ADOPTION OF ANTITRUST LAWS IN DEVELOPING COUNTRIES: REASONS AND CHALLENGES

Dina I. Waked[*]

INTRODUCTION

Starting in the 1990s the developing word has witnessed a massive spread of adoption of competition laws. Today more than half of the worlds' developing countries have adopted a competition law, compared to less than 10 before 1990. The spread of these laws has many explanations, champion amongst which is pressure by supranational bodies, conditionality in structural adjustment loans and treaties, and promises for development. Developing countries were promised that competition laws were necessary tools needed to assure growth and development to impoverished nations, and that they help undo many of the ills that liberalization and privatization, part of the Washington consensus, brought about. The argument put forth by much of the literature, particularly from the World Bank and the World Trade Organization, was that the neoliberal reforms that were taking shape in many of these countries in the early 1990s did not succeed primarily due to the lack of a proper competitive environment.[1]

Competition laws were argued to offer the missing link in these attempts at reform that would assure that the state monopolies would not be simply replaced by private ones. They would also ensure that the failed attempts at lowering barriers to entry would be rectified when non-tariff barriers would be eliminated under a proper competition regime, which assures the empowerment of the domestic firms and access to smaller, less politically-powerful, firms. Without a competition law, many of the developing countries saw, despite their attempts at reform, the local elite still monopolizing their markets, foreign firms abusing their local population, cartelized goods being imported and local population paying higher and higher prices.

These newly adopted competition laws, which were generally modeled on the laws of more advanced countries, would empower a domestic competition authority to serve the following goals: (1) prevent abuses of local

---

[*] Assistant Professor of Law at Sciences Po Law School. I am indebted to the support of the respectful antitrust authority directors and staff members in the developing countries part of my study, who took the time and effort to share valuable information with me. I am also grateful to the helpful comments and discussions with Einer Elhauge and Mark Roe.

[1] R. S. Khemani, *Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries* (FIAS Occasional Papers No. 19, 2007), http://www.cuts-ccier.org/pdf/IRPDF-02.pdf.

and foreign monopolies and dominant firms that impoverished the population through supracompetitive prices; (2) prevent illegal agreements and collusion between domestic and/or foreign firms that among others fix prices, limit output, divide markets and engage in bid-rigging; (3) prevent mergers to monopoly or those that facilitate oligopolistic market structures, which are predicted to increase inefficiencies in the market; (4) engage in competition advocacy to spread awareness of the benefits of competition and assure compliance with the law.

In many instances, developing countries resisted the adoption of these laws, mainly due to the lobbying of the incumbent elite that feared the loss of their rents. Some developing countries were, and many still are, reluctant to give way to more competitive markets that reduce their abilities to shield their domestic firms, national champions, and infant industries from fierce competition. The adoption of competition laws seemed to threaten more protective trade policies and government monopolization of the local markets. Nonetheless, this paper shows, that in spite of these challenges, many developing countries did adopt competition laws after all.

Notwithstanding this reality of adoption and to partially address the local challenges and developing countries' unwillingness to believe the merits of competition laws, many have encouraged that developing countries adopt laws that mirror their local circumstances, needs, and environments. These were predicted to stand in the way of proper antitrust enforcement. Yet, the majority of developing countries adopted laws that were almost identical to the laws developed in more advanced nations. Cut-and-pasting developed countries' laws into the developing world is a phenomenon that is easily discerned from a close reading of these newly adopted laws. This in turn has lead many to predict that developing countries' antitrust laws are nothing but ink on paper and will not be enforced.

This paper analyzes the spread of developing countries' antitrust laws (Part I), why they were adopted (Part II), and the challenges they face adopting and enforcing these laws (Part III). It also addresses the concern of many academics and professionals that developing countries need to adopt specifically tailored antitrust laws to be able to implement them (Part IV). It concludes by showing that the reality is, unfortunately, different from the prescriptions of adopting uniquely tailored laws, which often leaves developing countries with a sole option, namely to adapt their enforcement and overall competition policy to their own needs.

I. THE SPREAD OF ANTITRUST LAWS

Starting in the 1990s, a surge of adoption of antitrust laws emerged in the developing world.[2] By 2007, out of the world's 151 developing countries[3], 77 had an antirust law in force and an agency set up to enforce the adopted law, a surge from less than 10 before 1990.[4] By 2012, the estimate is that more than 100 developing countries have adopted a competition law.[5] This means that more than half of the world's developing countries currently have a law that prohibits certain anticompetitive activities and regulates the market place.

Figure A.1 shows that the trend to adopt these laws in the developing world has been a phenomenon of the 1990s, where the number of countries adopting antitrust laws post 1990 is astonishing, compared to the decades before.[6] Table A.1 lists all developing countries with a competition law.

The geographical distribution of developing countries with a competition law in place is shown in Figure A.2. Figure A.3 shows the percentage of developing countries with and without a competition law in the respective regions of the world. In Africa only 34% of 53 developing countries have a competition law and agency set up to enforce the competition law; compared to 53% of the 30 developing countries in the Americas; 59% of Asia's 37 developing countries; 95% of Europe's 20 developing countries, and finally 18% of Oceania's 11 developing countries. The percentage is highest for Europe and lowest for Oceania followed by Africa.

---

[2] The definition of developing countries that is used in this paper is based on countries' gross national income (GNI) per capita. It follows the World Bank Atlas Method groupings that divide countries according to their GNI/capita into 4 categories: low income economies with GNI/capita of $975 or less; lower-middle-income economies with GNI/capita between $976-$3,855; upper-middle-income economies with GNI/capita between $3,856-$11,905; and high income economies with GNI/capita of $11,906 or more. The categories that are considered developing for the purposes of this paper are all of the low-income, lower-middle-income and upper-middle-income economies.

[3] According to the World Bank classifications based on gross national income (GNI) per capita. (Economies are divided according to 2008 GNI per capita, calculated using the World Bank Atlas Method. The groups are: low income, $975 or less; lower-middle-income, $976 - $3,855; and upper-middle-income, $3,856 - $11,905).

[4] These include 7 countries, which are considered developing according to International Monetary Fund (IMF) classification, but are considered high-income economies according to the World Bank. *See* IMF 2008 World Economic and Financial Surveys, World Economic Outlook, Database – WEO Groups and Aggregate Information. These countries are: Barbados, Croatia, Czech Republic, Estonia, Hungary, Saudi Arabia, and Slovak Republic (where the Czech Republic and the Slovak Republic were considered developing in the 2008 IMF Survey and are no longer so in the 2009 survey).

[5] The analysis of this paper focuses on antitrust adoption by 2007.

[6] Joel Davidow, *The Relevance of Antimonopoly Policy for Developing Countries*, 37 ANTITRUST BULL. 277, 278 (1992) ("[L]ess than a half dozen countries adopted competition legislation in the period 1980-1987. Since 1987 there has been an accelerated world trend toward adoption and strengthening of legislative measures designed to create, advance and protect a market economy.").

One of the explanations for the differences in percentages is the relative development levels of these countries in the various geographies (see Figures A.4 and A.5).[7] Using both a Pearson Chi^2 test and a Fisher exact test proves a strong relationship between a country's income level and its adoption of competition law, with Chi^2 (4, N=151) = 13.1, p = 0.011 and Fisher exact, p = 0.008.

Figure A.4 shows the distribution of countries' income levels in different regions of the world. As can be seen, Africa has the highest percentage of low and lower-middle income economies (82%), followed by Asia (64%) and Oceania (47%). The Americas' low and lower-middle income economies constitute only 23% of their total countries. Finally, Europe has the lowest percentage of low and lower-middle income economies (9%).

Figure A.5 illustrates that the highest percentage of developing countries with competition laws are those that are considered high-income economies by the World Bank but developing according to the IMF (100% of those countries have a competition law in place), followed by upper-middle-economies and then by lower-middle economies. The lowest percentage is amongst countries classified as low-income economies, with only 37% of those countries having a competition law in place.

Seeing that Africa has the highest percentage of low-income economies, and Figure A.5 shows that low-income economies have the lowest percentage of competition law adoption, might explain why the percentage of Africa's developing countries that have adopted a competition law is low. This can be contrasted with Europe, which has the highest percentage of high-income economies, no countries considered low-income economies, and has the highest percentage of developing countries with a competition law in a region. This only proves the strong relationship between a country's level of development and its choice to adopt a competition law.

Figure A.6 shows the breakdown of developing countries adopting competition laws by income distribution according to their region. It shows that the higher the income level of a country the higher the percentage associated with countries adopting competition laws. For example, 44% of Africa's upper-middle-income economies have adopted a competition law, compared to 36% of its lower-middle-income economies, and 30% of its low-income economies. This same trend applies to all the other regions proving the positive relationship between income levels and adoption of competition laws.

The level of development is one of many factors that affect the adoption of antitrust. As discussed in Part II, the reasons why these laws have spread are various. It is, however, important to keep in mind that the rea-

---

[7] Mark R. A. Palim, *The Worldwide Growth of Competition Law: An Empirical Analysis*, 43 ANTITRUST BULL. 105, 114 (1998) ("The current literature also suggests that the adoption of a competition law is related to a country's overall economic development.").

sons for the spread of these laws, as will be addressed next, mainly relate to the more developed of the developing countries.

II. REASONS DEVELOPING COUNTRIES ADOPT ANTITRUST LAWS

The unprecedented spread of antitrust laws in the 1990s raises the question of why did developing countries adopt competition laws in the 1990s and not before? Further, why did *so many* of them suddenly become interested in competition law adoption? There is no simple answer, except to say that competition laws were not considered an important addition to their arsenal of laws up until the 1990s. One reason was that many countries had provisions either in their penal codes, civil codes, or commercial legislations dealing with competition law issues before formally adopting legislation that is solely concerned with competition matters.[8] This made them less interested in adopting particular laws dealing with competition, seeing that they had general provisions in other legislation dealing with the same issues.

Then why did so many suddenly become interested in these kind of laws in the 1990s? It is simplistic to argue, yet probably true, that many countries were entering trade agreements in the 1990s that made the adoption of competition law a prerequisite to the implementation of the trade deals.[9] These treaties were either trade agreements creating free trade zones or part of structural programs that intended to open up the developing world economies and facilitated the entry of foreign entities that considered a competition law a necessity and guarantee for their work abroad, in particularly in a developing country.

More generally, the 1990s are considered the era where developing world countries started to put an end to their former protectionist policies that were either inspired by communist or socialist regimes or simply by efforts to industrialize and strengthen national champions and local producers. The 1990s introduced the new era of international trade, encouraging foreign direct investment, and membership in regional trade agreements or the World Trade Organization (WTO). With the emergence of many of these structural changes, open door policies and participation in world trade relations, competition laws were suddenly prescribed as necessities to fa-

---

[8] *See, e.g.*, Egypt's Penal Code of 1937, Article 345 (prohibits raising or lowering prices to achieve illegal benefits); *see also* Egypt's Law No. 241/1959 (states that it is prohibited for any distributor to have a monopoly in distributing any domestically produced good that is subject to an import ban).

[9] Francisco Marcos, *Do Developing Countries Need Competition Law and Policy?* 3 (Sep., 2006), http://ssrn.com/abstract=930562 ("[Competition Policy] mandates are also contained in most of the bilateral trade agreements and Free Trade Agreements in which young and developing countries take part. Parties to those treaties normally are required to have in place a domestic antitrust regime as one of the main conditions before entering into the agreement.").

cilitate much of the impending changes.[10] It is important to understand the role played by the WTO and other international organizations in encouraging and often requiring new members to adopt these laws in order to understand the surge in the developing world.[11] Similarly, the role played by the EU in encouraging new members and trade partners to adopt competition law is even more straightforward.[12] Adopting these laws seemed to many as the missing link to assure growth and development.[13]

Therefore, one could argue that one of the main factors that led to the widespread adoption of competition laws across developing countries is the push exercised by supranational bodies. Another factor is the overwhelming evidence these international bodies were presenting to developing countries illustrating a positive relationship between adopting a competition law and development. Competition laws appeared to be the missing link needed to usher in prosperity and growth. The pressure by international bodies and the development hopes that adopting competition laws carried are discussed in more detail next.

A. *The Push by International Bodies to Adopt Competition Laws*

International and supranational bodies have considered competition laws essential for economic reforms. Ever since competition laws were discussed as part of the agenda of the negotiations to establish an International Trade Organization (ITO) after World War II, competition laws were considered a vital requirement for needed reforms. The General Agreement on Tariffs and Trade (GATT) upheld the rhetoric of the ITO and included competition issues and restrictive business practices in a "best endeavor"

---

10 Khemani, *supra* note 1, at 26 ("The adoption of competition law-policy has been driven by a wide range of factors, including economic liberalization and deregulation, loan and policy conditions of the World Bank/IMF, regional and multilateral trade agreements, and aspirations to join the European Union.").

11 World Trade Organization, Working Group in the Interaction between Trade and Competition Policy, *Synthesis on the Relationship of Trade and Competition Policy to Development and Economic Growth*, WT/WGTCP/W/80 (18 Sept. 1998), https://docsonline.wto.org/dol2fe/Pages/FormerScriptedSearch/directdoc.aspx?DDFDocuments/t/WT/WGTCP/W80.DOC.

12 *See, e.g.*, *Euro-Mediterranean Association Agreements*, http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/euromed/ [hereinafter Euromed Agreements]; *see, e.g.*, Euro-Mediterranean Agreement, Establishing an Association, E.C. Egypt, Art. 72 (June 25, 2001), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0039:0208:EN:PDF ("[A] financial cooperation package shall be made available to Egypt" focused among others on "the accompanying measures for the establishment and implementation of competition legislation."); *id.* Joint Declaration on Article 34 ("while drafting its law, Egypt will take into account the competition rules developed within the European Union."). Similar provisions are found in other Euro-Mediterranean Association Agreements, which have been concluded between the EU and each of the following: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Tunisia, and Turkey.

13 *See infra* notes 40-53 and accompanying text.

clause.[14] However, the GATT did not require the adoption of specific provisions dealing with the treatment of private restrictive business practices (RBPs).[15] Therefore, the members of the WTO could freely adopt their own national competition laws so long as they did not infringe the principle of nondiscrimination.[16]

The General Council of the WTO created a Working Group in April 1997 on the Interaction Between Trade and Competition Policy. This Working Group strongly called on developing countries to adopt competition rules in the face of the global merger wave underway and the structural changes taking place within the developing countries as a result of their liberalization and free trade policies.[17] The WTO's focus on competition law adoption is due to the widely believed interaction between competition policies and the expansion of free trade.[18]

Effective free trade policies require, next to the withdrawal of trade barriers, the elimination of obstacles originating from private restraints resulting from abuse of dominance, monopolization, import and export cartels, horizontal and vertical restraints, and other issues considered to be competition law violations.[19] To achieve these results, the WTO urged developing countries to adopt competition rules, often US or EC type competition policies, while encouraging for time lags in the introduction of these different aspects of competition rules to be able to efficiently implement them.

One can explain the WTO's continuous attempt to influence, encourage, and facilitate the adoption of competition legislation in developing

---

14 Bernard Hoekman, *Competition Policy and the Global Trading System: A Developing-Country Perspective* 1 (The World Bank Policy Research, Working Paper No. 1735, 1997).

15 Bernard Hoekman & Petros C. Mavroidis, *Economic Development; Competition Policy and the World Trade Organization* 14 (The World Bank Policy Research, Working Paper No. 2917, 2002).

16 The General Agreement on Tariffs And Trade (GATT 1947) Article III National Treatment on Internal Taxation and Regulation, 5 (III. 4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.). For a variety of readings of the nondiscrimination provision see Einer Elhauge & Damien Geradin, GLOBAL ANTITRUST LAW AND ECONOMICS 1137 (2d ed. 2011).

17 Ajit Singh & Rahul Dhumale, *Competition Policy, Development and Developing Countries* 3 (T.R.A.D.E. Working Papers No. 50, 1999).

18 Robert Anderson & Frédéric Jenny, *Competition Policy, Economic Development and the Possible Role of a Multilateral Framework on Competition Policy: Insights from the WTO Working Group on Trade and Competition Policy, in* COMPETITION POLICY IN EAST ASIA 61, 61 (Erlinda Medalla ed., 2005) ("The central theme of this chapter is the fundamental complementarity of competition policy, trade liberalisation and domestic economic reform, and their importance for development.").

19 Damien Geradin, *Competition Law and Regional Economic Integration: An Analysis of the Southern Mediterranean Countries*, WORLD BANK PAPERS 21 (2004).

countries by its aspirations towards harmonizing competition laws to one day usher in universal competition policies under its umbrella.[20] The WTO is repeatedly encouraging agreements on core antitrust principles as a first step towards the achievement of this goal.[21]

When developing countries adopt rules similar to those in more developed countries, the attempt at harmonization seems more realistic and at the same time the effects of global anticompetitive conduct with relation to trade can be better tackled. If laws adopted in developing countries were fundamentally different from those in the advanced world, the ability of the developed countries to protect their interests from anti-competitive practices in developing countries would be limited. Thereby, not only would similar competition laws encourage more effective free trade, but would also give a sense of security for FDIs and MNCs working in developed countries. One can also argue that it would give the host developing country more teeth to prosecute prohibitive conduct emanating from local or foreign entities, and to challenge harmful global mergers.

The WTO is not alone in encouraging competition law adoption across the developing world. Several international financial institutions consider a competition policy dimension when evaluating country risk necessary for lending purposes.[22] For example, the International Monetary Fund (IMF) and the International Development Association (IDA) look at a country's competition policy when assessing the situation of borrower countries before deciding to allocate the funds needed.[23] A classic example is the case of Indonesia, where the country was required by the IMF to adopt a competition law in return for rescue money.[24] It is worth noting that the first conditionality appeared in a World Bank industrial sector adjustment loan to Argentina in 1991.[25]

---

20 Frédéric Jenny, *Competition Law and Policy: Global Governance Issues*, 26(4) WORLD COMPETITION 609, 621 (2003) ("Led by the European Union, a number of WTO Member governments have put forward a proposal for the development, in the context of the new Round of multilateral trade negotiations launched at Doha, of a 'multilateral framework on competition policy'.").

21 *Id.* ("Such an agreement [on competition policy at the WTO] would have five main elements: [1] A commitment by WTO Members to a set of core principles relating to the application of competition law and policy, including transparency, non-discrimination and procedural fairness in the application of competition law and/or policy.").

22 Marcos, *supra* note 9, at 3.

23 *Id.; see also* WORLD BANK, *Country Policy and Institutional Assessments 2005 Assessment Questionnaire*, Operations Policy and Country Services, criteria 6, at 16 (Dec. 20, 2005), http://siteresources.worldbank.org/ IDA/Resources/CPIA2005Questionnaire.pdf.

24 Eleanor M. Fox, *Equality, Discrimination and Competition Law: Lessons from and for South Africa and Indonesia*, 41 HARV. INT'L. L.J. 579, 589 (2000) (quoting J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT'L. L.J. 1, 22 (1995)).

25 Clive S. Gray & Anthony A. Davis, *Competition Policy in Developing Countries Pursuing Structural Adjustment*, ANTITRUST BULL. 425, 426 (Summer 1993).

Also, the United Nations and the OECD played a role in pushing for the adoption of competition laws across developing countries. Both institutions have adopted and promoted non-legally enforceable "codes of conduct" to prevent anticompetitive practices.[26] The United Nations has also set up, under the rubric of the United Nations Commission for Trade and Development (UNCTAD) and the United National Economic and Social Commission for Western Asia (UNESCWA), several projects and initiatives that assist developing countries in the design and implementation of their competition policies.[27]

The increased interest of international and supranational bodies with regard to encouraging adoption of competition laws in the developing world originated in the wave of neoliberal reforms as part of the Washington consensus, which resulted in privatization and liberalization across developing countries. Some of the goals of these reforms were to put an end to government monopolies and governmental intervention in the economy through liberalizations and privatizations. However, the result of the wave of privatization was that government monopolies were simply replaced by private monopolies yielding the same anti-competitive effects.[28]

> For the past two decades or more, the World Bank Group and other development organizations have encouraged developing and emerging market economies to adopt pro-competition measures such as trade and investment liberalization, privatization, and economic deregulation. These initiatives have been aimed primarily at reducing *public sector* policy-based barriers to entry, regulatory costs, and delays that unnecessarily constrain private sector economic activity . . . . They are, however, insufficient—they are complementary to but do not substitute for an effective competition law-policy. They do not address the *private sector* restrictive business practices that can significantly impede competition. Unchecked, anticompetitive practices by dominant and politically connected firms and vested interest groups can capture or significantly reduce the benefits that accrue from competition . . . . Competition does not arise or sustain itself

---

26 Hoekman, *supra* note 14, at 1; *see also* Cassey Lee, *Model Competition Laws: The World Bank-OECD And UNCTAD Approaches Compared* (Center on Regulation and Competition Working Paper Series No. 96, 2005).

27 Palim, *supra* note 7, at 127 (" . . . UNCTAD has also been active in encouraging and assisting countries in enacting competition laws. In 1980, the United National General Assembly endorsed a model law devised through UNCTAD. Today, UNCTAD provides technical assistance for member states and a forum for research and discussion among experts from member states on issues relating to competition law."); *see generally* UNCTAD, *Capacity-building on Competition Law and Policy for Development: A Consolidated Report* (2008), http://unctad. org/en/docs/ditcclp20077_en.pdf.

28 Anderson & Jenny, *supra* note 18, at 72 ("[I]n many cases, the potential benefits of market-opening measures will not be realised unless countries simultaneously take steps to address anticompetitive practices/structural barriers to development such as private and public monopolies in infrastructure sectors, domestic and international cartels that raise business input costs, and restrictions on entry, exit and pricing in manufacturing and other industries.").

> automatically. The competitive process needs to be *maintained, protected,* and *promoted* to strengthen the development of a sound market economy.[29]

Similar rhetoric was reproduced over and over, not only by these international organizations, but also by lawyers, economists, and policy makers. The result was that adopting competition rules became a priority on the agenda of economic growth in many less developed countries, who pushed forward with the help or pressure of various supranational institutions. Some countries, however, resisted the push to adopt competition laws and continued to prefer concentration to competition. They, thereby, had less of a drive to adopt competition laws based on their own initiatives. Others felt the need to adopt competition laws and to drive their markets towards the perfect competition ideal. Part of this desire was their belief in the rhetoric presented to them, but also due to the increased cross-border influences of anti-competitive practices,[30] especially their import of cartel-affected goods.[31]

Trading partners have also requested the adoption of antitrust laws as a condition for signing free trade agreements.[32] For example, the EU has been extremely active in the process of spreading its competition law to developing countries. This is to the extent where "some argue that today the EC competition law is the dominant model of competition law in the world."[33] Treaties, such as the Accession Agreements signed by Eastern European countries to join the EU[34] or the Euro-Mediterranean partnership

---

29 Khemani, *supra* note 1, at 36.

30 Paul Cook, *Competition Policy, Market Power and Collusion in Developing Countries* 2 (Center on Regulation and Competition Working Paper Series No. 33, 2002).

31 Margaret Levenstein & Valerie Y. Suslow, *Contemporary International Cartels and Developing Countries: Economic Effects and Implications for Competition Policy*, 71 ANTITRUST L.J. 801, 816 (2004) (the authors calculate the imports of "cartel-affected" goods, and find that the developing countries in 1997 imported $51.1 billion in goods from industries that saw international cartel activity at some point during the 1990s); Jenny, *supra* note 20 (the author presents evidence to show that transnational anticompetitive practices are more prevalent than was previously thought and that the magnitude of the costs that this imposes on developing countries is quite significant).

32 *See* Euromed Agreements, *supra* note 12; *see also* Palim *supra* note 7, at 53.

33 Seppo Reimavuo & Markus Händelin, Establishing a Credible Competition Authority—The Egyptian Case, Trade Enhancement Programme A (TEP-A) Component 2 Egypt-European Association Agreement 40 (Mar. 2005) (unpublished report) (on file with the author); *see also* Palim, *supra* note 7, at 120 ("[B]y requiring the adoption of E.U.-compatible competition law as a condition for gaining access to its markets, either through trade agreements or outright membership, the E.U. Has been a driving force in the enactment of competition laws beyond its borders.").

34 Palim, *supra* note 7, at 51 (quoting UNCTAD, *Secretariat Review of All Aspects of the Set of Multilateral Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* 30 (1995) (United Nations Publication TD/RBP/CONF. 4/8) ("The Czech Republic, Hungary, the Slovak Republic and Poland have also agreed, in their trade and cooperation agreements with the European

agreements signed by various non-European Mediterranean countries and the EU, oblige the signatories to adopt competition laws modeled on Article 101 (formally 81) and 102 (formally 82) of the Treaty on the Functioning of the European Union (TFEU).[35]

One of the studies on the adoption competition laws across countries suggests that "the impetus for adopting antitrust laws appears related to the imposed guidelines of supranational bodies, in particular the requirements of the European Union."[36] One reason why the EU has been actively involved in shaping the competition laws of developing countries could be the fact that the EU is an important trading partner and, therefore, it is eager to trade with countries that have similar laws. Another reason could be its race with the US on issues relating to harmonization of competition rules, whereby its influence on the competition laws of developing countries is an attempt to diffuse its laws, which could push the balance in its favor when negotiations on harmonized rules are underway.

It is also worth noting that the EU is not the sole entity to require the adoption of competition laws in its bilateral trade agreements with developing countries. Many Free Trade Agreements have endorsed similar requirements, where parties to these agreements are required to have a domestic antitrust regime in place as one of the main conditions before entering into the agreement.[37] Other bilateral and regional free trade agreements have also included chapters on competition policy.[38] Finally, several non-governmental organizations have also advocated the adoption of these laws and promoted assistance to countries in their implementation phases.[39]

Union to adopt and apply competition enforcement policy and procedures similar to those applied by the European Commission and to cooperate on this basis.").

35 *See* Euromed Agreements, *supra* note 12.

36 Michael W. Nicholson, *Quantifying Antitrust Regimes* 18 (FTC Working Paper No. 267, 2004).

37 Marcos, *supra* note 9, at 3 (referring to treaties that require parties "to have in place a domestic antitrust regime as one of the main conditions before entering into the agreement.").

38 *See generally* D. Daniel Sokol, *Order without (Enforceable) Law: Why Countries Enter into Non-Enforceable Competition Policy Chapters in Free Trade Agreements*, 83 CHI. KENT L. REV. 231 (2008); the multilateral RTAs which include a competition provision, according to the World Trade Organization Database for Regional Trade Agreements, and are relevant to the developing countries studied as the following: Caribbean Community and Common Market (CARICOM), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), European Community (EC: 27 Enlargement), North American Free Trade Agreement (NAFTA), Southern African Customs Union (SACU), Southern African Development Community (SADC), Southern Common Market (MERCOSUR), Trans-Pacific Strategic Economic Partnership, and the West African Economic and Monetary Union (WAEMU).

39 *E.g.*, International Competition Network (ICN); International Network of Civil Society Organizations of Competition (INCSOC); Consumer Unit and Trust Society (CUTS); Global Competition Forum by the International Bar Association.

B. *Development Hopes Associated with Adopting Competition Laws*

Development hopes have been crucial in the spread of competition laws. The direct impact of adopting competition laws on prosperity, economic growth, and development is often the reason furnished by these international institutions for developing countries to adopt these laws. The heightened interest in competition law adoption "suggests competition law is widely seen as a desirable and worthwhile economic policy."[40] Competition policy has often been regarded as a building block of economic development. A paper of the WTO Working Group described that:

> The specific benefits that have been attributed to such policy include promoting an efficient allocation of resources, preventing/addressing excessive concentration levels and resulting structural rigidities, addressing anti-competitive practices of enterprises . . . enhancing an economy's ability to attract foreign investment and to maximize the benefits of such investment, reinforcing the benefits of privatization and regulatory reform initiating and establishing a focal point for the advocacy of pro-competitive reforms and a competition culture.[41]

The United Nations has also advocated, on many instances, that competition policy is a key ingredient for growth and development of nations.[42] The same position has been taken by the OECD. One of its publications based on a survey of OECD members and non-members asserts that:

> There are strong links between competition policy and numerous basic pillars of economic development. . . . There is persuasive evidence from all over the world confirming that rising levels of competition have been unambiguously associated with increased economic growth, productivity, investment and increased average living standards.[43]

These kinds of assumptions are often backed by empirical studies showing that adopting competition laws lead to higher competition intensi-

---

[40] John Preston, INVESTMENT CLIMATE REFORM COMPETITION POLICY AND ECONOMIC DEVELOPMENT: SOME COUNTRY EXPERIENCES, DIFID Case Study for WDR, 2 (Nov. 2003).

[41] World Trade Organization, *supra* note 11, at 19.

[42] *See, e.g.*, UNITED NATIONS CENTER ON TRADE AND DEVELOPMENT (UNCTAD), THE UNITED NATIONS SET OF PRINCIPLES AND RULES ON COMPETITION, TD/RBP/CONF/10/Rev.2 (2000), http://unctad.org/en/docs/tdrbpconf10r2.en.pdf.

[43] Organization for Economic Cooperation and Development (OECD), *Implementing Competition Policy in Developing Countries* in PROMOTING PRO-POOR GROWTH: PRIVATE SECTOR DEVELOPMENT 39 (2006).

ties,[44] which is automatically read to mean higher growth levels. The microeconomic fields of industrial organization and endogenous growth present ample material to show how competition is positively associated with growth. For example, one study argued that competition rules help sustain two of the fundamental ingredients of "economic growth: namely competitive markets and a sound legal system."[45] Another study stressed the fact that the adoption of competition policy is "positively correlated with the intensity of competition."[46]

A further empirical study using multi-country regression analysis to explore the correlation between competition and growth rates found a "strong correlation between the effectiveness of competition policy and growth."[47] This study also illustrated that the effect of competition on growth is more than that of "trade liberalisation, institutional quality, and a general favourable policy environment."[48] This, however, was found to be predominantly true for Far Eastern countries and less so for other developing countries.[49]

Other proponents of the relationship between adopting competition laws and development argue that competition rules are a precondition to the implementation of successful privatization, especially if the goal of privatization is not the substitution of government monopolies by private ones.[50] Similarly, another study concluded that liberalization alone does not lead to development since "non-tariff barriers to trade will replace tariffs that trade

---

44 *See, e.g.*, Keith N. Hylton & Fei Deng, *Antitrust Around the World: An Empirical Analysis of the Scope of* Competition Laws and Their Effects, 74 ANTITRUST L. REV. 271 (2007); Hiau Looi Kee and Bernard Hoekman, *Imports, Entry, and Competition Law as Market Disciplines*, 51(4) EUR. ECON. REV. 831, 856 (2007) ("[W]e do find statistical evidence suggesting that competition laws have a significant effect in increasing the number of firms in the longer run, which indirectly lowers industry markups, especially in the highly concentrated markets."); Michael Krakowski, *Competition Policy Works: The Effect of Competition Policy on the Intensity of Competition - An International Cross-Country Comparison*, HWWA Discussion Paper No. 332 (2005); Mark A. Dutz and Maria Vagliasindi, *Competition Policy Implementation in Transition Economies: An Empirical Assessment,* 44(4-6) EUR. ECON. REV. 762, 765 (May 2000); Michael W. Nicholson, *An Antitrust Law Index For Empirical Analysis of International Competition Policy,* 4(4) J. C. L. & ECON. 1009 (2008).

45 Bruce M. Owen, *Competition Policy in Emerging Economies* 3 (SIEPR Discussion Paper No. 04-10, 2005).

46 Maria Vagliasindi, *Competition Across Transition Economies: An Enterprise-level Analysis of the Main Policy and Structural Determinants* 20-21 (European Bank Working Paper No. 68, 2001).

47 Aydin Hayri & Mark Dutz, *Does More Intense Competition Lead to Higher Growth?* 14 (World Bank Policy Research Working Paper No. 2320, 1999).

48 *Id.*

49 *Id.*

50 Jean-Jacques Laffont, *Competition, Information, and Development*, *in* ANNUAL WORLD BANK CONFERENCE ON DEVELOPMENT ECONOMICS 237, 253 (Boris Pleskovic & Joseph E. Stiglitz ed., 1998) ("Privatization and formal liberalization are likely to lead to private monopolies, which will generate resources for interest groups apt to resist further development of authentic competition. Efforts to impose these reforms before a credible set of institutions—regulation, competition policy, financial regulation—has been designed will yield disappointing results.").

liberalization removes because of the political power of rent-seeking special interest groups."[51]

Some also suggest that having competition legislation will deter corruption in transition economies, where "government bodies have tremendous power to affect the competitive process when they issue licenses, permits, franchises, and subsidies."[52] When these economies adopt competition laws some of the powers of government officials might be curbed and their responsiveness to bribes in order to facilitate illicit economic privileges might be reduced. This is assuming that the enforcers of the competition laws will not themselves be susceptible to bribes to avoid antitrust enforcement.

Moreover, competition policy is considered essential for developing countries as a tool to increase foreign direct investment (FDI), which is considered essential for growth.[53] Adopting antitrust laws creates a more transparent framework that increases investors' reliance on the economy and reduces transaction costs.[54]

These are only some of the studies testing the relationship between competition law and development. It is important to note that most of the above-mentioned studies either test the correlation between *adopting* competition laws and development or between a proxy called "effectiveness of anti-monopoly policy"[55] and development. This is drastically different from studying the relationship between *enforcing* the competition laws and development. The latter *should* be the measure used to ascertain whether competition laws lead to development or not. Studying enforcement instead of adoption will not necessarily lead to the same conclusions. Regardless, developing countries have found the promises of development and growth associated with the adoption of competition laws too hard to ignore.

---

51 A. E. Rodriguez & Mark D. Williams, *The Effectiveness of Proposed Antitrust Programs for Developing Countries*, 19 N.C. J. INT'L L. & COM. REG. 201, 211-12. (1994).

52 William E. Kovacic, *Institutional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement*, 77 CHI.-KENT L. REV. 265, 296 (2001).

53 Simon J. Evenett, *Links Between Development and Competition Law in Developing Countries* 8 (2003).

54 Franz Kronthaler, *Effectiveness of Competition Law: A Panel Data Analysis* 7 (IWH-Discussion Papers No. 7, 2007), http://www.iwh-halle.de/e/publik/disc/7-07.pdf.

55 WORLD ECONOMIC FORUM, THE GLOBAL COMPETITIVENESS REPORT (1997-2011) (the measurement is called "Effectiveness of Anti-Monopoly Policy" and is based on a survey of participants in each country asked to rate, on a scale from 1 (lowest value) to 7 (highest value), whether anti- monopoly policy in their country promotes competition); *id.* at 50 (the Report explains the participants in the survey as follows: "In view of reaching out to business executives at national level, the Forum has established a close collaboration with its network of over 150 Partner Institutes that administer the Executive Opinion Survey in their respective countries. The Partner Institutes are, for the most part, recognized economics departments of national universities, independent research institutes, or business organizations.").

International organizations and academic studies presenting the positive relationship between competition laws and development were made readily available to developing countries. The studies have shown persuasive conclusions that developing countries eagerly accepted. At the same time, these nations encountered numerous challenges, some structurally due their own positions as developing countries and some related to the discourse that competition laws lead to development and growth. Both of these challenges are discussed next.

III. THE OTHER SIDE OF THE COIN: CHALLENGES TO ANTITRUST ADOPTION

This section addresses some of the recurrent challenges articulated in adopting a competition law. Some of these challenges are due to the idiosyncratic nature of developing countries, yet others are more general critiques to the merits of competition laws.

A. *Limited Resources Need Not Be Wasted on a Costly Competition Regime*

Developing countries face numerous challenges with regard to adopting and enforcing competition rules. At the outset, enacting competition legislation was not always considered a priority on their reform agendas. This is due to the high costs and low returns associated with adopting these rules compared to other reform-oriented policies, such as removing trade restrictions.

One of the common arguments is that trade liberalization yields far greater prosperity than adopting laws that attack restraints of trade. The advocates of trade liberalization, as a substitute for antitrust, argue that the mere removal of trade obstacles, such as tariffs and barriers to entry, will effectively discipline domestic producers in transition economies.[56] They support the notion that "[f]ree trade is, consequently, the best antitrust policy."[57] Also, the argument that "[f]ree trade stimulates wealth creation and

---

[56] *See* Hoekman & Mavroidis, *supra* note 15, at 8 ("[t]he implication of the empirical literature is that liberalization . . . is likely to have a much greater direct impact on competition than antitrust enforcement, especially in smaller economies. Importantly, trade and investment liberalization and deregulation of entry barriers are not costly in administrative capacity and do not require the use of scarce technical expertise.").

[57] Robert D. Cooter, *The Theory of Market Modernization of Law*, 16 INT'L REV. L. & ECON 141, 162 (1996).

development, and in a small country it makes antitrust concerns largely irrelevant,"[58] has been made to caution against adoption competition laws.

Another argument in favor of trade liberalization is that the limited public resources of transition economies would produce better outcomes if invested in initiatives improving the flow of goods. For example, improvement in infrastructure would give consumers access to an increased number of sellers.[59]

Similarly, it is argued that economic policy and competition law enforcement divert the scarce resources away from more important priorities on the path to reform and development. The famous quote from one of the fierce opponents to imposing competition laws on transition economies, Paul Godek, is worth noting: "[e]xporting antitrust to Eastern Europe is like giving a silk tie to a starving man. It is superfluous; a starving man has much more immediate needs. And if the tie is knotted too tightly, he will not be able to eat what little there is available to him."[60]

B. *Plenty of Reforms to Accommodate a Competition Enforcement Apparatus Are Needed*

Related to the criticism of spending scarce resources on adopting and enforcing competition laws is the claim that developing countries need also acquire, reform, or implement administrative apparatuses, effective judiciary and appeal systems, independent investigating authorities, and expertise.[61] Most developing countries lack the aforementioned necessities to enforce antitrust laws. To improve the chances of *effective* antitrust implementation, developing countries need serious reforms in these areas. These are all costly endeavors that would deplete their resources further.

In addition to these challenges, developing countries face further obstacles to competition enforcement due to the lack of data collection, which is especially necessary to define market shares. This is evident by the lack of effective "Statistics Offices" in public administrations that provide this information.[62] The weakness of professional associations and consumer groups are also considered challenges that stand in the way of creating

---

58 Paul E. Godek, *One U.S Export Eastern Europe Does Not Need*, 15 REGULATION 20, 20 (Winter 1992).

59 Laffont, *supra* note 50, at 256.

60 Godek, *supra* note 58, at 21.

61 Khemani, *supra* note 1, at 2 ("developing countries lack strong supporting institutions such as independent judiciary, good governance, independent media, and professional, well paid civil service."); Owen, *supra* note 45, at 1.

62 Reimavuo & Händelin, *supra* note 33, at 5.

awareness and a competition culture that are essential to facilitate the smooth spread and implementation of these laws.[63]

Given these drawbacks in developing economies, what is ultimately feared is that the enforcement authority to be set up will not be able to apply the competition rules. It will lack the necessary funding, technical staff, and supporting environment to effectively enforce the law. It is also often argued, that in a developing country, an administrative body will often lack the necessary independence that is arguably critical for antitrust enforcement.[64]

C. *Corruption, Government Intervention and Crony Capitalism Hamper Effective Competition Policy*

One of the critical challenges that face developing countries is the already high level of government interference in the economy, which is by default increased further when a competition law is adopted and enforced. The government intervention includes government-erected barriers to enter or exit the market,[65] government monopolies, the various forms of subsidies granted by governments to loss-making enterprises,[66] and government politicization of the administrative authorities in force of applying and enforcing the law. In most developing countries, governments play an active role in regulating and setting bureaucratic measures to be followed by firms to enter or exit the market, resulting in many instances in rigid barriers that cannot be surpassed. This in turn leads to rent-seeking behavior, cronyism, corruption, and favoritism.[67]

Adopting a competition law is arguably adding another layer of bureaucratic red tape that needs to be surpassed for firms to operate effectively. Similarly, this criticism amounts to the fear that competition policy will be a tool to provide disguised government control and hamper the growth of the often-fragile private sector.

---

63 Gesner Oliveira, INTERNATIONAL COOPERATION AND COMPETITION POLICY 7, (Textos para discuss No. 121 São Paulo: Fundação Getulio Vargas 2003).

64 *See* Michal S. Gal, *Reality Bites (or Bits): The Political Economy of Competition Policy in Small Economies* 6-10 (N.Y.U. Law & Econ. Research Paper Series Working Paper No. 06-22, 2006), http://ssrn.com/abstract=901756 (illustrating the importance of creating autonomous agencies that are independent of the government).

65 Cook, *supra* note 30, at 13.

66 Vagliasindi, *supra* note 46, at 2.

67 Eleanor M. Fox, *Economic Development, Poverty, and Antitrust: The Other Path,* 13 SW. J. L. & TRADE AM. 211, 229-30 (2006-2007) ("Developing countries face markets that are much less dynamic and open than markets in developed countries. Moreover the markets are pock-marked by state intervention and control. Whether the intervention is through state measures, state-owned enterprises, or enterprises licensed or privileged by the state, these enterprises are likely to run on principles of privilege, preference, and cronyism.").

Developing countries also portray a unique political economy, where often government interests and those of the business elite are one and the same.[68] This casts serious doubt on whether competition law enforcement will not be selectively used to create further obstacles to those players that are not part of this favored club. It may only entrench the powers of the incumbent firms and those that pay the highest rewards to the government apparatus.[69] It is often argued that developing economies are enmeshed in a "Kafkaesque maze of control"[70] where large family owners use their influence to limit competition and obtain finances from the government to alter the game in their favor.[71] The poorly functioning capital markets in many developing countries furthers the concentrated ownership of the local elite even more.

The fear is that incumbent firms use their rents to pay for such selective and biased enforcement, which can often not be matched by new entrants and small firms who want a piece of the pie.[72] Incumbent firms want to maintain the status quo and resist any potential changes that might lower their influence and position in the market.[73]

Given this political economy "[a]ntitrust policies affected by political considerations may, however, come with a large price tag attached."[74] One of which is that "interest groups will follow their incentives and shift resources into monopolization through government protection. Lobbying the government for protection may be highly substitutable for organizing cartels."[75] In other words, producers and incumbents will now invest their

---

68 Daron Acemoglu, et al., *Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AM. ECON. REV. 1369, 1376 (Dec. 2001) ("In many cases where European powers set up authoritarian institutions, they delegated the day-to-day running of the state to a small domestic elite. This narrow group often was the one to control the state after independence and favored extractive institutions.").

69 Khemani, *supra* note 1, at 12 ("Incumbent firms often use their political influence to entrench their market and ownership positions.").

70 Jagdish Bhagwati, INDIA IN TRANSITION: FREEING THE ECONOMY, 50 (1993).

71 Erik Berglöf & Ernst-Ludwig von Thadden, *The Changing Corporate Governance Paradigm: Implications for Transition and Developing Countries* 18 (Working Paper No. 263, June 1999), http://www.hec.unil.ch/deep/textes/9912.pdf ("[L]arge family owners often use their influence to limit competition, obtain favorable finance form the government and in other ways alter the game in their favor.").

72 Gal, *supra* note 64, at 4 ("Political considerations may, however, tilt the balance towards specific markets or firms or shift the investigation away from them."); Rodriguez & Williams, *supra* note 51, at 214 ("Theories of endogenous protectionism predict that private domestic interest groups will respond to potential loss of rents by intensifying their lobbying efforts. Higher losses of rents cause proportionately greater lobbying activities.").

73 Frane Adam & Matevz Tomsic, *Elite (Re)configuration and Politico-Economic Performance in Post-Socialist Countries*, 54(3) EUR-ASIA STUD. 435, 448 (May 2002) ("[S]low implementation of certain reforms which could threaten the monopoly and advantages of the retention elite.").

74 Gal, *supra* note 64, at 1.

75 Rodriguez & Williams, *supra* note 51, at 225.

rents in lobbying the government to continue their monopoly positions. Rodriguez and Williams argue that "the gain to interest groups of establishing cartels or price-fixing schemes are outweighed by simply soliciting preferential treatment from the state."[76] This implies that "antitrust may cause inefficiencies that are worse than the allocative losses that it is designed to defend against."[77] Such bureaucratic capture is assumed to make enforcers not able to serve the public interest.[78] Nonetheless, arguments using interest group theory to qualify antitrust enforcement are not without their own critiques.[79]

Adding high levels of corruption to the mix, it is predictable that empowering the governments in developing countries with a competition law will lead to even more corruption spent to alter the game in the favor of the local elite and friends of the government at the expense of overall welfare. Such political and bureaucratic resistance is arguably among the main problems facing developing countries in terms of implementing their competition laws and creating a competition culture.[80]

D. *Highly Concentrated and Cartelized Markets Make Competition Enforcement Impossible*

A more pervasive obstacle is found in the market structure of many of these countries. Higher levels of concentration, arguably the most powerful challenge for countries wanting to adopt a competition law, persist in developing and small nations, much more than those in industrialized countries.[81] Few firms dominate many sectors and produce the majority of output. "Outside peasant agriculture and some services, perfect competition, or any recognizable semblance thereof—is typically conspicuous by its

---

76 *Id.* at 231.

77 *Id.* at 225.

78 Fred S. McChesney & William F. Shughart, THE CAUSES AND CONSEQUENCES OF ANTITRUST: THE PUBLIC CHOICE PERSPECTIVE 32 (1995); Rodriguez & Williams, *supra* note 51, at 220 (the authors argue that "[In developing countries] it is the executive branch, not the legislative branch, which tends to be the target of those seeking political favors.").

79 *See* Einer Elhauge, *The Scope of Antitrust Process*, 104 HARV. L. REV. 667, 725 (1991) ("[A]ny proposal to use capture theory to make *collective* judgments to strike down state law must recognize that those judgments will be made not by wise philosopher-kings (with whose philosophy we all agree) but by judges deciding cases.").

80 Oliveira, *supra* note 63, at 7.

81 Michal S. Gal, *Size Does Matter: The Effect of Market Size on Optimal Competition Policy*, 74 S. CAL. L. REV. 1437, 1445 (2000-2001) (the author argues that because of the low demand and the need for firms to achieve minimum efficient scale of production (MES) to be able to operate efficiently (at lowest cost), the market will not be able to support more than a few number of firms); Cook, *supra* note 30, at 16 ("Concentration levels are higher in developing countries than in industrialized countries.").

absence [in developing countries]."[82] This reality necessarily stands in the way of adopting and enforcing a competition law, especially one that is not favorable towards high concentration levels.

The reasons for these high levels of concentration are numerous, mainly including the high barriers to entry and exit. Developing countries' industrial policies have often been biased towards restricting entry by imposing strict licensing and financing arrangements on newcomers.[83] Moreover, trade regimes in developing countries are often highly protective, thus eliminating foreign competition.[84] Furthermore, because of the weakness of capital markets in developing countries, investment funds are often internally generated, leading to industrial power being concentrated in the hands of few.[85]

Low demand or purchasing power leads to lowering the number of firms that can efficiently operate in these markets.[86] For firms to operate efficiently, i.e., be able to exploit minimum efficient scale of production, they need high concentration levels to offset this low demand. Firms with lower market shares operate at sub-optimal levels and are not capable of reaching economies of scale.[87]

Furthermore, concentration levels are also high because of technological underdevelopment in these countries. A firm specializing in a newly developed technology entering these markets will by default occupy a large market percentage. Also, the penetration of multinational companies (MNCs) that have large capital investments and worldwide markets, make competition by local firms impossible. Local firms are incapable of even entering such markets or matching the prices of the MNCs. In some of these developing countries the higher concentration levels are not only due

---

82 Dani Rodrik, *Imperfect Competition, Scale Economies, and Trade Policy*, *in* TRADE POLICY ISSUES AND EMPIRICAL ANALYSIS 109, 111-112 (Robert E. Baldwin ed., 1988) ("In a wide range of manufacturing sectors, a few firms tend to dominate and, one assumes, make liberal use of their market power. Or course, the same could be said for the developed countries as well. It appears, however, that imperfect competition is in fact more pervasive in the industrial sectors of the developing countries than of the developed ones."); *see also* Khemani, *supra* note 1, at 9 ("[C]haracteristics of most developing countries are] [h]igh levels of domestic product market concentration, barriers to entry and trade, and low degree of interfirm rivalry-competition. While the liberalization of markets for goods and services is on the rise, the inherent structural features of high product market concentration tend to change slowly due to past government policies and interventions such as industrial policy, tariff protection, licensing, preferential procurement, and the like, as well as the relatively small size of domestic markets in most developing economies and underdeveloped capital markets.").

83 Rodrik, *supra* note 82, at 113.

84 *Id.*

85 *Id.* ("[I]n many developing countries industrial power is concentrated in the hands of minority ethnic groups, such as the Chinese in Southeast Asia and the Indians in East Africa.").

86 *See* Gal, *supra* note 81.

87 Khemani, *supra* note 1, at 10 ("In a number of economies, high levels of industry or product market concentration may be the result of the small size of the domestic market relative to efficient scale of production, so that there is room for only a few firms.").

to the MNCs operating, but are also due to the local industrial policies that encourage national champions, protections for infant industries, and higher levels of concentrations of their local firms so that they can compete internationally.

Moreover, because many developing countries were state-run economies, many sectors are still occupied by government monopolies. The new wave of privatization and liberalization only meant that these state monopolies are being sold to private entities that still maintain the monopoly status of the former government-run enterprises. These and other factors, mainly concerned with the political economy discussed above, result in higher concentration levels in developing countries.

Not only are concentration levels high, but the lack of merger regulation in some developing countries also works toward increasing these concentration levels even further.[88] Even the countries that do have merger regulations in place are found to approve almost all the requested mergers. Finally, some have argued that the extensiveness of high concentration levels is due to the non-enforcement of the adopted antitrust laws.[89]

Having more concentrated markets will hamper competition enforcement by making it very difficult for the antitrust authority to break up some of these dominant firms that abuse the market. It will also impact antitrust enforcement negatively by making cartelization much easier. It is easier for few firms to enter market sharing and price fixing agreements than it is for many firms operating in the same industry. Many studies, predominantly by Fredric Jenny, have shown how the markets in developing countries have and still are witnessing extremely high levels of cartel activity.[90] These cartels are hard to investigate and will for sure present a challenge for a newly formed competition authority.

---

88 Michal S. Gal, COMPETITION POLICY FOR SMALL MARKET ECONOMIES 196 (2003) ("Despite its admitted regulatory importance, until recently merger control has been absent from the competition laws of most small economies. […] many small economies instead opted for no merger control. This policy was based on the assumption that leaving merger control to the market would produce more efficient results than the absolute value of competition approach. […] This trend has changed profoundly since the mid-1980s as many small economies have added merger control to their competition policies.").

89 Rodrik, *supra* note 82, at 113 ("Even where antitrust legislation does exist, its implementation is rarely a serious bar to the actions of firms collusively inclined."); Khemani, *supra* note 1, at 10 ("[High levels of concentration in developing countries] could be attributable to lack of an effective competition law-policy that prevents monopolistic business practices and mergers and acquisitions.").

90 Frédéric Jenny, *Cartels and Collusions in Developing Countries*, Presentation for the Fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles And Rules For the Control of Restrictive Business Practices, (Antalya, Turkey, 14–18 November 2005) (some of the cartel cases the author presents are: Peruvian chicken cartel, milk processor cartel in Chile, Fish processor cartel on Lake Victoria in Kenya, cotton purchasers cartel in Malawi, cement cartel in the Philippines, cement cartel in Egypt, bus cartel in Jordan, bank cartel in Papua New Guinea, insurance cartel in Turkey); *see also* Jenny, *supra* note 20, at 609.

E. *Competition Enforcement Might Scare Away Limited Foreign Investment*

To discourage developing countries from adopting competition laws, it is often argued that misapplying competition rules would hamper the development of free markets.[91] This argument assumes that poorly enforced competition laws would discourage foreign direct investment (FDI), cross-border mergers and acquisitions, and trade in general.[92]

Another claim is that international firms will generally reduce their various investment activities in developing countries that have a competition law in place. The assumption is that foreign players prefer lax antitrust enforcement whereby their activities, even if contrary to the competition laws of their home-markets, will go unpunished.[93]

A similar argument is that price-fixing agreements by domestic firms raise prices, which might encourage foreign firms to enter the nation's market. Thus, enforcing antitrust laws against such price-fixing agreements may discourage the potential inflow of FDIs.[94] These arguments allege that operating in a country that has a strict competition regime will thus be discouraging for these foreign firms, thereby reducing important capital inflow into developing countries. In this scenario, one can say that developing countries are in a 'race-to-the-bottom' to attract FDIs.

It can be easily argued, however, that such abusive conduct by foreign firms will outdo any benefits associated with these firms operating in the developing country in the first place. Fredric Jenny found that developing countries lose about half of the development aid they receive paying for cartel-infected products and overcharges emanating from foreign firms.[95] In another study, Levenstein and Suslow reported that in 1997, developing countries imported goods from industries, which had seen a price-fixing conspiracy during the 1990s worth US $51.1 billion.[96]

---

91 Paul E. Godek, *A Chicago-school Approach to Antitrust for Developing Economies*, 43 ANTITRUST BULL. 261, 274 (Spring 1998).

92 Laffont, *supra* note 50, at 264; Evenett, *supra* note 53, at 8 (quoting S. Cooke & D. Elliott, *Competition Policy Issues for Developing Asian Economies*, Mimeo Prepared for the OECD).

93 Jenny, *supra* note 20, at 610 (argues that Egyptian cement producers, which to a large extent are foreign cement players, have been engaged in cartel activities in the early 2000s. These foreign players would not have been able to undertake such activities in their home markets, which e.g. for Lafarge would have meant heavy fines imposed by the EU Commission).

94 Evenett, *supra* note 53, at 8 (quoting M. Noland, *Competition Policy and FDI: A Solution in Search of a Problem?* (Institute for International Economics Working Paper number 99-3)).

95 Jenny, *supra* note 20, at 615 ("[T]he order of magnitude of international aid to development is about US$50 billion per year. Thus, at a minimum, the existence of anti-competitive trans-national cartels implies transfers (in the form of overcharge) form developing countries to cartel members (mostly from firms in developed countries) which represents at least half of the value of the development aid given by the governments of developed countries to developing countries.").

96 Levenstein & Suslow, *supra* note 31, at 816.

Despite these critiques, some authors have continued to argue that aggressive competition law enforcement in a transition or developing economy might be detrimental to investment.[97] Thus, "[t]aken as a whole, antitrust as practiced in the developed world may have adverse effects on a reform policy in the developing world, and may stunt growth."[98]

F. *Antitrust is Simply Superfluous for Developing Countries*

Last but not least, the literature discouraging the adoption of competition laws in developing countries is not free from the Chicago School critique against the field of antitrust in general. For example, Richard Posner argues that "[t]oo often the antitrust suits […] were brought by or on behalf of inefficient competitors against their deservedly more successful rivals."[99] Similarly, Robert Bork argued that the competition laws reduce efficiency, since the monopolies they oust are in effect increasing output and leading to the reduction of general prices.[100]

According to some economists setting perfect competition as the ideal market structure is an impossible target, and leads to the elimination of research and innovation undertaken by the entrepreneurs, which benefits consumers.[101] "Attempts to base antitrust judgments on [these models] necessarily leads to economically absurd cases with harmful social consequences."[102] Those arguing that higher concentration levels are the drivers for growth shy away from advocating competition laws for the developing world. Many look to the East Asian experiment to prove that perfect competition is not the right path for development.[103]

Although their rhetoric stems from a rejection of the free market, capitalism, and perfect competition as the ideal market structure, arguably all

---

97 A.E. Rodriguez & Malcolm B. Coate, *Limits to Antitrust Policy for Reforming Economies,* 18 HOUS. J. INT'L L. 311, 317 (1996).

98 *Id.* at 357.

99 Richard Posner, *100 Years of Antitrust,* WALL ST. J., June 29, 1990.

100 Robert H. Bork, *Goals of Antitrust: A Dialogue on Policy*, 65 COLUM. L. REV. 363, 363 (1965) ("This increased efficiency [achieved with higher concentrations] is valuable to society at large, for it means that fewer of our available resources are being used to accomplish the same amount of production and distribution."); *id.* at 374 ("And law that makes the creation of efficiency the touchstone of illegality can only tend to impoverish us as a nation."); *id.* at 375 ("To inhibit the creation of efficiency in order to make life easier for other producers or for would-be entrants is to impose a tax upon efficiency for the purpose of subsidizing the inept.").

101 Joseph A. Schumpeter, CAPITALISM, SOCIALISM AND DEMOCRACY 106 (3d ed. Harper Prennial, 1962) ("[P]erfect competition is not only impossible but inferior, and has no title to being set up as a model of ideal efficiency.").

102 *See* Dominick T. Armentano, ANTITRUST AND MONOPOLY: ANATOMY OF A POLICY FAILURE 271 (2d ed. 1999).

103 *See* Alice H. Amsden & Ajit Singh, *The Optimal Degree of Competition and Dynamic Efficiency in Japan and Korea*, 38 EUR. ECON. REV. 941 (1994).

elements of the Washington Consensus, their conclusions *uncannily* places them in the same policy framework as the Chicago School advocates. This unholy alliance between those found on the left and the right, is in their rejection of perfect competition and their inclination to accept concentration or bigness as more effective dynamisms of growth and development.

For the left, this stance is in support of a government role to puppeteer such bigness as in the socialist model, and in the belief that dynamic efficiency and innovation is only funded through monopolistic rents. Whereas for the right, their support of bigness is enshrined in their belief that business is entitled to the fruits of their labor and their distrust towards any kind of government intervention.[104] They also believe that innovation is generated through concentration, yet they reject competition policies' infringement on the operations of the free market and the intervention of government regulation in the *invisible hand* of the marketplace. "The entire antitrust system," writes Armentano, "allegedly created to protect competition and increase consumer welfare—has worked, instead, to lessen business competition and lessen the efficiency and productivity associated with the free market process. Like many other governmental interventions, antitrust has produced results that are far different from those that were allegedly intended."[105]

Others have based their calls for a narrow scope for antitrust enforcement on the indeterminable nature of many of the antitrust issues ex ante. For example, they argue that it is near impossible to know in advance the exact effect a merger would have on prices, whether it will indeed realize its promised efficiencies, what benefits will consumers accrue, etc.[106] Accordingly, "[this] is reason enough to confine the application of merger policy (and competition policy generally) to the narrowest possible scope, in order to minimize the cost to the economy of regulatory errors."[107]

Those advocating a lesser critique still do not support the adoption of a full-fledged comprehensive competition legislation in developing countries. They would endorse the prohibitions on naked trade restraints but not on complex issues such as abuse of dominance, mergers, vertical restraints,

---

104 Bork, *supra* note 100 and accompanying text.

105 Armentano, *supra* note 102, at 271.

106 Douglas H. Ginsburg, *The Goals of Antitrust Revisited: Comments*, 147 J. INSTITUTIONAL & THEORETICAL ECON. 24, 26-27 (1991) ("In the merger context, errors of under-enforcement are surely to be preferred to those of over-enforcement. The self-correcting forces of the marketplace will compensate relatively quickly for any inefficiencies following a merger that proves to be anti-competitive. On the other hand, an error of over-enforcement, which prevents a merger that would have enhanced efficiency, may never be corrected.").

107 *Id.* at 27-28 ("[T]he ignorance from which we suffer is unavoidable. . . . Increasing the emphasis upon economic analysis cannot, therefore, remedy the situation. . . . Just as quantification may create the illusion of certainty, econometric sophistication may provide the illusion of a scientific method.").

and price discrimination.[108] This is again similar to the minimalist Chicago School view of competition law, which "seems to favor little other than prosecuting plain vanilla cartels and mergers to monopoly."[109]

The effect of these challenges on antitrust enforcement in developing countries is rarely tested, but they certainly affect enforcement in one way or the other. What is undeniable is that they challenge the assumptions of a positive relationship between antitrust and growth that everyone took for granted. What is important to point out is that a real assessment of the impact of competition law on development and growth has to be centered around antitrust enforcement instead of adoption, seeing that adopting a law is nothing but ink on paper if it is not implemented. Few have assessed the impact of antitrust enforcement on growth in developing countries, which is necessary to conclude on the merits of such laws with regard to development. Such an analysis would also help discern the impact the challenges laid out here have with regard to implementing competition laws and realizing the promised prosperity.

Given these challenges and despite the lack of agreement on whether competition laws are beneficial or detrimental to developing countries, the reality is that the majority of developing countries have today a competition law in place. As explained before, many of those countries did not choose to adopt antitrust laws based on their own free will, yet, arguably they did have a choice as to how to draft their laws. This will be addressed next in conjunction with arguments that due to these challenges, developing countries need different laws than those developed in the West.[110]

IV. TYPES OF COMPETITION LAWS ADOPTED BY DEVELOPING COUNTRIES

Developing countries adopted Western-inspired competition legislations. They did not take into account the evolution of these laws within their own origin countries. Instead, they looked to the most advanced versions of these laws. If a historic outlook was taken, a similar approach to transplanting Western law would have resulted in a very different competition legislation. Both competition law and policy in Europe and in the U.S. transformed itself over time to suit locally changing circumstances. For example, at one point in the development of European competition law and

---

108 Laffont, *supra* note 50, at 256 ("Although even more desirable in developing countries, the U.S.-type competition policy with its armada of lawyers and economists is not affordable or even implementable. The design of a body of simple and transparent rules for developing countries, in particular for horizontal collusion and abuse of dominant position, remains, I believe, a worthy task.").

109 Frank H. Easterbrook, *Workable Antitrust Policy*, 84 MICH. L. REV. 1696, 1701 (1986).

110 For a similar analysis *see* Gal, *supra* note 88 (the author argues that the distinctive nature of "smallness", which is characterized by high industrial concentration, high entry barriers and sub-optimal levels of operation, justifies that these small nations adopt competition laws different from the advanced world).

policy in the 1980s, the European Commission (EC) approved a 'crises cartels' to protect local production and shield it against foreign imports.[111] A practice frowned upon in modern competition laws and policies of the West.

In the 1990s, when developing countries looked to Western competition laws to draft their own, they looked to the most recent versions of these laws. They did that thanks to the push of the international organizations and their own belief that they need to adopt the most advanced, state-of-the-art, model laws. They ended up with a law and competition policy that:

> [A]ssumes large numbers of participants in all markets, no public goods, no externalities, no informational asymmetries, complete markets, no natural monopolies or, more generally, convexity of technologies in addition to full rationality of economic agents, a benevolent court system to enforce contracts, and a benevolent government with lump sum transfers to achieve any desirable redistribution. *Developing economies are of course very far from this ideal world*, and the policy question "Should competition be encouraged in developing countries?" must be raised in a more realistic framework.[112]

One can easily argue that developing countries face unique conditions and challenges, which require their competition laws to address their local needs. It is well established that in order for obeying laws to become less costly, moral and social norms need to align with state law.[113] If this is the case, then abiding by the law will not only be out of respect and fear, but also social condemnation.[114] This mode of the rule of law facilitates economic development.[115] The role of law in a society can only be understood by looking at its cultural and political environment, in order to prevent the failure of legal reforms.[116]

Mere transplantation of laws does not properly address the legal culture and desired outcomes in each country. Transplanted laws must be adapted to the local circumstances for them to be effective, and also to en-

---

111 European Commission Decision 84/380/EEC of 4 July 1984, *Synthetic fibres*, OJ 1984, L 207/17.

112 Laffont, *supra* note 50, at 237 (emphasis added).

113 Robert D. Cooter, *The Rule of State Law and the Rule-of-Law State: Economic Analysis of the Legal Foundations of Development*, Annual World Bank Conference on Development Economics 191, 192 (1997), http://works.bepress.com/robert_cooter/48.

114 *Id.*

115 *Id.* at 193-201 (this is empirically tested in a study the author conducts where he explores the relationship between state law, effective law, and economic development by using a model of social norms that explains how the internalization of norms strengthens people's willingness to punish violators informally).

116 Anthony Ogus, *The Importance of Legal Infrastructure for Regulation (And Deregulation) in Developing Countries* 4, (Center on Regulation and Competition Working Paper Series No. 65, 2004).

sure that the legal institutions needed to enforce them will develop.[117] If transplanted laws are not tailored to the local environment and their subject made familiar to the local population, then the laws will be not be effective.[118] One of the focal problems with this diffusion of law movement is put forward in the following quotation:

> Where law develops internally through a process of trial and error, innovation and correction, and with the participation and involvement of users of the law, legal professionals and other interested parties, legal institutions tend to be highly effective. By contrast, where foreign law is imposed and legal evolution is external rather than internal, legal institutions tend to be much weaker.[119]

The meaning of a transplanted rule does not survive the journey from one legal culture to the other since "the deep structures of law, legal cultures, legal mentalities, legal epistemologies, and the unconsciousness of law as expressed in legal mythologies, remain historically unique and cannot be bridged."[120] Therefore, developing countries are often encouraged to develop their own competition laws that address their domestic environment and challenges.[121]

Some have argued that for developing countries, the competition policies of the advanced world are not appropriate for their current development stage.[122] It is alleged that if developing countries adopt modern competition policies followed by the more advanced nations, they would not be able to implement them. This is a recurrent statement and leads to the argument that developing countries fail to enforce their competition laws,

---

117 Daniel Berkowitz et al., *Economic Development, Legality, and the Transplant Effect*, 51 AM. J. COMP. L. 163, 168 (2003).

118 *Id.*

119 *Id.* at 189-90 ("Our empirical analysis offers strong support for these propositions. Receptive transplants, i.e., those that adapted the imported law, or had a population that was familiar with it show legality ratings that are statistically no different from those of origin countries. Countries without similar predispositions, i.e. unreceptive transplants, perform much worst. These countries suffer from the transplant effect.").

120 Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11, 14 (1998).

121 Eleanor M. Fox, *Competition, Development and Regional Integration: In Search of a Competition Law Fit for Developing Countries* 2, (N.Y.U. Law and Economics Research Paper No. 11-04, 2011), http://ssrn.com/abstract=1761619 ("[D]eveloping countries must develop their own brand of competition law, resisting pressures to copy 'international standards' without regard to fit."); *see also* Gal, *supra* note 64, at 11.

122 Singh & Dhumale, *supra* note 17, at 9; Fox, *supra* note 24, at 593 ("The design and use of competition law for the developing world is complex. The experience of mature market economies is highly useful but may not be wholly transferable. While the American determination not to mix equality with efficiency may work for the United States in the year 2000, it may not be an obvious truth for the world.").

partially because of the laws' inadequate fit for their own needs. They will not be able to overcome the challenges mentioned above, which will hinder their ability to apply these laws effectively.

Eleanor Fox has, however, discouraged the notion that each nation entirely invents its own wheel.[123] She argues that "[t]he "idiosyncratic" option would produce such atomization of law that it is not seriously offered."[124] This will produce a huge cost and might negatively impact a county's ability to attract investment.[125] She argues that a combination is the most desirable formula, for example:

> "[The] competition-law principles of the South African case-law, informed by EU law, may comprise the best available anchor, on grounds that this set of laws best incorporates the Spence principle of efficient inclusive development while also incorporating important insights of the revised Washington Consensus; and it does so in a way that respects the problem of seriously limited resources."[126]

She also encourages incorporating competition rules as part of regional agreements.[127]

Despite the calls for drafting special competition laws in developing countries, or at least to modify them to incorporate some local flavor, the reality is very different. Most developing countries adopt laws that do not address their particular conditions, needs, and challenges.[128] "One size fit all" models of competition laws have spread across the world.[129] Studies looking at competition laws on the books of many countries conclude that the laws enacted in the developing world are quite similar to those adopted in developed countries.[130]

This similarity is ascertained when looking at studies allocating scores to the presence of key issues of competition features in national laws. These studies measure the comprehensiveness of the breadth of the overall competition law on the books. Two such studies are used to compare the laws on the books across countries. In the first, the "Scope Index" is devel-

---

123 Fox, *supra* note 121, at 14.

124 *Id.*

125 *Id.* at 15.

126 *Id.* at 19.

127 *Id.* at 15-19 ("[C]ompetition law on the regional level holds much promise. The expectation and promise of effective regional competition law may be greater than its delivery in the near term. But for the longer term, the project is vital.").

128 Khemani, *supra* note 1, at 26 ("The competition laws in most developing countries mirror and contain the core provisions found in such legislation in industrial countries.").

129 Gal, *supra* note 81, at 1441 ("The main factor that creates the need to tailor competition law to economic size is that competition laws generally consist of "fit all" formulations that are designed to best achieve the goals of the law in each category of cases to which they apply . . . .").

130 Hylton & Deng, *supra* note 44; Nicholson, *supra* note 44.

oped by Hylton and Deng[131] and in the second, the "Antitrust Law Index" is developed by Nicholson.[132]

Both measurements show strikingly similar scores in developed and developing countries, which can be read to mean that their competition laws are not only very similar but almost identical. For example, in Nicholson's study, the highest score (21) is given to the U.S., followed by Ukraine (20), then Turkey (19), then Belgium, Latvia, Poland, and Romania (18).[133] According to the "Scope Index" the highest score of 25 is allocated to Australia, Barbados, Belarus, Malawi, and the US.[134] These are followed by a score of 24 allocated to Hungary, Korea, and Kyrgyzstan.[135] And a score of 23 is given to Indonesia, Mexico, Spain, Ukraine, U.K., and Uzbekistan[136] (Table A.2 summarizes both sets of scores for developing countries).

When looking at these studies, competition laws on the books are relatively similar in both the developed and developing world. Thereby, the law does not differ depending on the developmental status of a country. Both Malawi's and Australia's competition laws have the same breadth, which is enough to show that advanced laws are simply transplanted without significant changes needed to make the law fit local circumstances. This challenges the assumption that laws are enacted to address unique concerns. A close reading of the competition laws of developing countries will show striking similarities with either the U.S. enforcement guidelines or Articles 101 and 102 of the TFEU. These results suggest further that developing countries model their laws on those adopted in the West. It is important to note that the fact that the law is similarly drafted does not mean that they are similarly enforced.

Given this unsettling reality about antitrust laws being cut-and-pasted from advanced countries into developing countries, the only choice that developing countries do have is in setting the overall policy that guides their enforcement. They can choose how to implement these laws, what to promote as their enforcement goal, and how to realize it.[137] This should be a priority to be addressed by developing countries so that they can contain the setbacks that usually ensue when a country adopts a law that is not suitable for its own needs. This is essential to assure that competition laws do not become one more Western-imposed piece of legislation that has no teeth or that hurdles their attempts at development further.

---

131 Hylton & Deng, *supra* note 44.

132 Nicholson, *supra* note 44.

133 *Id.* at 1022.

134 Hylton & Deng, *supra* note 44, at 332.

135 *Id.*

136 *Id.*

137 *See* Dina I. Waked, *Antitrust Goals in Developing Countries: Policy Alternatives and Normative Choices*, 38 SEATTLE U. L. REV. 945 (2015).

CONCLUSION

This paper provided an in depth analysis of the spread and motives to adopt competition laws across the developing world. It showed that in some instances, competition laws have been adopted over the course of many years in response to local pressures, in order to mend behaviors, imposing social costs on societies. Many of the ills stemming from the neoliberal reforms undertaken in these countries were promised to be repaired when competition laws were to be adopted. Competition laws were advocated as essential to realize the benefits of these reforms and to achieve growth and development. In other instances, competition laws were adopted following recommendations and conditionality clauses in treaties and international loans. Most developing countries either adopted competition rules in response to such recommendations of international institutions or because of various obliging treaties they signed.

In an attempt to benefit from the experiences of countries preceding them in enacting competition rules and so not to reinvent the wheel, newly adopting countries passed rules modeled on the legislations of developed nations. This mode of adopting competition rules does not always address local needs, legal institutions, or general conceptions of the rule of law. Adopting laws that are not specifically tailored to address the local challenges, which are discussed in the paper in some detail, has often been discouraged. This led many to assume that these laws will never be enforced.

Whether developing countries do enforce their laws, what they aim at achieving with their implementation and what they should target to achieve growth and development are issues that are scarcely addressed in the literature.[138] This paper provides a starting point to be further extended to address these questions, which are essential to capture a realistic picture of developing countries' experiences with antitrust laws.

---

138 These question are addressed in Waked, *supra* note 137 and other forthcoming articles.

APPENDIX

FIGURE A. 1. TIME LINE OF ADOPTING COMPETITION LAWS IN THE DEVELOPING WORLD

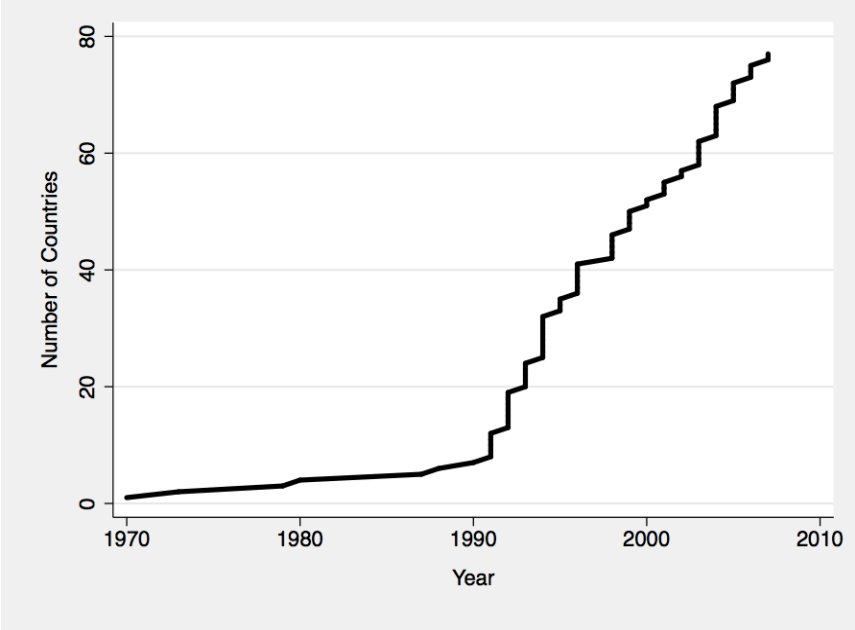


FIGURE A.2. GEOGRAPHICAL DISTRIBUTION OF DEVELOPING COUNTRIES WITH COMPETITION LAWS

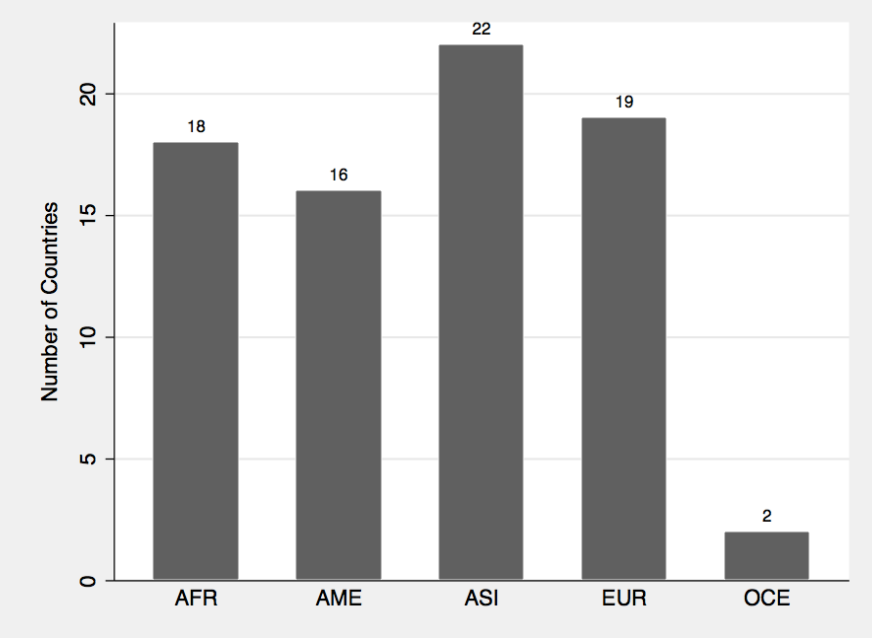


TABLE A.1. BREAKDOWN OF DEVELOPING COUNTRIES WITH A COMPETITION LAW BY 2007*

##	Country	Region	Year of Adoption	Income Group[1]	##	Country	Region	Year of Adoption	Income Group[1]
1	Albania	Europe	1995	LM	40	Mali	Africa	1992	Low
2	Algeria	Africa	1995	UM	41	Mauritius	Africa	2003	UM
3	Argentina	Americas	1980	UM	42	Mexico	Americas	1992	UM
4	Armenia	Asia	2000	LM	43	Moldova	Europe	1992	LM
5	Azerbaijan	Asia	1993	LM	44	Mongolia	Asia	1993	LM
6	Barbados	Americas	2002	IMF[a]	45	Montenegro	Europe	2005	UM
7	Belarus	Europe	1992	UM	46	Morocco	Africa	2001	LM
8	Bosnia & Herzegovina	Europe	2001	UM	47	Namibia	Africa	2003	UM
9	Brazil	Americas	1994	UM	48	Nepal	Asia	2007	Low
10	Bulgaria	Europe	1998	UM	49	Nicaragua	Americas	2006	LM
11	Burkina Faso	Africa	1994	Low	50	Pakistan	Asia	1970	LM
12	Cameroon	Africa	1998	LM	51	Panama	Americas	1996	UM
13	Chile	Americas	1973	UM	52	Papua New Guinea	Oceania	2002	LM
14	Colombia	Americas	1992	UM	53	Peru	Americas	1991	UM
15	Costa Rica	Americas	1994	UM	54	Philippines	Asia	1992	LM
16	Cote d'Ivoire	Africa	1991	LM	55	Poland	Europe	1990	UM
17	Croatia	Europe	1995	IMF	56	Romania	Europe	1996	UM
18	Czech Republic	Europe	1991	IMF	57	Russia	Europe	1991	UM
19	Egypt	Africa	2005	LM	58	Saudi Arabia	Asia	2004	IMF
20	El Salvador	Americas	2006	LM	59	Senegal	Africa	1994	Low
21	Estonia	Europe	1993	IMF	60	Serbia	Europe	2005	UM
22	Ethiopia	Africa	2003	Low	61	Slovakia	Europe	1994	IMF
23	Fiji	Oceania	1998	UM	62	South Africa	Africa	1979	UM
24	Georgia	Asia	1996	LM	63	Sri Lanka	Asia	1987	LM
25	Guyana	Americas	2004	LM	64	Syrian Arab Republic	Asia	2007	LM
26	Honduras	Americas	2005	LM	65	Tajikistan	Asia	2004	Low
27	Hungary	Europe	1996	IMF	66	Tanzania	Africa	2003	Low
28	India	Asia	2003	LM	67	Thailand	Asia	1999	LM
29	Indonesia	Asia	1999	LM	68	Tunisia	Africa	1991	LM
30	Jamaica	Americas	1993	UM	69	Turkey	Asia	1994	UM
31	Jordan	Asia	2004	LM	70	Ukraine	Europe	1993	LM
32	Kazakhstan	Asia	2001	UM	71	Uruguay	Americas	2000	UM
33	Kenya	Africa	1988	Low	72	Uzbekistan	Asia	1996	Low
34	Kyrgystan	Asia	1994	Low	73	Venezuela	Americas	1992	UM
35	Lao, PDR	Asia	2004	Low	74	Vietnam	Asia	2004	Low
36	Latvia	Europe	1998	UM	75	Yemen	Asia	1999	Low
37	Lithuania	Europe	1999	UM	76	Zambia	Africa	1994	Low
38	Macedonia	Europe	2006	UM	77	Zimbabwe	Africa	1996	Low
39	Malawi	Africa	1998	Low					

* *Source:* Global Competition Forum, World Bank Competition Law Database, World Bank Atlas Method, IMF World Economic and Financial Surveys.

[1] Income group according to the World Bank Atlas Method or IMF when indicated. Upper Middle (UP), Lower Middle (LM), and IMF Developing (IMF).

[a] IMF: Developing: High Income Economies according to the World Bank, but considered developing according to the IMF 2009 classification.

FIGURE A.3. PERCENTAGE OF DEVELOPING COUNTRIES WITH AND WITHOUT A COMPETITION LAW IN DIFFERENT REGIONS

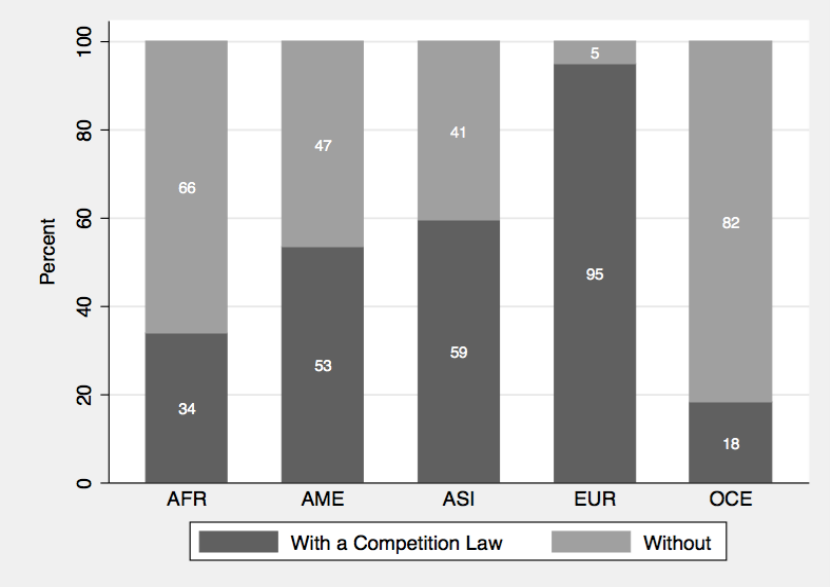


FIGURE A.4. DEVELOPING COUNTRIES' INCOME DISTRIBUTION BY REGION

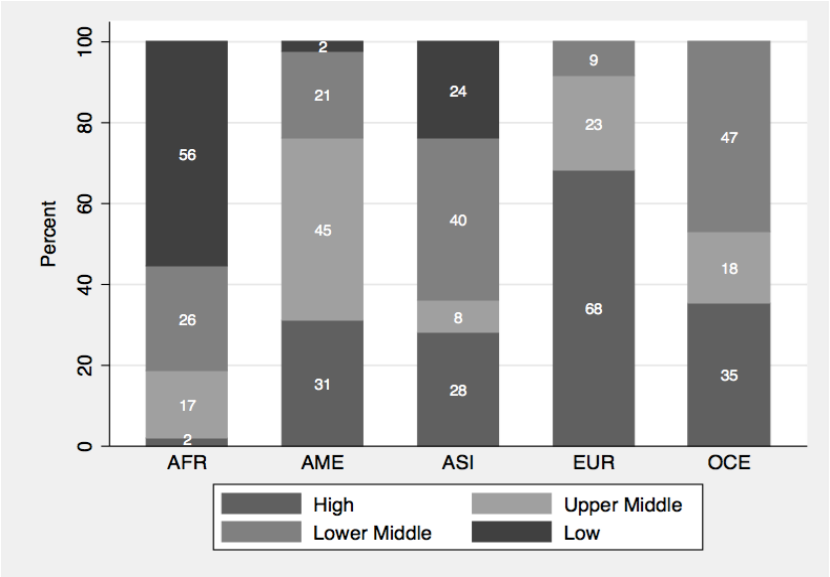
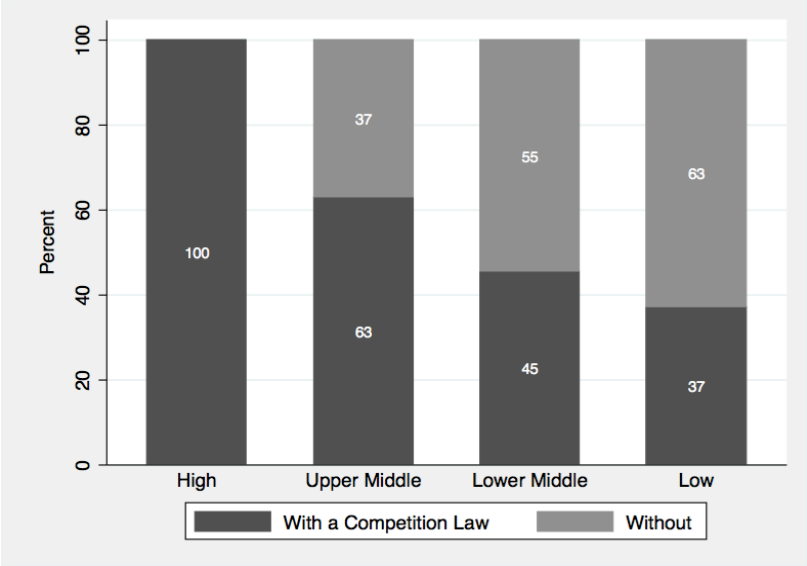


FIGURE A.5. PERCENTAGE OF DEVELOPING COUNTRIES WITH AND WITHOUT A COMPETITION LAW BY INCOME*



* High income economies yet considered developing according to the IMF.

FIGURE A.6. PERCENTAGE OF DEVELOPING COUNTRIES WITH AND WITHOUT A COMPETITION LAW BY INCOME GROUP AND REGION*

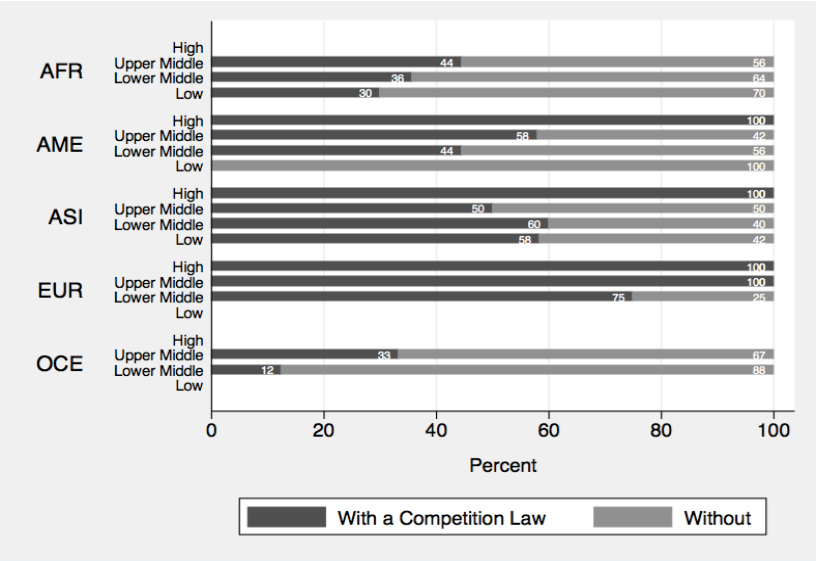


TABLE A.2. LAWS ON THE BOOKS INDICES (FORMAL ENFORCEMENT)**

Country	Scope Index[a]	Antitrust Law Index[b]	Country	Scope Index[a]	Antitrust Law Index[b]
Albania	20	N/A	Moldova	22	N/A
Algeria	15	N/A	Mongolia	18	N/A
Argentina	25	17	Montenegro	19	N/A
Armenia	17	12	Morocco	17	N/A
Azerbaijan	20	N/A	Namibia	22	N/A
Barbados	25	N/A	Nepal	N/A	N/A

* High here once again refers to those countries that are considered high income economies according to the World Bank but are classified as developing according to the IMF.

** *Source:* Hylton & Deng for the Scope Index; and Nicholson for the Antitrust Law Index.

[a] Scope Index (Hylton & Deng): the score is allocated to the latest competition law (including the latest amendments).

[b] Antitrust Law Index (Nicholson): for laws in effect in 2003.

Belarus	25	N/A	Nicaragua	20	N/A
Benin	N/A	N/A	Pakistan	14	N/A
Bosnia & Herzegovina	21	N/A	Panama	21	10
Brazil	22	11	Papua New Guinea	13	N/A
Bulgaria	20	N/A	Peru	12	13
Burkina Faso	15	N/A	Philippines	N/A	N/A
Cameroon	17	N/A	Poland	22	18
Chile	13[c]	4	Romania	22	18
China	23	N/A	Russia	22	N/A
Colombia	19	N/A	Saudi Arabia	20	N/A
Costa Rica	18	11	Senegal	15	N/A
Cote d'Ivoire	12	N/A	Serbia	19	N/A
Croatia	20	15	Slovak Republic	19	16
Czech Republic	20	14	South Africa	24	17
Egypt	13	N/A	Sri Lanka	8	10
El Salvador	18	N/A	Syria	24	N/A
Estonia	21	15	Tajikistan	20	N/A
Georgia	0	N/A	Tanzania	16	N/A
Guyana	15	N/A	Thailand	21	13
Honduras	20	N/A	Tunisia	14	10
Hungary	25	N/A	Turkey	21	19
India	22	N/A	Ukraine	23	20
Indonesia	23	13	Uruguay	22	N/A
Jamaica	20	10	Uzbekistan	26	17
Jordan	23	N/A	Venezuela	13	14
Kazakhstan	24	N/A	Vietnam	22	N/A
Kenya	18	16	Yemen	N/A	N/A
Kyrgyzstan	24	N/A	Zambia	20	14
Lao PDR	13	N/A	Zimbabwe	23	N/A
Latvia	21	18			

[c] The SI for Chile is still under construction as it is missing the codification of the merger regulations