Tackling the 'Tyranny of Vested Interests': Competition Policy as Political Governance[1]

Executive Summary

When economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries. Competition policy, if challenging political and economic monopolies, builds competitive markets that in turn reinforce political legitimacy, strengthening the capable, accountable and responsive institutions on which effective states are constructed. Growth is a political process built by 'growth coalitions'. Competition policy must align with those political forces for change through economic growth while supporting the political stability on which sustainable growth dynamics depend. The political governance approach to competition policy suggests that competition policy merits attention for tackling the 'tyranny of vested interests', promoting economic democracy for producers and consumers. Competition policy is therefore much more than a technocratic tool for achieving economic efficiency gains. The operational implication is important – that competition policy must tackle those vested interests powerful enough to change the 'rules of the game' but not so politically powerful as to destroy politically realistic prospects for reform. This political economy ambition for competition policy suggests competition policy in developing countries should be judged explicitly against its contribution to tackling 'the tyranny of vested interests' for better growth and poverty reduction outcomes.

[1] With grateful acknowledgment of many helpful comments and ideas from Roger Nellist, John Preston and Karen Ellis of DFID's Investment Climate Team.

Introduction: The Tyranny of Vested Interests

Competition is politically radical, for "competition would overthrow the tyranny of vested interests…. Competition benefits often-despised outsiders against those who are well-connected and entrenched."[1] Competition policy provides a framework for challenging monopolies of economic and political power. Whether competition policy can really live up to this dramatic promise of both economic competition and political inclusion in the governance context of developing countries demands closer attention.

Governance is now recognised as critical to development and delivering the Millennium Development Goals (MDGs).[2] The 2006 UK White Paper on development, entitled 'Eliminating World Poverty: Making Governance Work for the Poor', emphasises that: "First and foremost, the fight against poverty cannot be won without good governance. We need to help governments and citizens make politics work for the poor". But which instrumental or intrinsic dimensions of governance really deliver sustainable growth in developing countries remains uncertain. This paper considers competition policy [or anti-trust] as a political process delivering 'governance for growth' in developing countries and contributing to the creation of effective, accountable and responsive states.

Econometric research in recent years on institutions has confirmed that 'politics trumps economics' but has not adequately clarified why, nor been able to identify operational implications for development. 'Governance for growth' is the range of government policies and behaviours that shape the 'Investment Climate': the costs, risks and barriers to market competition.[3] But how the investment climate translates through the political climate that enables or blocks economic growth outcomes is far from clear. The authoritative 2005 World Development Report on the 'investment climate', for example, proposed that developing countries need a comprehensive range of governance reforms including a competition policy, but only on its closing page did it abruptly raise doubts about the political realities:

> 'This Report has highlighted the importance of understanding the political economy considerations that influence investment climate policies. While the subject has attracted significant attention, little is known about the conditions under which governments choose to pursue sound policies in these areas, including the implications of alternative political structures and processes.'[4]

The most important dimension of the investment climate is the least analysed or understood: the 'politics of growth' – the political blockages to economic freedoms for all people whether as producers and consumers: how processes of contesting political power, including informal institutional arrangements, influence economic and legal institutions to affect growth outcomes. In many developing countries poverty is the product of deliberate political constraint on economic opportunity through vested interests that 'capture' the state and so curtail economic growth prospects for poor people. So all analysis must start by asking: what political context really allows growth to happen? How do governance processes shape growth outcomes? What is 'good enough' governance for growth and investment? What are the operational implications - can the international community influence the process for better development outcomes?

Competition policy therefore should not be solely, or even primarily, about achieving economic efficiency gains. The customary analysis of the rationale for competition policy and law is that its objective is to achieve "a blend of efficiency and fairness in…markets"[5]. A recent British Government study noted that competition policy in many European states actively facilitates many sectors in the European economy to shelter behind barriers that reward inefficiency.[6] So, since 'efficiency' and 'fairness' cannot be judged on economic grounds but politically on society's ambition for a transformational impact, competition policy must be judged by its success in breaking the monopolies of economic and political power that hold back poverty reduction in developing countries.

Operationally, this means working progressively on both efficiency gains and on breaking up vested interests to create a sustainable culture of competition. Burkina Faso passed a competition law in May 1994, and a National Commission on Competition and Consumption has been operational since 1 August 1998, but it has had no effect because 'there is no culture of competition in the country' – an often-heard phrase which requires more careful research attention in a governance context.[7]

This governance context influences how the three main branches of competition policy [inter-company collusion; abuse of market dominance; and mergers and acquisitions] interpret the balance of law enforcement, advocacy for economic competitiveness or consumer interests, and long-term national development. While international competitiveness is difficult to achieve in the absence of significant domestic competition, competitiveness is not the same as competition. Competition policy, shaped by institutions and politics, is not simply a tool of economic policy. Successful competition policy promotes the credible legitimacy of the state by providing an effective, predictable, transparent and accountable framework for government objectives. Reforms around competition policy must be more than a technocratic intervention that most poor countries can ill-afford, or at worst a new vehicle for the various forms of 'state capture' by vested interests visible in many parts of the developing world.[8]

Governance is not a risk or assumption but is central to all aspects of competition policy. A former EU competition commissioner once noted: "Competition policy is not something neutral, it is politics."[9] In developed countries the origins of competition policy can be traced to the political concern not for market competition and competitiveness but for the impact on democracy's stability of excessive economic influence.[10] In developing countries effective competition policy is even more politically charged, as its objective is to constrain concentrated political and economic power while helping the more diffuse interests of ordinary, often poor, consumers and producers. Yet, where politics and economic power are closely aligned, as in most developing countries, how to overcome vested interests of monopolies, incumbency and concentration and support poverty reduction by challenging vested interests is a significant political challenge.

A recent study of competition issues in Malawi highlights the problem.[11] Although the government claimed to support competition, the enactment of the relevant laws was not followed with the establishment of institutions to make the laws effective. It took eight years to appoint the Competition Commission. A year after the establishment of the Commission its secretariat was still not in place, and the Government appeared to procrastinate over creating and staffing the Consumer Protection Council. The report concluded that "This gives the impression that promoting competition and protecting the consumer are not Government's priorities currently." While apparently true, this begs serious political economy analysis as to the reason: other political priorities [is competition simply not a country-owned priority], capacity constraints or deliberate political resistance?[12] In such contexts, the international community needs to improve its capacity to support a 'good enough' reform mix of instrumental as well as intrinsic aspects of governance that deliver economic competitiveness.

This paper considers how competition policy fits within the current development ambition for governance to construct effective states. It challenges the current lack of serious political economy analysis about local institutional context for competition policy to be effective, but underlines competition policy's potential importance.

Competition, competition policy and competitiveness – and the State

Competition, competition policy and competitiveness, although often confused, are distinct concepts with differing governance implications. International competitiveness is the aim, to deliver the sustainable economic growth and state effectiveness in developing countries needed to reduce poverty.

Competition is an economic concept with significant political implications;[13] a belief that market efficiency creates optimal choices over outcomes. Besides a theoretical construct for economic efficiency however, free market competition can be interpreted as the political economy of individualism, linking democracy, liberalism, and the system of private property. The economic concept of 'perfect competition' may be a valuable analytical tool, but its demanding assumptions are rarely likely to be met in practice. Even in advanced economies there are many limitations to market competition;[14] and the extent of competition in developing countries is hotly contested.[15] Competition is politically radical, overthrowing the tyranny of vested interests. It may also threaten those political 'rents' on which social and political stability may depend. In low income countries when weak public finances cannot afford welfare safety-nets, economic rents often buy elite support that constrains violence and disorder.[16] Introducing greater competition in such contexts may not produce more efficient markets but may rather erode the stability on which sustainable growth depends. 'Fair' competition however also requires political not just technical definition of 'fairness'. Without strong mechanisms for transparency and accountability, administrative discretion in interpreting such an ill-defined concept is often the starting point for corruption in developing countries. Further challenges arise when explicit non-competition criteria are assessed by competition authorities without extremely transparent processes for doing so.

Competition policy (the combination of policies, laws, and institutions designed to structure market competition) is part of an 'Investment Climate' aimed at improving economic growth and thereby delivering poverty reduction. Competition policy is the state's intervention to rectify 'market failure' depending on the size, structure and level of development of the national economy.[17] When competition challenges vested interests, competition policy is more than a technical intervention in markets. By promoting opportunity, efficiency and fairness become intrinsic to a wider vision of economic empowerment as key to political freedom.[18] As Joseph Stiglitz has observed: "Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies."[19] In 1936 the US Chief Justice had declared that US competition policy was a key component of the legitimacy of the US political system: "We have said that the Sherman Anti-Trust Act, as a charter of freedom, has a generality and adaptability comparable to that found to be desirable in constitutional provisions."[20] Two decades later the Supreme Court described the Sherman Act as: "a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade". This rested on the premise that "the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions".[21]

Neither competition nor competition policy however inevitably translates into the international competitiveness on which a country's long-term growth prospects depend. The political and institutional context means contestation over the aim and implementation of competition policy, that may fluctuate between pro-producer policies legitimising market power and pro-consumer policies.[22] Successful 'late developers', those states that managed to achieve high growth in the last century, all witnessed a key role for government in facilitating growth while maintaining political stability. Yet the state's ambitions for maintaining stability, building a competition policy, and achieving international competitiveness, can differ and sometimes be contradictory. Much more serious consideration needs to be given to these political dimensions to ensure alignment of all these aims.

Developing countries often suffer severe governance constraints of 'political will', capacity and corruption. Trevor Manuel, South Africa's finance minister, suggests that the lessons from 19th century elite capture of wealth and power underline the need to prevent the aggregation of social and economic power in the hands of too few by regulating economic power in a way that maximises the freedoms of those without power:

> "Regulation of markets and making them reasonably competitive (or possible to enter) became a critical element of a public policy that sought to steer in a sustainable way between the rights of the individual and those of community and society."[23]

The effectiveness and integrity of government and state institutions are critical for competition policy. Competition policy however is a political tool for the redistribution of wealth creation, based on politically determined judgements of economic efficiency or non-economic criteria.[24] In highly unequal and politically fragmented political environments, that aim produces political tensions; for:

> 'If a competition law is to be adopted in an economy that refuses to open up effectively to the world, it is likely that the same vested interests behind the refusal of opening up will dominate the process of decision making when it comes to the implementation of competition law, hence leading to an idle tool in the economy.'[25]

Consideration of these issues should be placed in the context of advances in thinking about 'governance'.

The new governance agenda

A remarkable consensus has developed in the international community in recent years that both the problem and the solution to development lie in 'governance': The 2005 *Commission for Africa* for example concluded: 'The issue of good governance and capacity-building is what we believe lies at the core of all of Africa's problems.' But what is governance? There are many definitions. The World Bank for example suggests that:

> "Good governance is epitomized by predictable, open and enlightened policy making (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law."[26]

Governance has two distinct qualities – its intrinsic role for societal-state relations, such as respect for human rights; and its functional or instrumental dimensions, including the capacity to deliver the economic growth on which poverty reduction depends. There is a general consensus that governance is built on

- five principles (Accountability; Transparency; Participation; Efficiency; and Fairness); and
- six pillars: the three separate but inter-connected organisational structures of government – the executive, legislative and judiciary; and the three broad structures of: 'Civil Society', where citizens engage with political issues; 'Economic Society', or state-market relations; and 'Political Society', in which societal interests are aggregated.

Consensus on the fundamental importance of governance has however perhaps only been possible because governance is a malleable concept, both as to its precise meaning and to its practical implications. The opaqueness of the general concepts, while allowing for international agreement that they matter, has left open how governance actually translates into practical results such as improved economic growth. In the 1990s governance became central to the development agenda because it was then perceived in technocratic terms. The focus for governance reform was on institutional strengthening and capacity building that could be solved through technical assistance based on importing international 'best practice'. This solution suited the operational requirements of the international financial institutions (IFIs) and donors who, concerned to avoid doubts about mandate and any accusation of political interference, were happy to focus on technical interventions.

Subsequent progress was limited, while the list of apparently necessary governance reforms grew exponentially. In the last few years, donors, with improved aspirations for aid effectiveness, have begun to query many of their assumptions. This has coincided with and been built upon the 'drivers of change' approach that has been asking much more searching questions about what causes long-term sustainable development. This involves the mix of deep-rooted societal structures with political economy institutions, processes and individuals that combine to deliver 'the great transformation' of society, the economy and political regime. 'Drivers of change' analysis underlines that aid effectiveness requires a much better grasp of local context, including history and social norms; and that improved understanding of local fit meant there was no 'best practice' only 'good practice'.

As a result, donors have begun during the last few years to see 'governance' in a much more exciting, complex but far less certain manner. This new 'governance' agenda dares to ask how power relations, individual incentives, political processes, and informal as well as formal institutional arrangements may be shaping development and poverty reduction outcomes. The achievement of this work has been to force the development community to explicitly recognise that 'politics matters'. A technical focus on 'institutions' or 'policies' misses how change is really achieved in any society. 'Politics' is the process of bargaining and competition between holders of state power and organised groups in society. If this leads to managing competing interests effectively, it results in legitimate institutions and political processes serving a common purpose. So, the governance approach now interprets development as a process of continuous political experimentation to find 'what works' in local institutional context, not a technical fix of 'best practice' laws or institutions. This underlines the importance of avoiding pushing 'model competition laws' or 'one-size fits all' competition agencies.

'Good Enough' Governance for the Investment Climate

This new approach underlines the need to discover 'what really works', a shift from 'good governance' to 'good enough' governance. This attempts to prioritise the essential among the apparently endless list of reforms supposedly necessary for weak governments with limited human and financial resources to undertake. Investment climate reforms should also be scrutinised from this new governance approach: what among all the doubtless desirable investment climate reforms are 'good enough' to translate most effectively into economic growth?

Causality is unclear between governance, investment and growth. High-growth and low-growth developing countries apparently have the same governance quality according to standard indicators, but the average high-growth developing country actually had slightly worse governance in the

1990s than the average low-growth country.[27] Governance may be critical to the 'investment climate', which in turn may [or may not] lead to growth; but governance also influences how investment climate can lead to growth. For example, India and Brazil with similar rates of investment [21% of GDP] grew at rates as different as 5.7% and 2.1% between 1980 and 2004. Even the evidence for institutional reform impacts on growth is surprisingly patchy.[28] Governance reforms supposedly crucial for growth have had no apparent effect on economic performance of African countries.[29] Growth spurts or sustained economic development have occurred where the 'institutional environment' appeared 'poor' (notably in China since 1978 and, to a lesser extent, in India since 1980). The adoption of the 'right' institutions often fails to generate growth [notably Latin America]. China has significantly higher growth rates than India but does not perform better along the supposedly critical dimensions of investment climate such as the stability of property rights, corruption or the rule of law. Other dimensions of governance, such as credible trust in the government's commitment to growth as a political objective, may matter much more.[30]

The policy prescription on the broad governance reforms supposedly necessary for the investment climate to deliver growth is therefore incomplete or misleading. Substantial intra-national growth differences also exist that cannot be explained by broad generalisations about institutional factors. There are significant examples of rapid growth and investment in some [non-natural resource] sectors within countries that are otherwise regarded as having poor growth and investment climates.[31] Growth differs widely by locality within countries, with local rather than national governance factors apparently explaining some marked regional variations in growth performance. Examples include the Indian states of Gujarat, West Bengal and Tamil Nadu that were at a comparable level of development at the time of Independence;[32] and within China.[33]

What matters everywhere is how the political arrangements have underpinned the process, allowing key competence in key areas of the public sector, from expert promotion to fiscal and monetary policies. Increasingly the attention is on what really matters: identifying the key binding constraints to growth, and 'good enough governance.'[34] The 'investment climate' approach, including competition policy, needs greater attention to the 'politics' in 'political economy' that is central to economic growth prospects in developing countries. It also needs to engage with the main finding from the huge upsurge in 'institutions and growth' research of recent years: that there is no one set of institutional arrangements that translates into economic growth.[35]

The investment climate approach has yet to catch up with this insight.[36] Nor has it engaged with the evidence that developed countries, when at a comparable developmental stage to today's low-income countries, did not have institutions like competition authorities. This suggests that, contrary to what is often assumed in the investment climate version of the 'good governance' discourse, many institutions follow rather than lead economic development'.[37] Institution-building over the long-term does matter for sustainable growth, but the enormous 'varieties of capitalism' confirms that first-order economic principles, such as market-based competition, do not stem from any unique set of policy prescriptions. Much more thorough historical analysis is required on how markets are built through processes of political settlements and contestation. Still too often international development reforms in the investment climate field appear to ignore local political complexities, not least that 'countries strongly divided along class and ethnic lines will place severe constraints on the attempts of even the boldest, civic-minded, and well-informed politician (or interest group) seeking to bring about policy reform.'[38] Different aspects of governance rely on each other to function. Laws, for example, may be well drafted but can quickly be undermined by a poorly educated bureaucracy or a corrupt judiciary.

Recognition of this interdependency raises further doubt about what governance capacities are really necessary for ensuring the efficiency of markets at different stages of economic development. Mushtaq Khan suggests an important distinction between two types of 'governance for growth' capacities necessary at different stages of economic development to achieve sustained growth. One is '*market-enhancing governance*' (such as property rights, the rule of law and competition policy). The other is '*growth-enhancing governance'* by which the State uses extra-market mechanisms to accelerate the transfer of resources to more productive entrepreneurs, and facilitates the adoption of new technologies. In this way, the State not only drives productivity growth but also ensures that market forces are politically consonant with social cohesion on which political stability and therefore continued investment depend.

So all investment climate reforms, including the promotion of competition policy, need to be assessed against the finding that 'the role of market-enhancing governance conditions in explaining differences in growth rates in developing countries is at best very weak'.[39]

Competition Policy as Governance

The governance challenge for effective competition policy lies in its potential for reforming political and economic power, challenging 'state capture' by unpicking vested interests and protecting consumers. Anti-competitive activity [e.g. cartels; predatory pricing; bid-rigging; tied sales ('bundling'); abuse of market dominance; exclusionary vertical or horizontal relationships; price fixing; and restrictive mergers] are linked to political manipulation of the economy from low-level corruption though 'crony capitalism' to 'state capture'. This limits productive opportunities for the poor, increases the prices people pay for basic goods, and undermines the state's capacity to deliver services especially crucial for the welfare of poor people. In such contexts technocratic approaches are of limited validity. The Herfindahl-Hirschman Index for example, can only measure direct market concentration and therefore overt economic and political power, but gives no guide to the extensive webs of collaborative agreements between influential firms and how these shape the political climate for competition policy.[40] Anti-competitive practices exacerbate weak governance further in economies with significant state-owned industries, in government procurement, and where sizeable informal sectors exist limiting the scope for formal competition.

Competition policy faces considerable challenges. Political judgment is implicit in complex trade-offs about risks and benefits to any intervention, building on institutional capacities to deliver sophisticated legal and economic understanding of relevant economic concepts such as market definition, market share,[41] market power and market dominance [market share combined with barriers to market entry], market concentration [number of firms competing and their relative market shares], efficiency gains, elasticities of demand or economies of scale. Competition policy also does not stand on its own but requires a supportive political climate, in which the legal and regulatory frameworks are used to protect property rights, remove obstacles misdirecting investment, ensure fair and speedy dispute resolution, eliminate barriers to market entry and facilitate access to essential business services.

An effective competition policy requires governments to have sustained political incentives, determination and administrative capacity to tackle at least some vested interests. Competition policy can conflict both with powerful vested interests and, if only driven by market efficiency objectives, with a government's legitimate broader development ambitions. More insight is needed on how, in developing country contexts, the international community can support sustained political leadership, commitment and incentives to make competition policy effective, with a competition authority empowered with the necessary legal authority, resources and clear direction for improving competitiveness.[42] Advocacy of competition policy too often appears to be an ideological proxy for asserting the comparative importance of markets rather than the state, of technical correction to 'market failure' with a contradictory presumption of 'government failure'.[43]

With now over a decade of international development focus on governance, there is much less optimism about the ease of overcoming constraints. Competition policy needs to be better grounded in lessons from governance reform. A major challenge therefore for competition policy is that it remains dominated by economics and jurisprudence. The focus is on experts supplying the 'technical fix', rather than on the political underpinnings needed. Studies on the political economy of competition policy implementation and enforcement in developing countries - the relative importance of political aims, bureaucratic incentives and economic rationale in explaining government actions on competition - are scarce.[44] Little is understood of how political processes shape complex trade-offs between competition and public interest over distributional outcomes in low-income economies. In these cases weak markets, fragile cultures of competition, sizeable informal sectors, poor infrastructure, information asymmetries, significant inefficiencies and higher transaction costs cause market distortions, considerable inequalities and weak or non-existent institutional capacities producing much higher risks of 'state capture'.[45]

The DFID-supported CUTS 7-UP studies have begun to consider these issues, aimed at helping to build a better culture of competition: the study on the competition climate in Kenya noted:

> 'While it is generally agreed that the competition agencies need to be independent of political influence, in Kenya this can only be truly effective if the government's economic and industrial policies are driven by the principles of dynamic efficiency.'[46]

A recent study of the need for competition policy in China calls for the establishment of 'a powerful and independent competition authority' in part 'to tackle the administrative monopolies inherited from the old central planning system, which have proved to be extremely resilient throughout the entire economic reform era.' This resilience suggests that such a call is politically unrealistic.[47] Political context in competition policy can appear paradoxical. For example the government of 'Communist' mainland China has recently approved a pro-competition law, whilst 'capitalist' Hong Kong has seen no need for a competition law, and the 'developmental state' Taiwan created an effective competition regime in the early 1990s.[48]

Given these potentially powerful political influences, it is perhaps not surprising that there is little evidence yet that competition policy in developing countries works for poor people, either as producers and consumers. The governance approach increasingly appreciates that there are no easy answers to development. The evidence on 'what works' underscores the need for caution before promoting 'international best practice'. The government of China, thirty years after it began economic reforms, only finally approved a competition policy law in June 2006 (and legislation has still to be passed by the National People's Congress). Yet the country has moved at extraordinary speed from low to middle-income status with unparalleled developmental achievements in growth, poverty reduction and economic transformation. In Africa, neither of the two major success stories on growth and poverty reduction – Botswana and Mauritius – had a formal competition policy until Mauritius passed its Competition Act in April 2003. By comparison, Kenya passed the Restrictive Trade Practices, Monopolies and Price Control Act in 1989 but it has yet to have any significant impact on the anti-competitive activity regarded as widespread in the economy.[49] Bangladesh achieves high growth despite very poor governance characterised by over-regulation, lack of accountability, and poor rule of law: yet growth is being achieved through international competitiveness at least in some sectors, where a 'policy' could subvert these achievements.[50]

But as Dani Rodrik and others have pointed out, kick-starting growth requires a different set of political and institutional arrangements from sustaining it. Our understanding of the relative importance of competition policy would be greatly improved if research in this field was better grounded in comparative political economy context.[51]

The Politics of Competition Policy reform

One place to start on this is to recognise explicitly that effective competition regime requires sustained political leadership.[52] In developed countries the effectiveness of competition policy has clearly been dependent on the political climate.[53] Shifting political views on competition policy are particularly well documented for US history.[54] The Federal Trade Commission Act prohibits "unfair method of competition", but the interpretation of "unfair" has constantly altered since the law was passed in 1914; not least in response to changes in political leadership in the federal antitrust agencies.[55] US antitrust enforcement has often been motivated by political pressures unrelated to economic welfare, such as stopping mergers that would result in job losses in politicians' constituencies.[56] Instead of constraining monopolies, US competition policy has often restricted the competitive process so that, 'Nothing less than an extreme opposition in principle to all antitrust laws appears justified by the facts.'[57] Robert Jackson, US Supreme Court Justice of the 'New Deal' era, commented:

> '[Roosevelt] knew that there were evils in the suppression of competition and that there were evils in competition itself, but where the greater evils were he never fully decided.'[58]

In the UK, at least once aspect of competition policy - mergers - has been assessed as subject to significant political influence. An OECD peer review in 2001 noted:

> 'The UK regime was rated significantly worse than the EU regime on political independence. Lawyers considered the UK regime to be significantly worse than the EU regime on the technical competence of legal analysis. (The enactment of the Enterprise Act 2002 has however reduced greatly the scope for political intervention in merger decisions in the UK.) Respondents from the US and EU officials thought that the UK regime was worse than the EU regime in terms of the speed of decision making.'[59]

The political shaping of US mergers policy by the President and Congress mediated through the FTC is likewise well documented.[60]

A competition policy in a weak governance context therefore could be counter-productive, reducing competition through 'market sharing' or 'price fixing' where the lack of accountability and transparency would maintain rather than challenge politically entrenched vested interests. Capacity challenges are also significant even in developed countries. A concept such as market dominance, if applied too rigidly, 'is liable to seriously harm competition rather than protect it'.[61] But the compromise position of addressing an abuse of market dominance requires considerable clarity and transparency about the rules governing judgment on what does or does not constitute an 'abuse'. Administrative discretion is a particularly difficult area since even in developed countries it has proved difficult to devise robust and efficient *per se* rules for competition policy (i.e. generally applicable prohibitions). Arrangements such as vertical constraints, once thought harmful, are now seen as potentially beneficial in various (but not all) contexts. Due process based on 'reasonable' decisions derived from clear policy objectives and transparent and objective methods are critical - but a difficult challenge given capacity constraints in many developing countries, and their political economy contexts.

How then does competition policy fit as a priority for reform in developing countries? The UK's Centre for Regulation and Competition suggests:

> "regulatory and competition policies emerge from political and bureaucratic processes that are influenced by a wide range of factors" and that "regulatory institutions and their practice have been shaped by, and evolved from, a whole range of governance factors… (including) the variety of government institutions involved in rule-making and implementation, public policy processes, the significance of political interactions and relationships and... systems of public values which provide the underlying setting for regulation and competition."[62]

A recent book sponsored by the Asian Development Bank entitled 'Competition Policy and Development in Asia' argues that the challenge of competition policy 'amounts to nothing less than making sure that market forces work for the good of all.'[63] This noble aim however has to be filtered through national political processes. A study of the political economy of competition policy in Brazil, for example, notes that:

> 'antitrust enforcement may be ... understood in a broader context in which government activity is the outcome of competition between interest groups for access to the governmental power to redistribute wealth. Therefore, antitrust enforcement is dependent upon both the interests and political strength of all interested agents. By changing the relative strengths of different interest groups, the political equilibrium is altered and so is the antitrust enforcement.'[64]

In China, political control of competition policy is apparently at present contested around different institutional interests:

> 'Currently, in Beijing, the various organs of the central government responsible for competition policy formation – the Ministry of Commerce, the State Administration of Industry and Commerce and the State Development and Reform Commission – are involved in a protracted power struggle to determine which body will win the considerable political and bureaucratic prize of controlling the new and powerful proposed competition authority.'[65]

A competition policy adopted under international pressure, without domestic political support or the capacities needed to be effective might turn out to be an expensive irrelevancy that a low-income country can ill afford. If competition policy is used as a government mechanism to unpick a delicate political peace settlement or attack the vested interests of the political opposition, it could be potentially highly politically destabilising. In such conditions, interpreting the political governance motivations in competition policy demands judgment on underlying interests and lobbying that influence outcomes and reform: "implementation and political sustainability are not sideshows, but the main event in a reform agenda."[66]

Reform pressures place considerable strain on developing, particularly low income countries, and raise profound governance challenges. Reform is always a demanding agenda, politically no more so than when the aim is to support sustainable development through better governance and equitable shared growth. South Korea's Fair Trade Commission officially embraces this ambition with its policy goal "to nurture growth potential by enhancing efficiency in resource allocation through transparent business management and fair competition, thereby distributing the value-added in an effective and reasonable way."[67] Such ambition, however, may be unrealistic elsewhere: for instance it has been asserted that the 'adoption of a competition law in Egypt with such a weak policy and institutional infrastructure, absence of incentives among major stakeholders, and weak collective actions among potential gainers from the adoption of such law is likely to result in a failure of enacting the law'.[68] Even in the comparatively sophisticated developing country environment of Botswana, 'popular political and economic considerations like citizen empowerment are likely to outweigh considerations like promotion of competition'.[69]

Effective competition policy must be rooted in a local political concept of the 'social contract' between citizen and state that will shape the 'level playing field' of fair competition. International experts may too often be overly keen to promote new laws as 'solutions.' Despite recent donor and World Bank focus on governance and political determinants of development effectiveness, studies of competition policy in developing country contexts still give inadequate attention to political considerations.[70] The role of politics in competition policy is now often noted, but rarely analysed as the determinant of successful implementation.[71] If developing countries are to be urged to adopt competition policy, it is essential to understand what differences of history, legal tradition and ideology of state-market relations it reflects and the detailed cultural challenges it poses.[72]

No law is effective out of wider legal context and competition law is only one and possibly not the most important legal and political factor in how societies judge 'fair competition'.[73] Without the right political climate, laws will have little or no effect. In Guatemala, where the economy has been dominated by a very small economic elite, article 130 of the Constitution declares that 'The State will protect the market economy, and prevent the combinations that restrict or aim to restrict market freedom, or harm consumers'. No action has apparently ever been taken to enforce this.[74]

In Bangladesh the Monopolies and Restrictive Trade Practices Ordinance {MRTPO enacted in 1970 by the Government of Pakistan when Bangladesh was East Pakistan], remains on the legislative books, but neither the government nor the private sector has apparently attempted in earnest to invoke this law. As a result, in Bangladesh anti-competitive pricing is a real and binding constraint.[75] A recent survey showed 65% of private sector respondents believed price-fixing to be a major anticompetitive practice in Bangladesh markets, followed by monopoly and bid-rigging (48%), discriminatory practices (39%) and barriers to entering a new market (30%).

The great majority of the respondents strongly favoured having a competition law and an autonomous independent agency to administer it; yet the MRTPO has not been enforced and no Commission has been set-up to administer it. The growth rate in Bangladesh however has been impressive without a competition agency. Yet the contrast with Kenya is illuminating: despite having a competition authority and a very similar economy a few generations ago, Kenya has had nowhere near the same economic success because 'cronyism and rent-seeking have characterised government-business relations in Kenya.'[76] In such contexts where dominant political elites apparently have no political incentive to promote broad based economic growth, finding some way for tackling this problem is essential before there is any realistic chance of fostering any institution to support competition and competitive market conditions.

Different sectors have differing political economies with different competition issues.[77] The technological challenges of individual sectors from which growth in developing countries can realistically emerge will therefore shape how productivity and competition policy will inter-relate in key areas of every economy. Anti-competitive policies can also be applied at sub-national level. In China, some local governments banned exports of certain materials to other regions of China. In mid 1998, the Shanghai Municipal Government and the Hubei province imposed large fees, levies and taxes to protect their regional car production. These were removed in 2000.[78] One of the aims of the new Chinese law appears to be to allow the central authorities to control local administration; and Russia and China have used competition law provisions to strike down attempts by regional and local officials to impose restrictions on trade between regions and localities. But there is also evidence that China's State Council has authorised the creation of 'national champion' groups of companies through state-led consolidation and state privileges, including limiting competition domestically and externally, including in pursuit of Africa's natural resources.[79]

Competition policy and 'Growth Coalitions'

Competition policy presents a potential political mechanism towards more inclusive societies, challenging existing elites. Competition policy for an effective state must combine *capability, accountability and responsiveness.* The 2006 UK White Paper on development, entitled 'Eliminating World Poverty: Making Governance Work for Poor People', offers an analytical framework of these three inter-locking basic characteristics: "*capability* – the extent to which government has the money, people, will and legitimacy to get things done; *responsiveness* – the degree to which government listens to what people want and acts on it; and *accountability* – the process by which people are able to hold government to account."[80] These principles create a governance framework for competition policy that contributes to state *legitimacy*, creating a sense of national purpose and market processes in the long-term interests of the whole population. This ambition is reflected in the aim of the 1998 Competition Law of South Africa 'to balance economic efficiency with socio-economic equity and development'. With such optimism, and the end of the Cold War, competition policy has been adopted by a diverse range of developing, as well as transition, countries in the last decade.[81]

This highlights current ambiguity about the governance structures for 'effective states' to deliver economic growth.[82] While theory abounds, little is known about the detailed political process for constructing a 'growth-friendly political equilibrium'[83] through policy negotiation among politicians, bureaucrats and interest groups over key areas of a developing country's growth dynamics, including competition policy. Understanding how competition policy both depends on, and can reinforce, the broad political process of national consensus-building, more than specific institutional design, will both improve reforms and assist in measuring reform impact.

A national competition agency can offer the necessary institutional unity, concentrated responsibility and hierarchical power to provide it with the clear mandate needed for institutional effectiveness and policy coherence.[84] Competition enforcement may be blocked by denying the enforcement agency the capacity and independence to act effectively. Faced by these political risks and barriers, a priority on competition *advocacy* for example may be to help tackle barriers to market entry: 'reformers should focus on creating government institutions to thwart rent-seeking before moving to create an active antitrust regime.'[85]

A key issue is whether "market and government structures in developing economies allow producers to choose whether to obtain anticompetitive rents from either cartellization or seeking favors from the state".[86] The World Bank however disputes this:

> "We … reject the view that the administration and enforcement of competition law itself must inevitably become a source of intervention in the market, corruption, misuse of bureaucratic power, or cause of market distortions. All of these risks can be dealt with through institutions that incorporate accountability, transparency, checks and balances, and clear rules and procedures. The design and implementation of competition law, and the mix of policy instruments and enforcement priorities must, however, reflect the institutional endowments and technical capacity of countries at different stages of economic development."[87]

Effective competition policy is constructed on state-business relations. These may be characterised as ranging from 'looting' and 'capture' to effective collaboration.[88] This requires detailed study of local context, where corruption or 'dividend collecting' may represent 'wealth creation' and political stabilisation as much as or more than private extraction.[89] A political balance of power may be needed between political and business elites through a web of 'money politics' to mitigate political risk and make long term investment by business productive.[90] Successful developmental states built 'growth coalitions'. These generated growth-oriented policies which allowed government the political space to balance protecting firms from, and disciplining them through competition. This delivered productivity improvement and international competitiveness.

When states are coherent but business weak and dispersed, 'top down' predatory behaviour by government overwhelms business with public sector corruption and rent-seeking. This prevents private sector capital accumulation in productive hands. Then growth collapses. Equally, where states are weak and business concentrated, private sector rent-seeking overwhelm public institutions. The political balance between government and business appears to have been decisive for South Korea's industrialisation under President Park, channelling rent-seeking in a developmental direction by reducing transaction costs, so making long-term investments by business profitable and productive.[91] 'Economic characteristics of developing countries make patron–client politics both rational for redistributive coalitions and effective as strategies for achieving the goals of powerful constituencies within these coalitions.'[92] Economic power is concentrated in most developing countries, and the governance challenges are therefore magnified. The example of the Philippines is characteristic of many developing countries. Around seventeen percent of total market capitalisation is owned by one family; and the wealthiest fifteen families control half of the corporate sector in terms of market capitalisation.[93] In Tanzania, with a total population of more than thirty-five million people, 286 'large taxpayers' pay almost seventy percent of all domestic taxation.[94]

Competition policy and its implementation therefore may easily fall prey to being captured or sidelined by powerful vested interests - 'crony capitalism' where political pressures or violence secure 'discretion' or exemptions.[95] Corruption swells to 'state capture' when firms shape policy formulation through 'grand corruption' of public officials and politicians. 'Undue influence' exists when business overrides public interest; and 'administrative or petty corruption' may exist over the implementation of laws, rules, and regulations.[96] Many developing countries' state institutions, particularly in Africa, appear poorly aligned for inclusive economic development because of 'neo-patrimonialism', the political process by which elites are rewarded or punished not for their success in bringing about economic growth, stability, and rising general prosperity, but for their ability to grant favours to supporters and interest groups by systematically appropriating state resources to maintain themselves in power.[97] Even in the Indian context of complex institutional checks and balances, the leading competition NGO, CUTS, concludes that it is most often the government (central as well as states) that indulges in or encourages anti-competitive practices.[98]

In many developing countries rampant political capture is the principal obstacle to the creation of effective competition and regulatory agencies.[99] It is hardly surprising therefore, that corruption is known to be a major problem in regulatory authorities in developing countries.[100] Little evidence has come to light about corruption in competition authorities. Collusion and corruption often go hand-in-hand in public procurement.[101] The persistence of inequality and inefficient governance encourages efforts to bribe to restrict entry. Initial conditions apparently determine whether the economy converges to a steady state characterized by efficient governance and low levels of inequality, or follows a path toward an institutional trap where regulatory capture and wealth inequality reinforce each other.[102] Corruption could be rife in sector or company case selection and subsequent investigation. Excessive regulatory discretion is a key cause of corruption when undisciplined bureaucracies and weak rule of law allow officials to decide individual cases without effective and transparent oversight.[103]

In the context of patronage politics in developing countries with weak institutional checks and balances, effective competition policy governance principles – independence, accountability, legitimacy, credibility, transparency, and adequate appeal mechanisms – will struggle. Decisive issues will include:

- the scope for ministerial discretion,
- the effectiveness of pressures from other ministers and departments and their political clientele interests;
- the opportunities for direct representation and pressure by interest groups, and for private legal action;
- civil society 'voice' through studies, media exposure, and public persuasion.[104]

In Mauritius, for example, the competition law expressly states that anticompetitive agreements can, if the minister is satisfied that such an agreement is beneficial to consumers, be exempted from the provisions of the law.[105] In Thailand, while the government enacted a competition law in 1999, to date it has allegedly had very limited impact due to 'the unholy nexus between politicians and businessmen, and cronyism'.[106] A study of the Sri Lankan Fair Trade Commission [FTC] noted:

> 'Political influence within the workings of the FTC is pervasive. Under provision 3 of the Schedule to the FTCA [Fair Trade Commission Act] the Minister has the power to remove any member of the FTC by order published in the Gazette, without providing any reason thereof. This decision of the Minister cannot be challenged in a court of law.'[107]

Weaknesses of competition policy are linked to related governance challenges affecting growth, such as anti-corruption measures, judicial independence and parliamentary oversight.[108] Competition law and policy may, therefore, be overtly used to protect state-owned enterprises from competition. Competition law and policy may also covertly protect politically well-connected companies from 'fair' competitive forces, guaranteeing monopoly rents without efforts to innovate. At the same time such law and policy may disguise unfair government attacks on legitimate companies which represent real competition to politically influential business. Interesting research suggests new market entrants are the most likely to pursue 'state capture' to achieve anticompetitive advantage when powerful incumbent firms (predominantly state owned and newly privatized) dominate their respective markets without having to resort to bribery payments. To survive, new entrants feel forced to adopt a strategy of 'state capture' to buy greater security for their property rights from public officials and to encode, or incorporate, competitive advantages into the emerging legal and regulatory framework.[109]

Fostering competition in the economy and in the political marketplace is the main defence in preventing and combating state capture. Competition law and policy in developing countries may make an effective start by seeking to prohibit anticompetitive activity by government ministries, agencies and government officials. This approach has allowed Russia's competition authority in some circumstances to issue orders against ministries for adopting anticompetitive rules and taking other anticompetitive actions. Improving competition may build new interest coalitions around the new economic opportunities created:

> 'It is not only that the supporters of the reform process organised around short-term distributional considerations or that they often colluded with the reformers in order to get their preferences translated into policy. It is also that particular combinations of liberalisation policies can concentrate benefits upon a small coalition and disperse costs among a larger set of groups, leading to less than optimal aggregate results and to a setting favourable to rent appropriation'.[110]

Competitiveness, Innovation and the State

So when is the lack of competition policy a real restraint on competition and competitiveness for low-income countries? This is unclear; but the experience of successful developmental states suggests 'growth coalitions' are built through a focus on global competitiveness while ensuring that the benefits of growth are shared among the population. The historical experience of all the successful 'late developers' from East Asia to Finland raises doubt about current policy prescriptions for growth. The success of the 'development state' has been described as when

> 'political capacities are rooted … in the amount of power the states command to extract resources, to define priority areas of expenditure, and to instil a sense of discipline and purpose in society.'[111]

The incentive to dismiss the importance of the real experience of developmental states is that it contradicts established 'best practice' principles in both economics and an ideology of 'government failure'. Evidence, for example, on authoritarian regimes instilling market `discipline' through the "control of labor, downward penetration of state authority so as to silence opposition and control behavior, and nationalist mobilization so as to put a peacetime economy on a war-time footing' makes uncomfortable reading.[112]

Economies open to trade turn out to be one of the best indicators of political stability, suggesting that a virtuous political economy cycle is built around carefully fostering international competitiveness.[113] High-growth industrial economies have emerged through effective state intervention to create international economic competitiveness, but in no case did a competition agency form part of this successful transformation. Finland only established a competition agency in 1988.[114] Malaysia indeed has had no competition policy, arguing that 'a vigorous and effective trade policy may well provide the best alternative for promoting the economic efficiency of the country as a whole.'[115]

Michael Porter suggests successful firms are those that can create and maintain barriers to entry and the rents associated with them. By exploiting "competitive" advantages, based on innovation, firms are not dependent on unsustainable cost advantages such as low wages or exchange rates, so avoiding price-competitive sectors, vulnerable to forces beyond its control.[116] Competition policy supports competitiveness through its focus on productivity growth and innovation. Innovation however often requires state support for addressing risks from adopting more efficient technologies, improving product quality or introducing new products. State-structured competition enhanced this process of 'churning': East Asian governments were not successful because they were 'picking winners' but rather by picking key sectors for support they were stimulating the entry or 'churning' essential for productivity gains through adopting, adapting and learning new technology.[117] East Asia's effective industrial policy created cartels and barriers to unfettered competition precisely to provide rents to overcome the investment risks associated with late development, where sectors have increasing returns to scale beyond the domestic market. Infant industries may require anti-competitive rents in the domestic market to reach international competitiveness to compete in export markets. However, the numerous examples of protected infant industries that never became competitive indicate the dangers of indiscriminate protection. The political capacity to close down non-competitive 'losers' is essential. How is 'fair' competition to be judged against national goals for creating globally competitive industries?

The key capacity of the state at early stages of economic growth appears to be not fostering a competition 'policy', but targeted competition for developing enough competitiveness domestically to raise productivity to international standards through the disciplining of selective recipients of industrial policy support.[118] Competition policy at too early a stage could compromise the government's ability to manage this transformative process. Creating market competition for developing countries at early stages of development requires governance capabilities that allow states to manage political stability through patron-client politics at relatively low cost, without disrupting productive investment and technological learning. Effective policy may promote trade while restricting competition through strong vertically integrated structures.[119] Japan's export-oriented growth was built through fierce domestic industrial rivalries.[120] This was, however, matched by intense informal collaboration among business, government and bureaucracy in selected areas where it sought to foster long-term international competitiveness:

> "Observers coming from market-rational systems often misunderstand the [Japanese] plan-rational system because they fail to appreciate that it has a political and not an economic basis... The very idea of the developmental state originated in the situational nationalism of the late industrialising states, and the goals of the developmental state were invariably derived from the comparisons with external reference economies."[121]

Given the ideological posturing around the comparative arguments for the evidence on the effectiveness of industrial policy and competition policy, it still seems unclear how far competition policy if rigidly implemented would undermine a 'developmental state' by removing the government's capacity to enable producers to acquire the skills, technology adaptation and capital accumulation needed to compete internationally.[122] Competition policy in developing countries needs to balance risks from market power against the detrimental effect of administrative and political misuse of competition policy undermining entrepreneurial incentives to innovate.[123] In South Korea the link between industrial and competition policy was made explicit when the Korea Fair Trade Commission was established in 1981 as part of the Economic Planning Board, and was only made independent in 1994. Globalisation may have changed the international context, but infant industries may still need nurturing. As a result of studying the experience of 'developmental states', many developing countries have continued to demand flexibility about content, timing and sequencing of competition policy within broader economic and political governance reforms; international advice in response to such country-owned demand for support has been surprisingly muted.[124]

What is to be Done?

A more politically informed view of competition policy, understood in governance context, offers improved analysis of how competition policy matches priorities and sequencing of economic reforms, and what aspects matter most in promoting economic growth in different investment climates. Tanzania passed a Fair Trade Practices Act in 1994 setting up a Fair Trade Commission, yet nearly a decade later it was still being alleged that the Tanzanian legal system provided an insufficient basis for the development of a private sector and market economy.[125]

The operational implication is simple but critical. Competition policy must be judged not by economic efficiency gains alone, but by the greater aim of breaking the monopolies of economic and political power that currently prevent poverty reduction in developing countries. This pursuit of political equity and fairness, as well as economic efficiency, requires that competition policy must work on these two fronts at once if it is to build the legitimacy of the state. It must build a culture of competition by gradually confronting vested interests that are sufficiently politically, as well as economically, significant, but not so dominant that they can crush the reform effort. It also means that technocratic (changing laws; setting up competition agencies) must not become displacement activity for the political challenge of tackling vested interests.

The 2005 Commission for Africa suggested that it is governments that "make markets and competition work". Some aspects of this do not depend on competition law or fair trade commissions. Governments can introduce competition principles into their own commercial activity such as procurement and infrastructure controlled by state-owned companies. Competition policy may also emerge as a self-enforcing political bargain from repeated political interaction between consumers and producers based on a political settlement for economic growth.

Better assessment of the political economy of competition policy would help to identify aspects of political governance that effect institutional effectiveness.[126] General questions might include:

- How strong are the political influences of vested economic interests?
- Are there clear national economic goals and policies?
- How far does the concept of 'competition' depend on the political context and shifts within the ideological climate?
- To what extent is the absence of competition policy the binding constraint on growth and private investment?
- When is competition policy the most appropriate reform to promote competitiveness in developing and particularly low-income countries suffering political power inequalities and limited bureaucratic capacity?
- Are the goals of competition policy economic, social or political?
- How does history shape the very different traditions and priorities for competition policy in different countries?
- What political and institutional factors may help any competition policy enhance international competitiveness, and really deliver that in the long-term national interest?

More research along these lines should improve operational capacities for governance that delivers growth in developing countries. Governance quality does not automatically advance as countries become richer, because of “state capture” - the undue and illicit influence of the elite in *shaping* the laws, policies and regulations of the state.[127] This ‘capture' of the institutions of the state allows entrenched elites to benefit from worsening governance and successfully resist demands for change even as incomes grow:

> 'In countries with such a "captured" environment, the focus of efforts to combat corruption and improve governance needs to shift from a narrow emphasis on passing laws and rules, and on procedures within the public administration, to a much broader agenda of greater political accountability, transparency, independence of the media, monitoring and diagnostic surveys (as checks and balances from civil society), as well as the establishment of effective mechanisms through which the voices of citizens and users of public services can be heard.'[128]

More specific diagnostics for identifying governance blockages to reform might ask:

- How representative is the call for competition law and policy?
- Does it have national ownership?
- Is education of political leaders and parties important if the main challenge is leadership on the benefits of competition policy?
- If the problem is one of educating government, citizens and business to the importance of competition policy, how does this sit with the current development focus on 'country-owned' reforms?
- Who is represented at, for example, public-private dialogues, is a key challenge: large formal business which already has political 'voice', or the informal sector which is often both the majority of the economy and the main driver of job creation but politically invisible?
- How effectively can civil society lobby for consumer rights, particularly of poor people, almost by definition politically and economically powerless?

Broad governance indicators [like the World Bank's 'Governance Matters'] and specific investment climate assessments, such as the World Bank Group's 'Doing Business' reports, suffer from methodological weaknesses, not least that they miss the political dimensions to actual state-business relations. Indicators for measuring 'competition policy' for institutional effectiveness in a political context could measure whether a competition policy is clearly articulated; the extent to which a competition agency has adequate autonomy, resources and objectives to carry out its function; and most importantly, whether there is a real political commitment. As governance becomes central to aid effectiveness, improving governance indicators should be a major focus of international effort.[129] DFID, for instance, is developing a competition policy assessment framework. In part this will influence its new Country Governance Analysis in evaluating a partner government's political determination to create and regulate efficient markets, and foster competitiveness. But the acceleration of growth in developing countries requires more than just an 'environment' for market-driven growth and for promoting productivity while maintaining political stability. Development agencies need to understand more about the politics of competition policy, institutional arrangements (and their impacts on competitiveness and economic growth), the role of the legislature, executive, media and civil society in the 'principal-agent' problems around the effectiveness of competition authorities. A vibrant civil society and an active public interest law practice are crucial for building an effective political climate for reform. The adoption of competition policy can help create a culture of competition.[130] Civil society demand can help, through consumer organisations undertaking competition advocacy on behalf of the poor and vulnerable, as the CUTS 7-UP projects (which DFID has supported) have shown.

Conclusion

The political dimension to competition policy in developing countries has been under-researched.[131] This is a significant omission - the politics of regulation policy for example has been better studied, thanks to the 1990s fashion for 'New Public Management' and privatisation in developing countries.[132] Without that better understanding of political governance, the 'Investment Climate' agenda risks becoming the new 'Washington Consensus' – a list of theoretically correct prescriptions which lacks traction or sequenced reform in local political realities. The 'homogenization of competition policy' could deprive developing countries of important opportunities to build local institutional arrangements.[133] Developing countries should be supported and encouraged in institutional experimentation relevant to their own requirements. Any competition law must ensure relevance to local market failure and identify distinctive institutional challenges that may affect choice of strategies for correcting such failures.[134] As Carlos Santiso has rightly observed: "the obstinate search for optimal solutions tends to underestimate the advantages of gradualism and muddling-through in complex environments."[135] Competition policy in developing, particularly low-income countries must match political realities as well as governance capabilities.[136] It must also not be overwhelmed by technocratic expertise, but must hold on to its promise for delivering competition that overthrows 'the tyranny of vested interests'.

One of the better research findings from the recent upsurge on 'governance and growth' concludes: 'a nation can achieve economic miracles by reducing political instability, building policy certainty, and increasing political freedom'.[137] Competition policy, at the meeting point of politics and economics, of theory and ideology, of local cultural values and international best practice, of state and market institutions, of principles of democratic accountability and of administrative effectiveness, of political fairness and economic efficiency, is a very good place to start.

Endnotes

1 Martin Wolf: FT 17 January 2006.

2 The World Bank Group offers a definition of governance as 'the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them.'

3 The World Bank Group: World Development Report (WDR) 2005.

4 WDR 2005: p.197.

5 E. Graham and J. Richardson: Global Competition Policy, Institute for International Economics 1997. The authors noted (p. 8) that: 'Efficiency has a fairly clear economic meaning…The meaning of fairness, by contrast, is internationally nuanced and culturally distinctive.'

6 HM Treasury: The case for open markets: how increased competition can equip Europe for global change: 2006.

7 'Competition Regimes in the World', 2006, Cuts International, Jaipur, India, p. 218.

8 e.g. their impact on competition policy in Latin America during the 1990s reforms, see M. Rowat: Competition policy in Latin America: Legal and institutional issues: in Julio Faundez (ed.), Law and politics: London, 1997.

9 K. Van Miert : http://www.internationalcompetitionnetwork.org/merida_speech26.pdf

10 G. Amato, Antitrust and the Bounds of Power: Oxford 1997. R. H. Pate: Competition and Politics: Pate, the Assistant Attorney General Antitrust Division U.S. Department of Justice: 12th International Conference on Competition in Germany 2005 describes "politics" as 'decisions that are taken on a basis outside of efficiency or consumer welfare as defined by price, quality, and output' based on legitimate political choices over the laws and procedures that govern competition enforcement: see http://www.justice.gov/atr/public/speeches/210522.pdf

11 7Up3 project (Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa) Malawi Country Research Report: 2006.

12 As the ODI have noted: 'Malawi has a hybrid, 'neo-patrimonial' state, where there is a framework of formal law and administration but the state is informally captured by patronage networks. The distribution of the spoils of office takes precedence over the formal functions of the state, severely limiting the ability of public officials to make policies in the general interest': D. Booth et al: Drivers of Change and Development in Malawi: ODI 2006: p.8.

13 Competition can facilitate progress and innovation; but it can also become an ideological set solution by which economic ills are always solved by becoming more competitive; the cult of competition is fostered by indices of competitiveness ranking countries. But "competition" does not tackle social justice, economic efficiency, environmental sustainability, political democracy and cultural diversity: L. Emmerij: Development thinking and

practice: Introductory essay and policy conclusions: in L. Emmerij (ed.), Economic and Social Development into the 21st Century, 1997: Johns Hopkins University Press.

14 R.Rajan et al: Saving Capitalism from the Capitalists: London 2003: argues that the main threat to capitalism as coming from an unholy alliance between elites protecting their rents against competition, and disaffected workers suffering from the competitive process of creative destruction.

15 The evidence on the extent of competition in developing countries is surprisingly unclear, not least because of very large informal sectors: J. Tybout: 2000. "Manufacturing Firms in Developing Countries: How Well Do They Do, and Why?", Journal of Economic Literature, vol.XXXVIII, March, pp.11-44.

16 M.. Khan and K.S. Jomo, eds., Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia, Cambridge: 2001.

17 M. Gal: Competition Policy for Small Market Economies Harvard 2003.

18 e.g. in the US Senator John Williams of Mississippi gave support in 1914 to establishing the Fair Trade Commission on the grounds that it would 'destroy what is plutocratic, exploitative, and industrially tyrannical.' See M.Winerman: Origins of the FTC: at http://www.ftc.gov/ftc/history/docs/origins.pdf

19 Joseph Stiglitz, Nobel Prize winning economist, August 2001

20 Sugar Institute, Inc. v. United States, 297 U.S. 553 (1936).

21 Northern Pacific Railway Co. v. United States, 356 US 1, 4 (1958).

22 J. Baker, Competition Policy as a Political Bargain: SSRN working paper January 2005.

23 2006 Ditchley Park lecture: http://www.polity.org.za/pdf/Manuel070706.pdf

24 'Competition policy, by breaking the monopoly, serves both economic efficiency in the technical sense and public interest in the socio-political sense. However, when framing the goals of competition policy in practice, sometimes what society deems is beneficial for the public interest and what economists judge would maximize economic efficiency come into conflict. On occasion such objectives as protecting small business, preserving "free enterprise" or maintaining "fairness" have been incorporated into competition laws, despite their incongruence with economic notions of maximizing welfare (producer as well as consumer) and eliminating inefficiencies (see A Framework for the Design and Implementation of Competition Law and Policy, World Bank and OECD, 1998). Even when economic efficiency is the sole goal of competition policy, avoiding potential scuffles with ill-defined notions of public interests, there can be tensions between notions static or allocative efficiency and dynamic efficiency (E. Graham and J.D. Richardson in Global Competition Policy, International Institute of Economics, 1997). In particular disagreements arise when the debate focuses on whether to maximize consumer welfare or total economic welfare, or whether business practices that hinder efficiency in the short term might lead to greater dynamic efficiency gains (through incentives for innovation) in the longer term. These are debates that are quite theoretical in nature, and they are of

course difficult to express through legislation. Nonetheless, it is important for competition policy to project a coherent sense of its priorities and objectives so as to avoid projecting discretionality or creating undue confusion through potentially inconsistent application of the law.' B. Ramsey: An Evaluation of Competition Policy in Mexico: Johns Hopkins 2003, p.20.

25 Ahmed Farouk Ghoneim: Competition Law and Competition Policy: What does Egypt Really Need? 2002, p.15.

26 http://www.worldbank.org/publicsector/overview.htm

27 M.Khan: Paper for WB annual meeting 2006.

28 R. Hausmann, L. Pritchett, and Dani Rodrik, "Growth Accelerations," Journal of Economic Growth, 10(4), December 2005, 303 – 329.; R. Hausmann, Dani Rodrik, and A. Velasco, "Growth Diagnostics," Harvard 2005; B. Jones and B. Olken, "The Anatomy of Start-Stop Growth," NBER 2005.

29 J. Sachs, J McArthur, G. Schmidt-Traub, M. Kruk, C. Bahadur, M. Faye and G. McCord : Ending Africa's Poverty Trap, Brookings Papers on Economic Activity 2004 1: 117-240.

30 E.g. for accelerating resource allocation to growth sectors, prioritizing infrastructure for these sectors, and in making credible and attractive terms available to investors bringing in advanced technologies: Qian, Yingyi and Barry R. Weingast 1997. Institutions, State Activism, and Economic Development: Comparison of State-Owned and Township-Village Enterprises in China, in Aoki, Masahiko, Hyung-Ki Kim and M Okuno-Fujiwara (eds) The Role of Government in East Asian Economic Development: Comparative Institutional Analysis, Oxford.

31 S. Haber, A. Razo, and N Maurer, The Politics of Property Rights: Political Instability, Credible Commitments, and Economic Growth in Mexico, 1876-1929. New York: 2003.

32 A Sinha: The Regional Roots of Developmental Politics in India: A Divided Leviathan (2005): Gujarat has consistently attracted a higher share of investment, West Bengal failed to capitalize on its initial conditions, and Tamil Nadu has a fluctuating performance (investment per capita in Gujarat was two and half times the all-India average by 1994, while in Tamil Nadu such investment stood at 0.85 of all-India levels, and in West Bengal at 0.47). Local politics in Gujarat developed 'strategic capacities' that have consistently made that state attractive to private capital – while in West Bengal and Tamil Nadu local politics have tended (at least until recently) to have the opposite effect.

33 FIAS 2006 Study:

34 R. Hausmann, Dani Rodrik, and A. Velasco: 'Growth Diagnostics' on binding constraints; Merilee Grindle on 'good enough' governance.

35 D.Rodrik: Institutions for High-Quality Growth: What They Are and How to Acquire Them: Studies in Comparative International Development, Vol. 35, No.3, September 2000, pp.3-31.

36 The 2006 External Review of the Review of World Bank research noted: 'The 2005 WDR, on the investment climate, is almost a caricature of the view that everything is important. If there are priorities, they are vague and constantly changing, and the report notes that virtually every conceivable aspect of a country's social, political and

economic institutions affects its investment climate. …Although we certainly acknowledge that the 2005 WDR supported outstanding data gathering efforts, the incoherence of the document itself is unsettling': A. Deacon et al: An Evaluation of World Bank Research, 1998 – 2005: 2006, p.86.

Political governance is central to economic growth and investment because it provides coordination, 'national purpose' and collective mitigation of risk and uncertainty. Viewing growth as a political process will improve development agencies' capacities to support the necessary conditions for growth. High-growth countries that successfully transformed their economies did not exclusively focus on 'market' governance such as 'secure property rights' at an early stage of economic development. They were instead transferring property rights into productive hands, acquiring new technology, imposing discipline on emerging entrepreneurs, and containing political conflict.

37 H-J. Chang (2003), 'Institutional Development in Historical Perspective' p.2, in H-J. Chang (ed.),' Rethinking Development Economics', Anthem Press.

38 W.Easterly et al: Social Cohesion, Institutions, and Growth: Center for Global Development: Working Paper Number 94 August 2006

39 M. Khan: Governance, Economic Growth and Development since the 1960s: Background paper for World Economic and Social Survey: UN 2006, p.10

40 This is an issue also in OECD countries: see M. Coate et al: Bureaucracy and Politics in FTC Merger Challenges: Journal of Law and Economics, Vol. 33, No. 2 (Oct., 1990), pp. 463-482; and the debate in 2007 about changes to the guidelines in Japan on mergers.

41 Measured for example by monetary value, units of sales, units of production or production capacity.

42 In reviewing the arguments for and against competition policy reform in transition economies, US Federal Trade Commissioner Professor Bill Kovacic noted the current understanding of the importance of political and administrative constraints: W.Kovacic: Institutional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement. Chicago-Kent Law Review, 2000 p.314.

43 Simon Evenett makes the interesting contrast between this and industrial policy in his recent paper 'Does the Return of Industrial Policy pose a Threat to Competition Law?' (2006) – although much of his discussion of the industrial policy validates the point by seeming to be tilting at windmills.

44 e.g. M. Wise (2000): 'Review of Competition Law and Policy in Mexico', OECD Journal of Competition Law and Policy, pp 44-89.

45 'antitrust has its origins as an instrument to constrain the exercise of political and economic power by big business and by government when it acts in support of those centres of power. This accounts for its enduring political and popular support. ... As with all equity/efficiency trade-offs, the conflicts must be managed; they cannot be eliminated. ... The two pillars in the management of this trade-off are, first, building a broad based constituency in support of antitrust, something that is best achieved by stressing its historic and continuing role in supporting the powerless

against the powerful. Second, ensuring that an independent and accessible antitrust authority with a clear demarcation between the investigative and adjudicative functions develops clear criteria for performing the balancing act that characterises all important legislative and judicial activity in the real world'. D.Lewis: The Political Economy of Antitrust, The Fordham 28th Annual Conference on Antitrust: October 2001.

46 http://cuts-international.org/kenya-report.pdf.

47 Ping Lin, People's Republic of China :Douglas Brooks and Simon Evernett (eds.): Competition Policy and Development in Asia: p.99.

48 M. Williams Competition Policy and Law in China, Hong Kong and Taiwan: 2005

49 CUTS: Competition Regimes of the World: 2006, pp.238-9.

50 In 2005 WB/DFID mission decided that competition policy could not be effectively implemented in current circumstances: Bangladeshi growth rates do not appear to have suffered.

51 Indeed it is distrurbing how little critical political analysis there iexists on the subject, with a few exceptions from the US: e.g. by Fred S. McChesney and William F. Shughart (eds.) The Causes and Consequences of Antitrust: The Public Choice Perspective, edited II, Chicago: 1995.

52 e.g. the successes of Mexico's Federal Competition Commission (Commissión Federal de la Competencia) provide interesting evidence on these issues: see B. Ramsey: An Evaluation of Competition Policy in Mexico: Johns Hopkins 2003.

53 e.g. USA: http://www.usdoj.gov/atr/public/speeches/210522.htm; see also R.Strum and E.Ortwein: The Normative and Legal Framework of German Competition Policy: A Political Science Perspective: 1994; The comparative analysis of national competition regimes shows that competition policy is introduced for different political reasons and serves a distinctive role within each society: G. B. Doern and S Wilks (eds). Comparative Competition Policy: National Institutions in a Global Market. Oxford: 1996.Also D. Tarullo (2000). "Norms and Institutions in Global Competition Policy". American Journal of International Law; V.94, #3, pp. 478-504.

54 W. Kovacic and Carl Shapiro. "Antitrust Policy: A Century of Economic and Legal Thinking," Journal of Economic Perspectives, Vol. 14, No. 1, 2000, pp. 43-60; Robert E. Litan and Carl Shapiro: "Antitrust Policy During the Clinton Administration": Competition Policy Center: 2001.

55 T. Muris: "How History Can Inform Practice in Modern U.S. Competition Policy" (2004). George Mason Law & Economics Research Paper No. 04-20.

56 M Coate, R Higgins, and F S. McChesney. "Bureaucracy and Politics in FTC Merger Challenges." Journal of Law and Economics 33 (October 1990), pp 463-82; W. Baumol and J. Ordover. "Use of Antitrust to Subvert Competition." Journal of Law and Economics 28 (May 1985), pp. 247-65.

57 D. Armentano: Antitrust and Monopoly: Anatomy of a Policy Failure,, 1996, p.323.

58 Jackson's autobiography, quoted in T. Di Lorenzo: "The Origins of Antitrust: An Interest-Group Perspective." International Review of Law and Economics 5 (June 1985),pp 73-90.

59 PWC: OECD Peer Review of UK Competition Authorities: 2001, p21.

60 M. Coate: A Test of Political Control of the Bureaucracy: The Case of Mergers: Economics and Politics, Vol. 14, pp. 1-18, 2002.

61 M.Duthilh (ed.): Dealing with Dominance, The Experience of National Competition Authorities, 2004, p.xiv.

62 CRC: Markets, Regulation and Development: 2006, p.44.

63 Edited by Douglas Brooks and Simon Evernett

64 C. Considera & P.Correa: The Political Economy of Antitrust in Brazil: From Price Control to Competition Policy, 2002, p.40

65 M.Williams, Competition Policy and Law in China, Hong Kong and Taiwan: Cambridge 2005, p.101.

66 J. Stiglitz: 2000. "Reflections on the Theory and Practice of Reform." In A Krueger, ed., Economic Policy Reform: The Second Stage. Chicago, University of Chicago Press, p.556.

67 Quoted from 2004 statement, cited in OECD paper at http://www.oecd.org/dataoecd/12/35/34427299.pdf

68 Ahmed Farouk Ghoneim: Competition Law and Competition Policy, What does Egypt Really Need? 2002, p.14.

69 UNCTAD: Economic Mapping for Botswana,: Final Report Submitted by UNCTAD to the Ministry of Trade, Industry, Wildlife and Tourism, Gaborone, Botswana: April 2004, p.52.

70 e.g. P.Rey: Competition policy and economic development: World Bank 1997.

71 An exception is : R. Dhanjee: The Tailoring of Competition Policy to Caribbean Circumstances - Some Suggestions, 2004.

72 e.g. the experience of using US model for advising China on competition policy: David Smith and Su Sun: Introducing Competition Policy into Developing Economies: A Summary of Lessons Learned, Perspectives 2 (4), February 2001.

73 e.g., the Nigerian constitution [clause 16 (2)] states that, 'The State shall direct its policy towards ensuring: (a) the promotion of a planned and balanced economic development; (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good; (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group'.

74 CUTS, Competition Regimes of the World: 2006, p.568.

75 Bangladesh Enterprise Institute (BEI) & the Consumer and Unity Trust Society (CUTS)-International: "Competition Scenario in Bangladesh" (July 2005).

76 J. Roberts & S. Fargernas: Why is Bangladesh Outperforming Kenya? A Comparative Study of Growth and its Causes since the 1960s: ESAU DFID/ODI working paper 2004.

77 e.g. S Haber et al: The politics of property rights: 2003.

78 Asian Development Bank: Asian Development Outlook 2005, p. 265.

79 P. Nolan: China and the global business revolution: Basingstoke 2001; Centre for Chinese Studies report: China's Interest and Activity in Africa's Construction and Infrastructure Sectors: Stellenbosch University 2006.

32 Op.cit., p.24.

81 Some have adopted competition laws [e.g. Ethiopia, Brazil, India, Pakistan, Mauritius, Sri Lanka, Kenya, Peru, Uzbekistan, Mali, Mongolia, Tajikistan, Senegal, Tanzania, Zambia, Costa Rica, Zimbabwe, Malawi]; others are introducing competition laws [China; Vietnam; Ghana]. Some low and middle income countries have also established competition enforcement agencies [Brazil, Peru. India, Pakistan, Indonesia, the Philippines, Sri Lanka, Burkina Faso, Kenya, Senegal, Tanzania and Zambia.]

82 The 2006 UK White Paper on development, entitled 'Eliminating World Poverty: Making Governance Work for Poor People' offers an analytical framework of good governance comprising three inter-locking basic characteristics that together create state legitimacy: "capability – the extent to which government has the money, people, will and legitimacy to get things done; responsiveness – the degree to which government listens to what people want and acts on it; and accountability – the process by which people are able to hold government to account."

83 T. Eggertsson: Imperfect Institutions: 2005, p.184.

84 J. Jordana and D. Sancho, Regulatory Designs, institutional constellations and the study of the regulatory state: in J. Jordana and D. Levi-Faur: the Politics of Regulation: CRC 2004.

85 A. Rodríguez and M. Coate (1996), "Limits to Antitrust Policy for Reforming Economies", Houston Journal of International Law, 18 (2), p.322.

86 A. E. Roderiguez & M. Williams: "The Effectiveness of Proposed Antitrust Programs for Developing Countries", North Carolina Journal of International Law and Commercial Regulation 19 (1994) pp. 223-227: p.224.

87 M. Khemani. and Dutz (1995) "The Instruments of Competition Policy and their Relevance for Economic Development", in Regulatory Policies and Reform: A Comparative Perspective, C. Frischtak (ed.), The World Bank, p.31.

88 A. Wedeman (1997) "Looters, Rent-Scrappers, and Dividend-Collectors: Corruption and Growth in Zaire, South Korea and the Philippines", Journal of Developing Areas, 31: 457-478.

89 T. Hellman, K. Murdock and Joseph Stiglitz, "Financial Restraint: Towards A New Paradigm," World Bank Workshop: The Roles of Government in East Asian Economies: Rent Creation, Coordination and Institutional Development: Stanford University, 1995.

90 D. Kang (2002) Crony Capitalism., Cambridge University Press, p.4.

91 Kang, op.cit., p.97.

92 M.Khan: Markets, States and Democracy: Patron–Client Networks and the Case for Democracy in Developing Countries: Democratization, Vol.12, No.5, December 2005, p.704.

93 e.g. see http://blake.montclair.edu/~cibconf/conference/DATA/Theme4/Australia1.pdf; see also M. Knight-John (2004) 'Competition, Regulation and Regulatory Governance in Sri Lanka', in Cook, P. Kirkpatrick, C. Minogue, M. and D. Parker (eds), Leading Issues in Competition, Regulation and Development.

94 The data, relating to June 2005, from the Tanzania Revenue Authority.

95 see V. Volkov: Violent entrepreneurship: Harvard 2003: on the economic uses of violence and coercion in Russia in the 1990s in creating the institutions of a new market economy through competition among criminal groups, private security services, private protection companies, and informal protective agencies associated with the state following the liberal reforms of the early 1990s.

96 Typology developed from 'Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition' by Joel S. Hellman; Geraint Jones; Daniel Kaufmann: World Bank 2000

97 P. Chabal and Jean Pierre Daloz. 1999. Africa Works. London; J. Currey, N van de Walle. African Economies and the Politics of Permanent Crisis, 1979-1999. Cambridge 2001.

98 CUTS C-CIER 2005 research project, "Towards a Functional Competition Policy for India" the India component of the 7Up2 project and supported by DFID.

99 Referring to Sri Lanka, see M. Knight-John: The Institutional Policy Framework for Regulation and Competition in Sri Lanka: Institute of Policy Studies (Sri Lanka) 2002.

100 A. Ogus: Towards Appropriate Institutional Arrangements for Regulation in Less Developed Countries University of Manchester June 2005. Since pure competition is unrealistic, the key political and developmental question is who gets the rents – are they productive entrepreneurs who create jobs and sustainable growth, and will the rents also support or undermine political stability on which development depends.

101 A. Lambert & K. Sonin. 2003. 'Corruption and collusion in procurement tenders.' CEFIR Working Paper no. w0034.

102 Institutional Trap by Quy-Toan Do: World Bank 2004: Small coalitions run short of resources, while large coalitions suffer more severe free-rider problems. The distribution of wealth thus determines the equilibrium coalition structure of the economy and consequently the level of regulatory capture. A dynamic analysis supports the persistence of inefficiencies in the long run. In weak institutional contexts, the potential danger of misuse of competition policy allows protection for specific industries or sectors which make monopoly rents for the political and economic elite which, in the absence of an effective industrial policy, merely prevents domestic firms from learning to compete with efficient foreign competitors.

103 S. Johnson, D Kaufmann and P Zoido-Lobatón. 1998. Regulatory Discretion and the Unofficial Economy, American Economic Review 88(2): pp.391-2.

104 G.Doern: A Political-Institutional Framework for the Analysis of Competition Policy Institutions: Governance Vol. 8 pp. 195-223: April 1995; J. Fingleton, 'Political economy insights from competition policy in Ireland,' Fordham Antitrust Conference 2001, pp. 569-95; M. Nicholson: Competition Policy and Institutional Development. 2005 University of Maryland. Doern suggests a helpful framework for developed countries which could be adapted to developing country context: 1) the use of explicit non-competition criteria that can be taken into account by competition authorities; 2) ranges of, and opportunities for, ministerial discretion; 3) intra-cabinet and intra-governmental pressures from other ministers and departments and their political clientele interests; 4) direct hearings or avenues for direct representation and pressure by interests; 5) opportunities for private legal action; 6) processes for giving comfort or guidance letters to private parties; 7) vehicles for pressure and political learning through studies, media exposure, and public persuasion; and 8) the extent to which "one-stop" versus multi-sector competition institutions exist and can be played off one another.

105 Where parties supply or acquire a substantial share of the market and whose effect significantly prevent, restrict or distorts competition: 7Up3 project (Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa) Country Research Report on Mauritius 2006.

106 CUTS, Pulling Up our Socks, A Study of Competition Regimes of Seven Developing Countries of Africa and Asia under the 7-Up Project: 2003 .

107 http://cuts-international.org/Srilanka-report.pdf

108 Kaufman, using the World Economic Forum's Global Competitiveness Report, analyses the extent to which corruption undermines business competitiveness. He shows that a country that manages to reduce the extent of corruption as an obstacle to business by one standard deviation can expect, on average, to move up about thirty rank positions in its global competitiveness standing, much more significant than alleviating any other obstacle to business operations.

109 J Hellman, G Jones, and D Kaufmann, 2000, "Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition Economies," World Bank Policy Research Working Paper No. 2444.

110 H Schamis: 'Distributional Coalitions and the Politics of Economic Reform in Latin America', World Politics, Volume 51, January 1999, pp.254.

111 A. Kohli, p.385.

112 Kohli, p.389; of course 'democratic' models such as Botswana also exist, and the relationship between regime type and economic growth outcomes is highly contested.

113 See the POLITY iv database at the University of Maryland.

114 M. Jantti et al: Finland, Combining Growth with Equity, WB background paper for WDR 2005.

115 APEC statement, at http://www.apeccp.org.tw/doc/Malaysia/Competition/mycom1.html

116 M.Porter: The Competitive Advantage of Nations: 1990

117 P. Aghion, Richard Blundell, Rachel Griffith, Peter Howitt, Susanne Prantl (2006), "The Effects of Entry on Incumbent Innovation and Productivity". NBER Working Paper 12027.

118 A. Amsden, The Rise of the Rest: 2001.

119 C. Lee: Competition Policy in Malaysia: University of Malaya 2004

120 R. Inoue, Hirohisa Kohama and Shujiro Urata eds. Industrial Policy in East Asia. Tokyo, Japan External Trade Organization, 1993.

121 C. Johnson: Miti and the Japanese Miracle. The Growth of Industrial Policy, 1925-1975: 1982, p.24.

122 M. Khan. 2000a. Rents, Efficiency and Growth, in M. Khan and K.S. Jomo, eds., Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia, Cambridge: 2001.

123 The challenge is far from new. In the 'Great Case against Monopolies' of East India Company v. Sandys (1685) the courts in England drew a distinction between monopolies operating within the realm, and those established in order to compete outside the realm. In the latter situation it was accepted that only a firm in a strong position could trade successfully in the difficult conditions prevailing. This case raised the relationship between competition and national industrial policy promoting 'national champions', the approach successfully used in different forms by East Asia economies.

124 Economic Partnership Agreements (EPAs) between the EU and the African, Caribbean and Pacific (ACP) States aim to ensure the elimination of distortions to sound competition and with due consideration for the different levels of development and economic needs of each ACP country. The EU seeks to support effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and State enterprises, offering co-operation in the drafting of an appropriate legal framework and its administrative enforcement, with particular reference to the special situation of the least developed countries. But developing countries successfully excluded competition issues from the remit of WTO negotiations; and ACP countries have collectively stated that they do not want to include competition policy, investment and government procurement in the EPA negotiations and described their disagreement with the EU on these issues as of a 'fundamental nature,' Joint Report on the all-ACP–EC phase of the negotiations, October 2003, Paragraph 25: 'For the ACP side, the rules aspects of the trade-related areas should not be the subject of EPA negotiations before agreement is reached on how to treat these issues at a multilateral level, particularly in the WTO.'

125 GTZ Economic Law Sector – Tanzania (Prüfung Wirtschaftsrechtssektor) project 2001.

126 G. Doern: (1995), A Political-Institutional Framework for the Analysis of Competition Policy Institutions. Governance 8 (2), 195-217.

127 Hellman, Jones and Kaufmann (2001). See also more recent evidence in some Latin American countries, emerging from the governance and anticorruption diagnostics (GAC) of the World Bank Institute (WBI) at (http://www.worldbank.org/wbi/governance/tools.htm).

128 D. Kaufmann and A Kraay, Governance and Growth: Causality which way? World Bank 2003 p.3

129 G.Hyden, J.Court and K.Mease: Making Sense of Governance: 2004: pp.143-163.

130 M. Dutz: "Competition policy issues in developing and transition markets," OECD Discussion Paper (2002)

131 For a rare and interesting detailed theoretical analysis, see Raul V. Fabella: Of Guanxi and Taipans, Market Power and the East Asian Model as a Competition Policy Package: University of the Philippines 2005. See also R. Adhikari (2004). Prerequisite for Development-Oriented Competition Policy Implementation: A Case Study of Nepal; and M. Gal: The Ecology of Antitrust: Preconditions for Competition Law Enforcement in Developing Countries: both in Competition, Competitiveness and Development: Lessons from Developing Countries. 2004. UNCTAD; M. Krakowski: Competition Policy Works: The Effect of Competition Policy on the Intensity of Competition - An International Cross-Country Comparison. 2005 HWWA Discussion Paper No. 332. These authors suggest developing countries' competition policy design and implementation have problems not only with institutional competence, credibility and independence of competition authorities but with the other interdependent aspects of governance such as inadequate judicial system, excessive bureaucracy, vested interests, or lack of financial and human resources – what Gal calls the "ecology of antitrust": large informal sector, the lack of well defined property rights, limited environmental, safety and health standards, underdeveloped consumer protection institutions and laws, limited capability to verify and check standards, lack of technical expertise and experience.

132 M. Minogue: What Connects Regulatory Governance to Poverty? CRC, University of Manchester: June 2005.

133 Ajit Singh, Multilateral Competition Policy and Economic Development: A Developing Country Perspective on the European Community: Fifth session of the Intergovernmental Group of Experts on Competition Law and Policy July, 2003.

134 W E Kovacic (2001), " Institutional foundations for economic legal reforms in transition economies: the case of competition policy and antitrust enforcement," Chicago-Kent Law Review Vol 77 (1).

135 C.Santiso: Development finance, Governance and Conditionality: Politics Matter: International Public Management Journal Vol. 7, No. 1, 2004, p.93.

136 'In theory, these governance capabilities should together ensure the efficiency of markets and from this stems much of the 'good governance' analysis of the role of governance in economic development. Efficient markets in turn will ensure the maximization of investments and the attraction of advanced technologies to the developing country, thereby maximizing growth and development. Thus, by enhancing the efficiency of markets, good governance drives economic development. The prediction of the theory is that differences in the quality of governance measured by these characteristics will correlate with performance in economic development…. the evidence provides at best very weak support for this prediction.' Developing and particularly low-income countries' markets are inherently inefficient so that 'even with the best political will, structural characteristics of the economy ensure that market efficiency will

remain low till a substantial degree of development is achieved': M. Khan: Governance, Economic Growth and Development since the 1960s: Background paper for UN World Economic and Social Survey 2006, pp.2-4

137 Y. Feng: (2003): Democracy, Governance and Economic Performance: Theory and Evidence, Cambridge, p 37.