerber)
- ❑ **Consumer welfare and consumer harm from the perspective of developing jurisdictions:** those concepts need to be contextualized in developing jurisdictions
- ❑ The book recommends a **dynamic approach to the concept of consumer welfare that protect all market participants** and thereby promote the emergence of efficient markets

Main Conclusions of the Publication...

What has been said about the book...

“The authors offer a thoughtful, precise and relevant analysis of the economic characteristics of developing countries and derive from this analysis a nuanced, dynamic, inclusive and flexible approach to competition law in those countries. They sketch the contours of a simple competition law primarily aimed at promoting the emergence of well functioning efficient markets and at fighting market foreclosures, in particular by dominant firms”.

Prof. Frédéric Jenny



Main Conclusions of the Publication

What has been said about the book...

“This book (...) develops a powerful case against a “one size fits all” approach to designing competition laws for developed and developing countries. With respect to the latter, differences in economic characteristics require re-thinking of the traditional objectives and instruments of intervention adopted by competition laws. . . .”

Prof. Michael Trebilcock



I thank you for your attention!!!