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Agenda. Key note speech

The Contribution of Competition Policy to the Achievement of the Sustainable Development Goals

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The Contribution of Competition Policy to the Achievement of the Sustainable Development Goals

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17th Intergovernmental Group of Experts on Competition Law & Policy

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Outline

I. SDGs and core concerns, the Background, the Thesis

II. What the authorities do and can do

- A. Examples of Enforcement Successes
- B. Examples of Policy Successes
- C. Tweaking Law for Inclusive Development

III. The Challenges

IV. Conclusion

1 NO POVERTY



2 ZERO HUNGER



3 GOOD HEALTH AND WELL-BEING



4 QUALITY EDUCATION



5 GENDER EQUALITY



6 CLEAN WATER AND SANITATION



7 AFFORDABLE AND CLEAN ENERGY



8 DECENT WORK AND ECONOMIC GROWTH



9 INDUSTRY, INNOVATION AND INFRASTRUCTURE



10 REDUCED INEQUALITIES



11 SUSTAINABLE CITIES AND COMMUNITIES



THE GLOBAL GOALS

For Sustainable Development

12 RESPONSIBLE CONSUMPTION AND PRODUCTION



13 CLIMATE ACTION



14 LIFE BELOW WATER



15 LIFE ON LAND



16 PEACE AND JUSTICE STRONG INSTITUTIONS



17 PARTNERSHIPS FOR THE GOALS



- 1 **No Poverty**
- 2 **Zero Hunger**
- 3 **Good Health and Well-Being**
- 4 Quality education
- 5 Gender equality
- 6 Clean water and sanitation
- 7 Affordable and clean energy
- 8 Decent work and **economic growth**
- 9 Industry, **innovation** and infrastructure
- 10 **Reduced inequalities**
- 11 Sustainable cities and communities
- 12 Responsible consumption and production
- 13 Climate action
- 14 Life below water
- 15 Life on land
- 16 Peace, justice and strong institutions
- 17 **Partnerships** for the goals

The Core Problem

- **The outrage is the poverty**, the deep systemic poverty, and inequality without mobility at the most desperate end of poverty
 - JUXTAPOSED WITH wealth, power, privilege, opportunity, continuing returns from connections, and
 - the fact that wealth, privilege and opportunity beget more wealth, privilege and opportunity

“Poverty and inequality ... remain a pervasive challenge. ... Worldwide, **over 1 billion people continue to live in extreme poverty, under unacceptable conditions for any fellow human.** Out of the more than 7 billion people on the planet in 2011, 1,011 billion people (16.99% ...) lived on less than US\$1.25 per day, ... and over 10% experienced chronic hunger.... In some countries, the number of people living in extreme poverty has even increased. Inequalities also persist or have widened further, oftentimes linked to the same forces that have helped raise our capacity to generate wealth”

Report of the Secretary-General of UNCTAD to UNCTAD XIV
 (“Report of SG”), From Decisions to Actions 2015, para 12

Relation to market competition; thesis

- Poverty/hunger, inequality/exclusion is at the heart of the SDGs
 - with remaining SDGs: saving our planet (which I do not address).
 - Text for each SDG advises **how to achieve** the goal
- Most of the tools envision scaling up social protections, access to health care and education (critically important, **but:**)
- **Little attention to markets/empowerment through markets**
 - [but see: goals 8 (inclusive growth), 9 (infrastructure, innovation), 17 (partnerships)
 - and Report of SG to UNCTAD XIV contains 3 excellent paragraphs (51-53) on “Enhancing competition and consumer protection”]
- Plus little attention to phenomenon that free markets plus traditional antitrust tends to protect incumbents at expense of entrants
 - two-tiered markets

Thesis

- Markets and access to **markets** is **so important** to achieving the core goals; they empower people to help themselves
- As more people are empowered to participate in the economy; as more obstacles are eliminated to market success of people without power, less money is needed to fund people in need
 - **Empowerment through markets, market access, and making markets work for the people** should stand side-by-side aid
 - **This is a central contribution of competition policy, and it is huge**
 - **The competition authorities in developing countries know this and work hard at it**
- My remaining remarks are about the amazing work that the authorities do
 - **Markets for People** should be SDG 18

II. Markets for SDGs:

What the competition authorities do

- The huge task of competition authorities in developing countries: to look around and ask –
 - **How best can we free the market for the good of the people**
 - especially the poorer population
 - Competition law *enforcement* and competition *policy*
- Examples of enforcement successes
- Examples of policy successes
- Tweaking substantive law for inclusive development

A. Examples of enforcement success

- Cartels
 - South Africa – wheat, bread, maize, poultry, pharma, cement
 - See David Lewis, Thieves at the Diner Table
 - Chile – uncovering pharmacy cartel fires the public to strengthen the law
- Abuse of dominance – less visible; under studied but core
 - Kenya makes Safaricom drop exclusivity clauses
- Opening markets by cartel remedies: construction cartelists required to seed entrants
- Agreements - Professional restraints – Namibia deftly distinguishes
 - the rules that were really price-fixing + turf protection from professional standards

B. Examples of policy successes

- Kenya pioneers access to credit; making M-Pesa interoperable
 - while defending low price competition in taxi app market (Uber)
- Malawi stands up to cement giants
 - who want protection from foreign competition
- Zambia breaks the police-complicit car-towing cartel – corruption problem
- Mexico writes *Platform for Growth* as tool for presidential candidates
- Peru, China – weed out perverse regulations; Peru voids thousands
- Lithuania: in shadow of law against restraints by public authorities
 - negotiates end of exclusivities in transport, waste management
- See ICN/World Bank Group annual awards

C. Tweaking substantive law for inclusive development

- The status quo of two-tiered markets is not good enough
 - “The people” (seldom the technocrats) realize something is wrong when whole populations are excluded and feel that the market is not working for them
 - Three points of attack where the law can make the economy safer for the left-out populations:
- *1 Exclusionary restraints*
 - A standard under which everything is legal unless it lowers aggregate consumer surplus and output and has no efficiency justification (eg *Trinko* and progeny) is not good enough
- *2 Excessive pricing*
 - There are exploitations that harm people and markets and remedies that work; South Africa *Mittal*
- *3. Megamergers*
 - Increasingly high concentration and leverage-creating huge mergers work against inclusiveness
 - Esp. when their benefits are doubtful, why isn't there a better way to stop them? [cement, Holcim Lafarge]
- And/But – with more aggressive law, there is a special responsibility to answer the 4 challenges of *Trinko*: clarity, predictability, remedy that works, do no harm

III. The Challenges

1. **Priorities** – Do active good; not just passive review of mergers, complaints, filed agreements

2. **Clarity** – Be clear what you mean by what is anticompetitive; if you incorporate public interest, be clear how

3. **Think regional** as well as local

- Remember, the worst restraints might cross the border – need for regional action
 - Cartels, mergers; collaborate, integrate
- CCRED (University of Johannesburg) has laid out the challenge
 - Thando Vilakazi & Simon Roberts, Cartels as fraud? Insights from collusion in southern and East Africa in the fertilizer and cement industries, Rev. of African Political Economy (forthcoming 2018)

Conclusion

- The competition authorities of developing countries contribute every day to the *core* of the SDGs: a decent life, with respect and dignity, for our fellow human beings

Empowerment through Markets,

Market Access, and

Making Markets Work for the People

- MMW4P is at least as important as the tools that depend on donors