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Bespoke competition policy for developing countries

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BESPOKE COMPETITION POLICY FOR DEVELOPING COUNTRIES

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The broad consensus in literature and policy making circles is that developing countries need competition law, but one that is tailored to their specific needs.

There is some valuable research on how this tailored law should look:

- Competition law for small economies (Gal, 2009)
- Economic characteristics that affect competition law (Gal et al. 2015)
  - Agricultural sector
  - Informal sector
  - Infrastructure
  - Consumption patterns
  - Entry barriers
Empirical literature that studies the effects of competition law is scarce and suffers from certain disadvantages:

- Competition and law enforcement is often measured by opinion survey data.
- Law indexes do not show enforcement.
- The effect of competition law and competition cannot be distinguished.
- Competition is very difficult to measure, especially on a macro level.
- Inconsistent results that suffer from estimation bias.
A country's development across many areas can be seen as a continuous variable, which implies a tailor-made approach.

However, competition policy is discrete and has a finite amount of permutations.

There must be some groups of countries that would require essentially the same competition policy benchmark, that could be used in creating individual competition regimes.

How do we determine in what types of countries should certain competition laws be implemented?
1\textsuperscript{st} Competition law and competition should be separated in order to determine an optimal degree of competition and the ideal law to achieve it.

2\textsuperscript{nd} Developing countries should not be studied as a group, but divided into subgroups, based on developmental stage.

3\textsuperscript{rd} The economic and legal factors should be studied separately and combined at the end.

4\textsuperscript{th} Competition policy recommendations should take into account that many barriers and inefficiencies can only be removed in the very long term.
Competition law, enforcement tools and resources

Competition enforcement

This separation is needed to decide, where exactly and what types of challenges lie for developing countries in creating competition regimes

Competition

Development
RESEARCH PROCESS

1. Literature review and theoretical analysis
2. Questionnaire
3. Empirical analysis
4. Conclusion and policy recommendation
Literature on developmental stages is scarce.

Developmental stages are mostly classified on the basis of GNI per capita, which is not a suitable indicator to differentiate countries for studying competition.

As countries develop not only the size, but also the structure and complexity of their economies changes.

Low resolution picture of development:
- Agricultural ➔ Industrial ➔ Service ➔ Innovation
High resolution: The Economic Complexity Index*

- Shows the complexity of products produced (exported) in a country, where complexity is defined as the extent to which inputs can be substituted and repurposed to produce other products.

- Closely approximates a country’s resource reallocation flexibility and business opportunities.

- Significant predictor of GDP and GDP growth.

*atlas.cid.harvard.edu
STAGES OF DEVELOPMENT

- Most important indicators for stages of development relevant for competition policy:
  - Economic complexity
  - Infrastructural development
  - Health of capital markets
  - Human capital – poor measurements available
Firm dynamics in developing countries are different from those in developed, as well as among other developing countries.

Effects of competition can be both positive and negative.

Effects of competition on innovation are very possibly negative for least developed countries.

Spillovers, transfers and combining of resources are very important.

Number of firms decreases moving from least developed to more advanced developing countries and increases moving into developed countries.
Developing countries often face more difficult competition issues, therefore ideally should carefully consider efficiencies in all types of infringements.

However, young and resources strapped agencies face great challenges and may not have the capabilities to apply a rule of reason approach in many cases.

The incentives created by competition law in different political environments is lacking yet crucial.
Part I: 16 questions on existing laws

- Existing laws and amendments
- Types of prohibited conduct
- Treatment of foreign and state-owned firms
- Efficiency and public interest claims
PART II: 17 QUESTIONS CHARACTERISTICS AND POWERS OF THE COMPETITION AGENCY

- Agency independence
- Courts
- Powers of data collection
- Remedies and penalties
- Economic analysis
- Private enforcement and class action
- Priorities
PART III: DATA ON COMPETITION AGENCY ACTIVITY (2006-2016)

- Types of cases opened and by whose initiative
- Number of decisions in favor of agency, defendant or by settlement
- Size of fines and leniency
- Mergers
- Efficiency and public interest considerations by type of infringement
- Advocacy initiatives and data collection
- Number of different types of staff and budget
COUNTRY RESPONSES

- We received responses from the following countries:
  1. Argentina
  2. Russia
  3. Lebanon
  4. Jordan
  5. Turkey
  6. Mauritius
  7. Tunisia
  8. Burkina Faso
  9. Algeria
  10. South Africa
  11. India
  12. Bulgaria

- Many countries were not able to or able to a limited degree to provide statistical data on competition agency output.

- Provides for possible country level empirical analysis, but not analysis of different developmental stages.

- Indicates a need for further data collection in order to conduct meaningful empirical research.
Complete a full report of existing economic and legal theory relevant for developing countries competition policy.

Identify potential benefits and harms of competition policy in different stages of development.

Summarize the data collected and perform country empirical analysis, where possible.