

Research Partnership Platform 8th meeting

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Bespoke competition policy for developing countries

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**UNCTAD Research Partnership Platform, 8th
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BESPOKE COMPETITION POLICY FOR DEVELOPING COUNTRIES

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WHAT COMPETITION LAW IS APPROPRIATE FOR DEVELOPING COUNTRIES?

- 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

WHAT COMPETITION LAW IS APPROPRIATE FOR DEVELOPING COUNTRIES?

- 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.

STRIKING A BALANCE BETWEEN ONE – FITS-ALL AND TAILOR MADE

- **A countries 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?**

STUDY APPROACH

- **1st Competition law and competition should be separated in order to determine an optimal degree of competition and the ideal law to achieve it.**
- **2nd Developing countries should not be studied as a group, but divided into subgroups, based on developmental stage.**
- **3rd The economic and legal factors should be studied separately and combined at the end.**
- **4th Competition policy recommendations should take into account that many barriers and inefficiencies can only be removed in the very long term.**

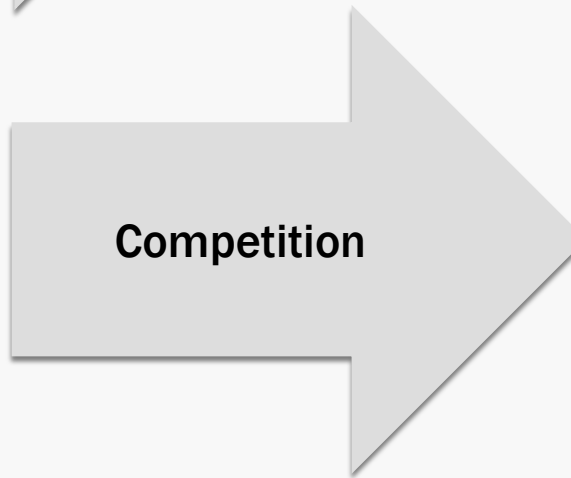
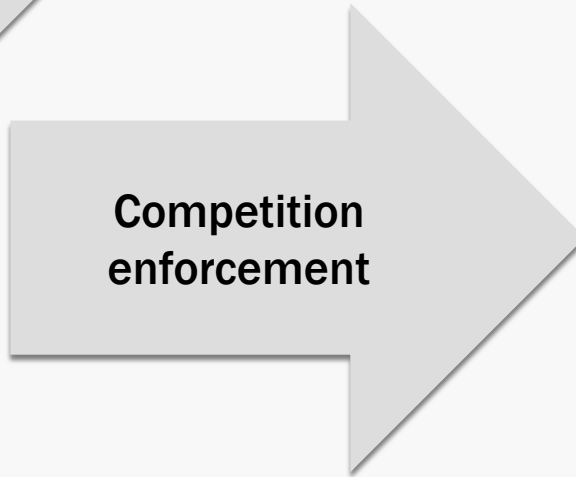
**This separation is needed to
decide, where exactly and
what types of challenges lie
for developing countries in
creating competition
regimes**

**Competition law,
enforcement tools
and resources**

**Competition
enforcement**

Competition

Development



RESEARCH PROCESS

1

**Literature
review and
theoretical
analysis**

2

Questionnaire

3

**Empirical
analysis**

4

**Conclusion and
policy
recommendation**

STAGES OF DEVELOPMENT

- 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

STAGES OF DEVELOPMENT

- **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 countries 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**

SOME FINDINGS FROM LITERATURE

- 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.

SOME FINDINGS FROM LITERATURE

- **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.**

THE QUESTIONNAIRE

- **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.

NEXT STEP

- **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.**