Case study commissioned by the Department for International Development, UK

A Contribution to WDR 2005 on Investment Climate, Growth and Poverty

Competition Law and the Investment Climate in Developing Countries

Prepared by

Simon J. Evenett

University of Oxford

November 2003

Key Messages

1. Although nearly 100 countries have enacted competition laws, research into their developmental consequences remains scarce, including the effects of such laws on the investment climate.
2. There is a growing record of enforcement actions by competition agencies in developing countries that is likely to have materially affected the incentives to invest of state bodies and domestic firms.
3. The latter finding is important as it suggests that the effects of competition law on the investment climate are not limited to their consequences for inflows of foreign direct investment (which is the subject of the small number of available econometric studies).
4. Even though investment can play an important role in promoting development, improving the investment climate is not the explicit objective of many nations' competition laws—nor should it be. Competition law enforcement should seek to enhance resource allocation in the near and longer terms.

The views and opinions expressed in this study are those of the author and do not necessarily correspond to the views or policies of the Department for International Development (DFID), UK.

Commissioned by the United Kingdom's Department for International Development (DFID) as part of a series of Case Studies for the World Development Report 2005: Investment climate, Growth and Poverty. The author is grateful for the comments of Roger Nellist and John Preston both at DFID. Readers might note that the terms of reference for this paper called for a body text of 12-15 pages, which has clear implications for the contents of this paper

Introduction

1. The econometric literature on the effects of competition law on investment focuses almost exclusively on the consequences for inflows of foreign direct investment. What is more, the empirical papers in this literature can be counted on the figures of one hand and contain potentially contradictory findings. Precious little has been made of the potential effects of competition law enforcement on the level and composition of investment by state bodies and by domestic firms, which is surprising given that some of the recent enforcement cases in developing countries have almost certainly affected the returns on such domestic investments.

2. This short paper describes what evidence is available and argues that the appropriate enforcement of competition laws probably improves the investment climate in developing countries along more dimensions than previously thought. It should also be noted that bolstering investment per se is not the widely accepted objective of such laws; improving static or dynamic efficiency is. Consequently, there may be occasions when an enforcement agency rightly takes measures that lead to a reduction in investment outlays by a firm or state body (as not all investments are welfare-enhancing.) Yet there are several good reasons to suppose that, when appropriately enforced, competition laws enhance the long-term performance of an economy.

3. Of the 38 jurisdictions that enacted competition laws in the 1990s, 27 were developing countries.[1] Although counts vary, by 2001 approximately 100 jurisdictions had enacted some form of competition law. Despite these changes, research into the developmental consequences of competition laws and their enforcement remains relatively scarce, especially when compared to the hundreds of papers written on trade policy reforms, deregulation, privatisation, and the like. Once again policymaking is further along than data collection and analysis, raising two disquieting possibilities: first, that policymakers may be getting ahead of themselves and, second, that researchers may have overlooked something important.

4. It is not the goal of this paper to document exhaustively[2] the many ways in which different competition laws have influenced developmental outcomes,[3] although some of the key lines of causation are summarised in the next section. Rather, the objective is to examine how the enforcement of competition law has influenced different agent's incentives to invest in developing economies. My emphasis on "different agents" is to differentiate this short paper from those that have focused solely on the effects on foreign investors' decision-making. It strikes me that such a focus is excessively narrow, as state bodies and domestic firms and entrepreneurs also make investment decisions which, in turn, may be directly or indirectly affected by the presence and enforcement of national competition laws. This is not just a logical possibility and I will refer to numerous recent enforcement actions in developing countries whose likely consequences have been to alter the returns on investment by certain state and non-state actors.

Preliminary Remarks

5. Before proceeding further it will be useful to distinguish between the terms competition law and competition policy. As one group of scholars recently put it "[c]ompetition (or antitrust) law lays down the rules for competitive rivalry. It comprises a set of directives that constrain the strategies available to firms" (Audretsch et al. 2001, page 614.) In contrast, competition policy refers to all of those government measures that can influence the intensity of competition in national markets or that bear on an economic entity's freedom to trade (World Bank-OECD 1997, page 2).[4] Consequently, a nation's competition laws are part of its competition policy, but so are many other laws and policies including trade policies, measures towards foreign investors, domestic business regulation, privatisation initiatives and the like.[5]

6. There is a considerable debate over the goals of competition law. Many researchers and practitioners in the industrialised countries contend that the goal should be to enhance the static and dynamic efficiency of an economy by altering the allocation

of resources (Posner 1978, 2001; Baumol 2001). However, for better or for worse, many jurisdictions have given their competition laws a number of non-efficiency-based economic objectives and non-economic objectives. South Africa, for example, lists six objectives for its 1998 Competition Act including the promotion "of a greater spread of ownership, in particular, to increase the ownership stakes of historically disadvantaged persons" (Chapter 1, article 2.) It is also worth noting that the goals of many competition laws are stated in such broad terms that no specific mention is made of encouraging investment. Even so, in some cases it might be possible to argue that enhancing the investment climate is a necessary condition for attaining some of the stated goals of a nation's competition law, such as promoting economic growth and sustained employment growth.

7. Turning now to investment, it is worth noting that many entities or actors in a developing country can forgo purchases of current consumption goods so as to acquire durable goods that might support productive or other activities in future years. Therefore, a local government's decision to build a school is a form of investment; so is the decision to buy new plant and machinery by a small- or medium-sized enterprise. Furthermore, the recognition that there are different types of investment in no way implies that each type has the same impact on economic and social indicators of interest.

8. One other preliminary comment about investment is in order. Funds made available for investment have an opportunity cost in terms of some type of forgone current consumption. If there are diminishing returns to the latter, then it is unlikely to be the case that each and every potential increase in investment is welfare improving for the entity undertaking the investment. Therefore, there is a sense in which entities can over-invest as well as under-invest. Moreover, one should be open to the possibility that the state measures taken to promote investment can create more inefficiencies or distortions to market outcomes than the benefits that are thought to flow from encouraging larger investment outlays. These last two points might be born in mind when evaluating any options to improve the investment climate.

Divergent views on the effects of competition law on the dynamic economic performance of developing economies: a summary

9. I now turn to the relationship between competition law, its enforcement, and economic development. Considerations of space necessarily force a degree of brevity, and I shall refer only to the principal lines of causation in the literature. A more detailed account of these matters, with a large number of references to the empirical literature, can be found in a study I completed for the WTO Secretariat in 2003 (WTO 2003, pages 11-48).

In the extant literature the following arguments have been advanced to question whether unfettered rivalry between firms promotes development:

(i) Missing markets, especially financial markets, imply that investments can only be financed out of retained profits, which are eroded by rigorous competition between firms.

(ii) Firms, it is argued, need to achieve a certain size to compete effectively on world markets or to withstand competition from imports. This view has clear implications for the conduct of reviews of proposed mergers and acquisitions, especially in those sectors where so-called national champions currently, or might in the future, operate.

(iii) Governments need not intervene to promote rivalry in markets where innovation is the principal source of competition. In such markets current monopoly profits act as a spur to innovation and the creation of new products and processes.

(iv) Maximising rivalry leads to inefficient outcomes in natural monopolies and in some network industries.

10. I am fully aware that the above succinct accounts do not convey much of the nuance underlying these arguments, and I urge the interested reader to consult WTO (2003) for a more extensive treatment. That document also includes my analysis of the

above claims, the conclusion of which is that I only find the fourth argument as a compelling rationale for curtailing inter-firm rivalry.

WTO (2003) also contains a description of the following five arguments that contend that promoting rivalry between firms enhances dynamic economic performance:

(i) Greater competition between firms sharpens incentives to cut costs and to improve productivity.
(ii) The benefits from trade reform, deregulation, and privatisation will not be realised without the potential for active and effective enforcement of competition law.
(iii) The appropriate enforcement of competition law adds transparency to a nation's commercial landscape which, in turn, attracts foreign direct investment.
(iv) Greater competition in product markets stimulates both product and process innovations.
(v) Rivalry in the market for future innovations can be protected by the active and appropriate enforcement of merger and acquisition laws which prevents, for example, one firm taking over another firm which has a potentially strong, but not as yet fully developed, range of rival products.

11. Without claiming that each of these arguments applies with equal force in every developing country, in my view the conceptual arguments and the available empirical evidence by and large supports the view that promoting inter-firm rivalry[6] enhances the dynamic economic performance of developing economies.[7] Furthermore, it is worth noting that in the second, third, and fifth arguments above the appropriate enforcement of competition law plays a direct role in promoting long-term economic performance; in the other two arguments such enforcement plays an indirect role by first fostering inter-firm rivalry.

12. Having described the relationships between competition law, inter-firm rivalry, and dynamic economic performance in general, I will now focus on the effects of such

laws on investment. The next section considers the effects on the inflows of foreign direct investment (FDI) and the following section considers the effects on the returns to investment by domestic entities.

The effect of competition law and its enforcement on inflows of FDI

13. Perhaps due to the debate over the openness of the Japanese economy and because of the growing emphasis on FDI as a "driver" of development, a small empirical literature has developed which sheds some light on the effects of enforcing competition law on the amount of FDI received by a nation.[8] The first papers to address this issue were motivated by relatively recent Japanese experience (see, for example, Noland 1999). More recently, however, attention has shifted to other countries, including developing economies (Clarke 2003, Cooke and Elliott, 1999, and Evenett 2002). In this section I will summarise this small literature and then suggest another approach to thinking about this issue.

14. Noland (1999) identifies a number of channels through which domestic firms can take steps to frustrate the entry of foreign firms. Although much of his qualitative discussion is not country-specific, the debate over the openness of Japan's markets in the 1980s and early 1990s clearly motivates his analysis. In the case of certain vertical relationships between manufacturers and distributors, Noland rightly notes that there is a body of industrial organisation literature which shows that such restraints are potentially efficiency-enhancing — even if these restraints do foreclose a domestic market to new entrants, including foreign entrants. Yet it is worth noting that where a market-foreclosing vertical restraint is not efficiency-enhancing, the failure of a nation's competition agency to take action against such a restraint can reduce FDI below its potential level.

15. Noland (1999) also notes that domestic private sector actions which frustrate the market for corporate control also prevent one other form of foreign direct investment — that is, cross-border acquisitions. It should be pointed out, however, that the widely-

employed means for preventing takeovers (cross-holdings, poison pills, etc) are the realm of corporate governance policy and not of competition law. Yet, if a nation had a merger review law that discriminated (de facto or de jure) against foreign acquirers, then this would constitute a barrier to FDI.

16. Horizontal agreements between firms can, according to Noland (1999), influence FDI in different ways. To the extent that price-fixing by domestic firms raises prices, this alone may encourage foreign firms to enter a nation's market—potentially increasing FDI. However, to the extent that certification and standard setting is undertaken by industry associations, then the latters' actions may effectively constitute a barrier to foreign entry, so reducing FDI. In both of these cases, enforcing competition laws would have implications for FDI (reducing FDI in the case of cartel enforcement and increasing FDI in the case of ending restricting practices by industry associations).

17. Noland (1999) goes on to conduct an empirical analysis of the determinants of FDI inflows in Japan and the USA. He found that there was little or no evidence to support the contention that Japanese inter-firm arrangements have substantially distorted the pattern of FDI inflows into Japan. Given that the focus of this paper is on developing countries Noland's empirical results may, at first glance, be of little interest. However, it is worth bearing in mind that some commentators have argued that the Japanese experience with inter-firm agreements might be profitably emulated by developing economies.

18. Cooke and Elliott (1999) take a fairly positive view of the effects of competition law and its enforcement on inflows of FDI. They describe a number of logical possibilities. First, competition law enforcement that prevents domestic firms from agreeing to reserve the entire home market for themselves would encourage those foreign investors that are not just interested in using the domestic economy as an export platform. Second, they note that the enforcement of national competition law against a potential abuse of a dominant position by a foreign investor would occur after the entry of the foreign firm and so, in their view, enforcing the former law will not have deterred

FDI. (Here Cooke and Elliott do not appear to have considered the effect of such enforcement actions on the future decisions of potential foreign investors).

19. Cooke and Elliott recognise that the misapplication of competition laws—especially merger review laws — against foreign firms can occur and presumably this would dampen cross-border mergers and acquisitions, a form of FDI. Yet, they go on to argue that it is the misapplication of the law rather than the law itself that is the problem. This argument cannot be correct as it does not consider the possibility that an appropriately applied merger review law could block a proposed foreign takeover if the combined firm is expected to have too much market power.[9]

20. Finally, Cooke and Elliott note that "empirical evidence on the influence of competition law on FDI is thin" (page 28). They add to that evidentiary base by performing a regression that purports to show that a higher assessment (in interviews with business people) of the pro-competitive effect of competition law enforcement is associated with greater inflows of FDI in 1995. They interpret this finding as follows: "[w]e do not regard this result at this stage as more than tentative support for the view that the existence of anti-trust law has a positive influence upon FDI flows. Further research in this area is merited" (page 29). Nevertheless, their empirical finding (however qualified) is supportive of the thrust of their argument; namely that, on net, the appropriate enforcement of competition law attracts FDI.

21. In a panel study of FDI inflows into over 90 developing and industrial countries during the years 1985 to 2000, Clarke (2003) found that active enforcement of competition law appears to stimulate FDI, especially in developing countries. It should be noted that this study is still in progress and that the reported finding should be treated as preliminary.[10]

22. Another empirical analysis that is relevant to this discussion is Evenett (2002). In that study, I examined the effect of different types of national merger review regimes on the value of cross-border mergers and acquisitions undertaken by American firms in

1999. The sample of countries used in this study included approximately 50 developing and industrialised economies. These economies differ markedly in the type of merger review regimes employed (if any) by their national competition agencies, with regimes that require notification of a proposed merger or acquisition before the transaction is completed regarded as the toughest — or most restrictive — by legal counsel.[11] A priori, such regimes could prevent those mergers or acquisitions that are likely to result in substantial price increases and, to the extent that some cross-border mergers and acquisitions are of this type, then one should expect to find jurisdictions with mandatory pre-notification regimes to receive less of this type of FDI. This is precisely the finding that emerges from my empirical analysis — and it survives a barrage of econometric tests too. Such merger review regimes were found to cut cross-border mergers and acquisitions by American firms in half, a sizeable reduction.[12]

23. Interpreting this empirical finding requires some care. To the extent that the discouraged FDI was welfare-reducing, then the enforcement of such mandatory pre-notification merger review regimes by developing countries has been beneficial. However, to the extent that the perception of vigorous merger enforcement has also deterred efficiency-improving cross-border mergers and acquisitions[13], then opportunities would have been foregone by developing economies that enforce this type of merger review law. If the findings of this study are replicated elsewhere, it would reinforce the point that merger enforcement must not only be effectively and competently implemented, it must also be seen to be so by private sector interests.

24. Do any general lessons emerge from these studies of the effect of competition law on FDI? Quite possibly not, but there may be a glimmer of hope. First I discuss the gloom and then the hope. Given that Noland (1999) finds that the presence of inter-firm agreements does not influence the pattern of FDI into Japan presumably, then, enforcing competition laws to alter[14] those agreements would have no effect on inflows of FDI either. Clarke (2003) and Cooke and Elliott (1999) find that indicators of stronger competition enforcement bolster FDI inflows, perhaps because such enforcement signals a nation's commitment to the ubiquitous "level playing field." In contrast, Evenett

(2002) finds that one type of competition law—mandatory pre-notification merger review laws — significantly deters cross-border mergers and acquisitions, a form of FDI. On the face of it these findings seem irreconcilable, but are they?

25. Suppose one borrows from medicine the distinction between good and bad cholesterol. As argued above, some FDI improves welfare and some does not. So could it be the case that different types of competition law influence different types of FDI in the same way that some medicines affect differentially the two types of cholesterol? Could it be the case that, as a general proposition, merger review laws in developing countries have reduced market-power-enhancing cross-border mergers and acquisitions and that other competition laws in these countries have promoted FDI either by ending[15] entry-deterring agreements among domestic firms or by indirectly signalling a commitment to treat all firms — irrespective of national origin — equally? If so, then the above empirical findings might be reconcilable. Moreover, if this conjecture is correct, one should also observe that the composition of FDI inflows should vary considerably across nations according to the presence and type of competition law regime; a hypothesis that, to the best of my knowledge, has yet to be tested empirically.

26. Leaving to one side the apparently inconsistent nature of the findings in the few papers on this topic, there is in my view a more fundamental problem with the current analyses of the effect of competition laws on FDI. That is, these analyses fail to take account of the fact that there are different modes of supply available to firms that wish to enter another nation's markets. In the case of a tradable good or service, there are three such modes of supply: exporting, greenfield investment, and cross-border mergers and acquisitions. These modes may differ considerably in the amount of FDI that is associated with them. If unconstrained, firms of course will choose the most profitable mode of supply. The nation being supplied could, or rather should, see the choice of mode differently: it wants the firms to choose the mode of supply that increases national welfare the most. Seen from this perspective, there is no reason to suppose that the most investment-intensive mode of supply best suits the needs of the nation being supplied. As maximising investment is not the correct metric for the nation, it should

come as no surprise that competition enforcement decisions can sometimes reduce FDI. Furthermore, it seems to me that the correct way to think through the effects of enforcing a nation's competition laws on the value of FDI received is to assess their impact on the relative profitability of all three modes of supply. Thus, in the market for any one good that is actually or potentially being supplied by foreign firms, the composition as well as the level of FDI is likely to be affected by the implementation of national competition laws.

Competition Laws and the Incentives for Domestic Entities to Invest

27. Foreign investors are not alone in making investment decisions in developing countries. State agencies, para-state bodies, and private sector firms can also invest and this point should not be overlooked. Admittedly, I have not found any econometric literature that examines how these decisions after affected by the enforcement of national competition laws. However, the growing enforcement record of competition agencies in developing countries does suggest that their actions are affecting the incentive to invest by state and domestic private sector entities. I took just one year of reports by developing country competition agencies to the OECD and found 10 cases where enforcement actions are almost certain to have affected the incentive to invest of state bodies, incumbent private sector firms, and potential entrants. Descriptions of those 10 cases can be found—using the reporting countries' own words — in Appendix B of this paper.

28. First, I will discuss the potential impact of competition enforcement decisions on the investment incentives facing state bodies. In 2001, one of Brazil's competition agencies prosecuted a group of firms that rigged the bids for a contract to build an oil platform for a state-owned firm. Similarly, Mexico fined several firms that were colluding in setting bids for a contract to supply medical equipment to a major state hospital. More generally, what are the consequences for state investment decisions of such bid rigging? Arguably, there are two. First, bid rigging will increase the cost of a given state investment project, so reducing its social rate of return. Officials with a given investment

budget and who want to obtain the greatest social returns for their outlays will be unlikely to invest in lower return projects[16] — and certainly not until all of the projects with higher returns have been undertaken. On this view, bid rigging will alter the composition of the state investment portfolio.

29. Moreover, bid-rigging can alter the share of total government spending going to investment projects if it affects the relative social returns from outlays on current spending and from outlays on available investment projects. In principle, both types of outlay could be affected by bid-rigging. However, if large infrastructure projects and the like are more susceptible to bid-rigging then one would expect a socially sub-optimal level of state investment to result.

30. The logic of the above two arguments can also be applied when considering the effects of active anti-cartel enforcement. In short, to the extent that such enforcement deters bid-rigging, the level and composition of state investment expenditures should change. (Again, to the best of my knowledge no one has empirically tested this hypothesis.)

31. With respect to the private sector's incentive to invest, the enforcement actions described in Appendix B point to situations where measures have created opportunities for private sector investment and to cases where the opposite has happened. This mixed picture is only appropriate as competition agencies are not supposed to maximise investment, and often have other objectives in mind. Nevertheless, a number of themes emerge from the cases reported in Appendix B.

32. First, some competition agencies have clearly been active in ensuring that, at the time of privatisation and afterwards, that new firms are able to enter and to invest in facilities that enable them to challenge the dominant privatised firm. This reinforces the point made earlier that the appropriate enforcement of competition law is sometimes necessary to maximise the societal benefits from other liberalising measures such as privatisation.

33. Second, competition agencies have taken measures against other state bodies whose actions—including the direct subsidisation of private firms—have reduced the profitability of rival private firms. Thus, private firms need not be the only targets of enforcement actions of competition agencies.

34. Third, competition agencies can take measures against firms that abuse their monopsony power. Such power can undermine the incentives of suppliers to invest. Comparable cases have occurred involving boycotts of distributors, wholesalers, and retailers.

35. Fourth, competition agencies are sometimes entrusted with managing the restructuring of certain economic sectors or firms, and in doing so can help bring investment incentives back in line with market signals; as the example of Korean restructuring of the chaebol in Appendix B makes clear.

36. To summarise, although to date there is no econometric evidence available to assess the general importance of these effects in developing countries, a body of enforcement experience with competition law suggests that there are a number of distinct ways in which such enforcement influences the incentives to invest of state bodies and of the domestic private sector.

Policy Implications and Concluding Remarks

37. On the basis of the above evidence — whose shortcomings have been detailed — it appears that the following three types of competition law have the greatest effect on the investment climate in developing countries:

(i) Measures to prosecute and deter bid-rigging (which is likely to affect the total amount and composition of state investments).

(ii) Measures to review the mergers and acquisitions, in particular those requiring mandatory pre-notification of proposed combinations.

(iii) Measures to ensure that entry by new firms is feasible in sectors where privatisation has taken place.

38. This is not to say other types of competition law have had no effect on investment decisions in the past; or that they will not do so in the future.

39. As to the desirability of adopting a competition law, one important point must be made and that is that improving the investment climate is not the explicit objective of many nations' competition laws — nor should it be. The overarching goal of competition law and enforcement should be to promote static and dynamic efficiency (recognising that, in some instances, there is a tension between the two). In some cases, the pursuit of this goal will result in decisions that stimulate investment, but in others it will not. On this view, the fact that from time to time competition agencies in developing countries have taken steps that have the knock-on effect of reducing investment levels need not, in and of itself, be a cause for concern.

40. The decision to adopt, or reinforce, a competition law ought to be based on a wide range of factors that are well beyond the scope of this paper. A cost-benefit analysis is more useful in identifying the elements of any such evaluation than in suggesting how those calculations should be conducted, especially on the benefit side of the equation.[17] After all, much of the benefit of an effective competition law comes in deterring anti-competitive acts by private firms and by state agencies in the first place, and it is very difficult to estimate the consequences of acts that are not undertaken because, by definition, they are unobserved! Unfortunately, this skews the discussion towards observable magnitudes—such as the cost of running an enforcement agency.

41. At present there is only one econometric analysis that estimates some of the principal costs and benefits of the enforcement of a competition law and this suggests that the active enforcement of anti-cartel law contribute substantially to improving the

allocation of resources (Clarke and Evenett 2003a). To this calculation of the static benefits of competition laws must be added the likely dynamic economic benefits mentioned earlier. Having said this, this line of reasoning in no way trivialises the difficulties that developing countries have in building and retaining professional staff for their competition enforcement agencies (see, for example, CUTS 2003) and it is to this end that capacity building efforts by bilateral and multilateral donors should be directed.

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Appendix A: Selected facts about enactment and implementation of competition laws in developing countries.

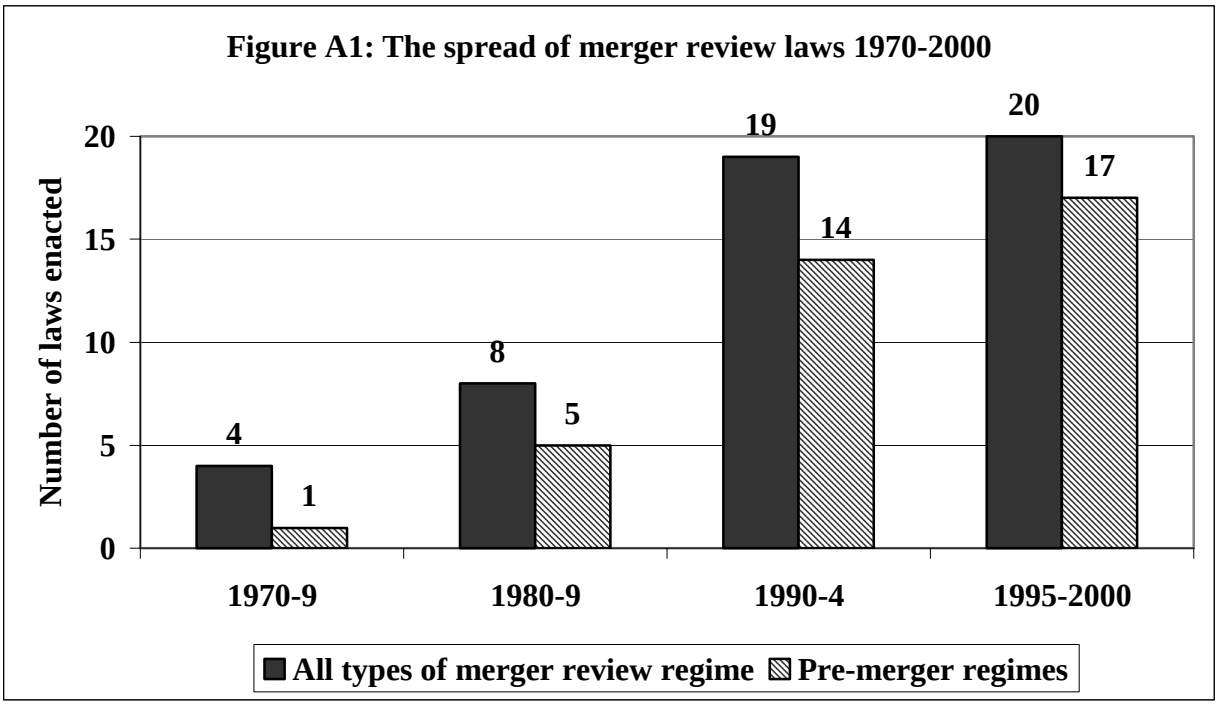

Table A1: The budgets of the competition enforcement agencies in seven developing countries in 2000

Country	Annual budget of agency primarily responsible for enforcing competition law (millions of US dollars)	Annual budget of the central government (millions of US dollars)	Percentage of central government budget that is accounted for by outlays on the primary competition enforcement agency
India	0.723	81307	0.00089
Kenya	0.236	3230	0.00731
Pakistan	0.326	13560	0.00240
South Africa	7.743	23270	0.03327
Sri Lanka	0.098	3395	0.00288
Tanzania	0.162	1010	0.01604
Zambia	0.193	340	0.05619

Source: CUTS (2003) table 7, page 54; as reported in WTO (2003).

Table A2: Year 2000 outlays and employees of government bodies responsible for the enforcement of national competition laws, as reported by governments to the OECD

When interpreting these reported statistics it is important to bear in mind that many government agencies that enforce their nations' competition laws also undertake other regulatory functions. There is no guarantee that the numbers reported below relate solely to the resources employed in the enforcement of national competition law.

Reporting entity	Name of Authority	Annual budget (local currency)	Annual budget (US$ Million)	Total number of employees	Economists	Lawyers	Other staff
Brazil	(The numbers presented here are the total for all three Brazilian agencies responsible for enforcing competition laws)		$10.96	398	60	50	288
Czech Republic	Office for the Protection of Competition	61.965m CZK	$1.6	113	36	44	33
Hungary	Competition Authority	562.1m HUF	$1.87	111	39	38	34
Korea	Fair Trade Commission	19,300m KRW	$17.55	444	81	51	312
Mexico	Federal Competition Commission	137.7m MXN	$14.6	200	38	50	112
Poland	Office for Competition and Consumer Protection	17.810m PLN	$4.301	219	89	51	79
Russia	MAP and Regional Offices	130.5m RUB	$4.6	1804	589	408	807
Turkey	Competition Authority	_	$21.2* $6.0**	307	44	23	240
Slovak Republic	Anti-Monopoly Office	28.7m SKK	$0.595	73	25	13	35
European Commission	Directorate General for Competition	6.05m EUR	$5.5	537	67 (and 7 lawyer and economists)	139	324
United States	Department of Justice	110m USD	$110	824	56	351	417
United States	Federal Trade Commission	25.5m USD	$25.5	251	40	159	92

Source for all countries' data except Brazil: Annual reports of competition authorities to the OECD.

See:

http://www.oecd.org/EN/document/0,,EN-document-0-nodirectorate-no-11-29574-0,00.html. This table was reported in WTO (2003).

The US $ estimate of the annual budget for some of the agencies included in the table was calculated independently using the appropriate exchange rate.

Source for Brazil: Brazil Ministry of Finance (2002).

Notes for the above table:

* denotes general expenditure,

** denotes expenditure on personnel

Table A3: Findings of anti-competitive conduct in selected developing economies

Economy	Year	Findings of horizontal agreements, cartels, and concerted agreements	Findings of abuse of a dominant position
Hungary	1997	0	8
	1998	2	5
	1999	7	7
	2000	11	19
Korea	2000	38	0
Mexico	1999	10	
	2000	34	
Russia	2000	9	438
Turkey	2000	12	-

Sources for data: Named countries' annual reports to the OECD on competition policy enforcement. Obtained from http://www.oecd.org/EN/document/0,,EN-document-768-nodirectorate-no-11-29574-768,00.html. This table was originally reported in WTO (2003).

Table A4: Investigations of anti-competitive conduct by agencies in the Czech and Slovak Republics

Economy	Year	Investigations of horizontal agreements, cartels, and concerted agreements	Investigations of abuse of a dominant position
Czech Republic	1992	15	20
	1993	9	20
	1994	15	16
	1995	28	29
	1996	30	24
	1997	27	5
	1998	67	4
	1999	54	13
	2000	36	11
Slovak Republic	1996	8	26
	1997	18	27
	1998	217	58
	1999	131	41
	2000	29	35

Sources for data: Named countries' annual reports to the OECD on competition policy enforcement. Obtained from http://www.oecd.org/EN/document/0,,EN-document-768-nodirectorate-no-11-29574-768,00.html. This table was originally reported in WTO (2003).

Table A5: Cross-country indicators of competition in national markets and of the perception of antitrust policy in 2001

Non-OECD economy	Indicator and Question asked in survey for *Global Competitiveness Report 2001-2002*		
	Quality of Competition in Transportation Sector	**Intensity of Local Competition**	**Effectiveness of Antitrust Policy**
	Is competition in your country's transportation sector sufficient to ensure high quality, infrequent interruptions and low prices? (1=no, 7=yes, equal to world's best)	In most industries, competition in the local market is (1=limited and price-cutting is rare, 7=intense and market leadership changes over time)	Anti-monopoly policy in your country (1=is lax and not effective at promoting competition, 7=effectively promotes competition)
Argentina	4.6	5.1	3.8
Bangladesh	3.0	4.5	2.9
Bolivia	2.8	4.0	2.8
Brazil	4.7	5.2	4.7
Bulgaria	3.4	4.1	3.3
Chile	5.1	5.9	5.1
China	3.6	5.5	3.7
Colombia	4.0	4.7	3.5
Costa Rica	3.5	5.2	3.7
Dominican Republic	3.9	5.0	3.4
Ecuador	2.7	3.9	2.5
Egypt	3.8	5.4	3.4
El Salvador	3.4	5.0	3.1
Guatemala	3.2	4.2	2.5
Honduras	2.5	3.4	2.1
Hong Kong, China	6.3	5.9	4.5
India	3.8	5.6	4.1
Indonesia	3.7	5.2	3.6
Israel	5.0	5.6	5.7
Jamaica	3.9	4.9	3.9
Jordan	4.9	4.7	3.8
Latvia	4.4	5.1	3.8
Lithuania	4.4	5.0	3.4
Malaysia	4.4	4.6	3.2
Mauritius	4.1	4.6	3.6
Nicaragua	2.1	4.2	3.0
Nigeria	3.1	5.2	3.0
Panama	3.1	5.0	4.0
Paraguay	2.7	3.4	3.1
Peru	3.7	5.2	3.8
Philippines	3.9	4.9	3.8
Romania	3.6	3.3	3.7
Russia	3.3	4.2	3.1
Singapore	5.9	5.4	5.1
Slovenia	4.7	5.0	4.2
South Africa	4.2	5.4	4.8
Sri Lanka	3.3	5.1	3.8
Chinese Taipei	5.3	5.3	5.2
Thailand	4.2	5.0	3.9
Trinidad and Tobago	4.9	5.0	3.2
Ukraine	3.7	4.5	3.3
Uruguay	4.4	4.9	2.8
Venezuela	4.3	4.3	3.8
Viet Nam	2.7	5.3	2.9
Zimbabwe	4.1	3.9	3.3

Non-OECD economy	Indicator and Question asked in survey for *Global Competitiveness Report 2001-2002*		
	Quality of Competition in Transportation Sector	**Intensity of Local Competition**	**Effectiveness of Antitrust Policy**
	Is competition in your country's transportation sector sufficient to ensure high quality, infrequent interruptions and low prices? (1=no, 7=yes, equal to world's best)	In most industries, competition in the local market is (1=limited and price-cutting is rare, 7=intense and market leadership changes over time)	Anti-monopoly policy in your country (1=is lax and not effective at promoting competition, 7=effectively promotes competition)
Correlation coefficient with "Effectiveness of Antitrust Policy"	0.741	0.680	1, by definition
Sample mean Non-OECD economies above	3.9	4.8	3.7
Sample mean OECD economies in sample	5.2	5.6	5.1
Sample mean all economies in survey	4.4	5.1	4.2

Source: Data taken from World Economic Forum (2002). Table reported in WTO (2003).

Appendix B: Selected case studies highlighting links between competition law enforcement and levels of investment in five developing economies.

All of these case studies are taken from the respective country's Annual Report to the OECD for the enforcement of its competition laws. These Reports can be downloaded off the World Wide Web and can be obtained from the author.

B1. Brazil

This first example demonstrates that left unhindered firms may take steps that raise the cost of investments by public agencies or state-owned firms.

"Administrative Proceeding no. 08012.009118/98-26

Complainant: Secretariat of Economic Law, ex-officio

Defendants: Estaleiro Ilha S.A. – EISA

Marítima Petróleo and Engenharia Ltda.

(i) This is an Administrative Proceeding brought to investigate an agreement between competitors in a public bidding tender, with anti-competitive effects. The investigation undertaken by SDE observed that the EISA and Marítima companies, both taking part in the auction for refurbishment of the Petrobrás P-X oil platform, entered into an agreement under which the winner of the tender would be obliged pay to the loser a variable amount that could be as high as US$ 1 million as reimbursement of joint or single investments made.

(ii) In their defense, the defendants claimed that the agreement was legal from the competitive standpoint, since the Marítima company had technical knowledge only of offshore work, while EISA has technical knowledge only of ship building. In the view of the defendants, competition was not affected since both took part in the contest, and the reimbursement stipulated was a legitimate way of paying for services provided.

(iii) The examination concluded that there had been no fixing of prices and terms for the provision of the services. However, the stipulated variable indemnification in accordance with the price obtained in the tender process, constituted the conduct of agreeing to advantages in a public tendering process (article 21, VIII),

also allowing the companies, the only participants in the process, to limit competition and dominate the relevant market in question (article 20, I and II). Thus, SDE concluded that this constituted an infringement, and sent the Administrative Process to CADE, suggesting: (i) a fine; (ii) banning the defendants from taking part in public tenders for 5 years; (iii) publication of the decision in newspapers; (iv) dispatch of the proceeding to the Public Prosecutor's office for appropriate criminal action."

The second example demonstrates that firms sometimes defend attempts to raise prices on the grounds of protecting their previous investments or preserving a sufficient incentive to invest in the future. This example highlights that concerns over maintaining or enhancing investment levels above all else can sometimes lead to distortions to prices and resource allocation.

"- Concentration Act no. 08012.002315/99-50

Petitioners: Brasil Álcool S.A., Copersucar Armazéns Gerais S.A. and others.

(i) This transaction was to constitute Brasil Álcool S/A, a company made up of 84 manufacturers of anhydrous alcohol and/or hydrated alcohol for use as fuel, accounting for approximately 70 percent of the production in its region, the center-south of the country.

(ii) The Petitioners justified the transaction by pointing out the difficulties alcohol producers were facing in this country with the fall in the price of the product to levels insufficient to cover production cost. In addition, putting off large crops to subsequent years was observed, since producers could not afford maintain their assets idle and had to produce to preserve their investment and avoid their manufacturing plants becoming scrap. As a result, prices might fall still further. As a consequence of this picture, alcohol producers decided to establish Brasil-Álcool and to export a portion of its members' production.

(iii) The relevant market was defined as that of automobile fuel production in this country. As for entry barriers, examination showed that they were large, mainly because of the high rates of idle capacity in the sugar and alcohol sector.

(iv) The examination undertaken by SDE concluded that the transaction, submitted as a concentration act, was no more than a cartel, given that the members of Brasil-Álcool got together and withdrew significant volumes of alcohol from the market (allegedly to be exported) to obtain higher prices in the domestic market. Indeed, the withdrawal of inventory took place at the time the company was being constituted, and the paying up of its capital was done with portions of the production of the stockholders themselves.

(v) The agreement of a substantial proportion of the producers in the center-south region of the country to withdraw large quantities of alcohol from the domestic market, and Brasil-Álcool's bylaws, granted monopoly power to Copersucar, holder of 40 percent of the shares in the newly created company. This derived from the fact that the sale of Brasil-Álcool's inventory of alcohol on the domestic market was made conditional on the approval of stockholders holding 75 percent of the company's capital. The same thing happened with the selling policy. In other words, for Brasil-Álcool's inventory of alcohol to be sold on the domestic market, Copersucar would have to agree to the operation and to the price to be charged.

(vi) SDE then began to check whether the operation could be classified as what the economic literature calls a "crisis cartel", tolerated in some jurisdictions, under very specific conditions. Acceptance of the operation for this reason was ruled out in the belief that the crisis in the sugar and alcohol sector was not circumstantial but structural, and the cartel proposed was, in fact, a mechanism to regulate the market privately, to the detriment of the end consumer.

(vii) Thus, it was suggested among other sanctions that the operation should not be approved, and that Brasil-Álcool be immediately dissolved, given that the losses to consumers, deriving from the action of the cartel, had already been apparent in the fuel market. The Federal Government even went as far as to auction alcohol inventories to lower prices that had been raised by the cartel."

The third example shows that the intervention of a competition enforcement agency in a privatization measure can alter the terms upon which state firms

are sold off so as not to foreclose the potential for viable investment by new entrants.

"- Privatization of the Distribution of Piped Gas in the States of Rio de Janeiro and São Paulo (concessionaires CEG, CEG Rio, Comgás and Gas Brasiliano)

(i) This is the privatization of the service of distribution of piped gas in the States of Rio de Janeiro (CEG and Riogás areas) and São Paulo (Comgás and Noroeste areas), submitted to the antitrust agencies.

(ii) SDE's examination identified various failings in good regulatory practice and in the principles free competition in the Concession Contract model employed by the State of Rio de Janeiro. Prominent among these were: 1) an absence of any separation between the distribution and selling functions making it impossible for there to be a "free consumer"; 2) the establishment of conditions making the choice by large consumers to purchase piped gas directly from the producer economically unviable; and 3) the lack of precise criteria for defining the price cap, in order to encourage increased efficiency leading to increased productivity and its sharing with consumers. A selling monopoly for this product was thus granted to a private company, with incentives and opportunities to exploit its monopoly position, to the detriment of consumers.

(iii) In the light of this, this agency believed it was necessary to recommend behavioral measures in order to, at least, mitigate the problem created. For the approval of the act of privatization, the implementation of a legal and accounting separation between the functions of distribution and selling was recommended. It should be observed these measures did not imply any substantial alteration to the Concession Contract (and, in particular to its financial balance). In addition, it was recommended to CADE that it request the Granting Authority to introduce more sweeping changes to the Concession Contract, in the public interest.

(iv) On the other hand, the Concession Contract in the State of São Paulo showed the concern that this state had had in promoting competition in the potentially competitive businesses in the supply chain of piped gas, by introducing a separation of the functions of distribution and selling. This was, in this context,

a considerable advance over the privatization model employed in the State of Rio de Janeiro.

(v) Nonetheless, as there was no vertical separation, [Comgás and Gás Brasiliano (concessionaire in the Northwestern Region) could both be present], strong incentives were created in the business of selling piped gas for them to operate in such a way as not to allow third parties to be in a position to compete in this market. To control any possible practice of cross subsidy (between distribution and selling) and the truthfulness of the information disclosed by the regulated company, SDE recommended to CADE making approval of the two privatizations conditional on a legal separation between the businesses of distribution and selling, by creating two different companies.

(vi) In the opinions prepared, care was taken over the question of vertical separation between the business of supplying piped gas and electricity generation by thermoelectric power plants, since concessionaires would be able to give benefits to the plants belong to its stockholders to the detriment of the rest. To forestall problems of this sort, SDE recommended imposing the following conditions: 1) submitting the authorizations for operating thermoelectric power plants driven by natural gas to the antitrust system, under the terms of article 54 of Law No. 8,884/94; 2) implementing the recommendation to National Electricity Agency – ANEEL that it undertake constant monitoring of the vertical companies, with a view to detecting any kind of discrimination in prices or services.

(vii) In these two cases, SDE established the understanding that it was not up to the antitrust agencies under the Brazilian Constitution to control the privatization model chosen by the states or the federal government, since in this regard, the principle rules that apply is that this choice is guided by government criteria of expediency and circumstance beyond the scope of antitrust law. It is the legal responsibility of the antitrust agencies, however, to check whether the act of privatization will create or reinforce a dominant position resulting in the elimination of competition in a substantial part of the relevant market for goods or services."

B2. Czech Republic

The first example highlights the role that a competition agency can play in ensuring that a rival has access to the network of a recently privatized telecommunications company. Without such access, such rivals would face little incentive to enter the market and invest in the first place.

"Refusal to enter into an amendment to the contract on interconnection in telecommunications sector

(i) The Office intervened in the case of the behaviour of a dominant operator of integrated telecommunication network – ČESKÝ TELECOM, a.s. against its competitor, DATTEL, a.s., which provided telecommunications services via integrated telecommunication network in delimited territory of the Capital of Prague.

(ii) The Office assessed the behaviour of ČESKÝ TELECOM against the second competitor on the market of integrated telecommunication network operation – DATTEL, as an abuse of dominant position. ČESKÝ TELECOM refused to enter into an amendment to existing contract on interconnection with above mentioned competitor, which would provide for the division of fees (eventually even appropriate reduction) for interconnection of networks between both operators as well in case of special lowered tariff (tariff Internet 99) when using both networks of TELECOM and DATTEL for transmission of information between customer and provider of access to Internet service. By above mentioned procedure ČESKÝ TELECOM sought to exclude the competitor from effective competition in case of special lowered tariff. As a result of the anti-competitive behaviour of the dominant operator, DATTEL was forced to provide its transmission network for Internet calls with lowered tariff to its network for free, without receiving any interconnection fees from ČESKÝ TELECOM in cases of such calls. DATTEL was forced to accept such situation, so that its providers of Internet services did not cancel co-operation with it. Thus ČESKÝ TELECOM made DATTEL incapable to compete under

equal conditions with similar service in "Internet operation" for lowered tariff between the networks. For above mentioned behaviour a fine of 2 million CZK was imposed on ČESKÝ TELECOM."

The second example highlights that monopsony power can be used to intimidate suppliers. Here the remedy proposed by the competition agency seeks to ensure non-discrimination across comparable buyers, so alleviating the traditional "hold up" problem that is associated with investments in vertical relationships.

"Reduction of brown coal purchases without objectively justifiable reason

(i) A dominant electricity producer ČEZ dealt with reduced consumption and intake of brown coal for electric power production, resulting from decreased consumption of electric power in the Czech Republic, by gradual reduction of brown coal purchases only from one of long-term suppliers, Mostecká uhelná společnost, a.s. (Most coal company) without objectively justifiable reason in 1999, while purchases from other brown coal suppliers were not reduced. This behaviour was assessed by the Office as an abuse of dominant position on relevant market of brown coal for electric power production with prejudice to Mostecká uhelná společnost and imposed fine of 7.5 million CZK on ČEZ company.

(ii) The Office's decision was based on the fact, that in extraordinary circumstances (significant reduction of electric power consumption) is abuse of dominant position established by behaviour, by which undertaking with dominant position considerably reduces its purchases not proportionally in relation to one of the suppliers, in situation, when such a behaviour may cause to this supplier a serious competitive disadvantage and endanger its further existence, provided, that the undertaking in dominant position cannot provide any objective reasons for its behaviour."

B3. Hungary

The following case highlights that a competition agency can take measures against another governmental body (here a local government) that is

effectively subsidizing the output of a product and detrimentally affecting the incentives of private sector firms to remain in the industry. The example also shows that the targets of enforcement action need not respond to the competition agency's decisions in a passive manner.

"2.2.4. Assessment of free services

(i) Local governments frequently publish information in "official" newspapers. In 1998 in one of its decisions the Competition Council stated, that these papers were to be regarded as market products and as such they fell under the scope of the Competition Act. Based on a complaint the presumption was made, that the Mayor's Office of the town of Érd strives to drive out the only other newspaper having to some extent similar character published in the town from the market of local newspaper publishing by abusing its dominant position. In the course of the proceedings it was extremely important to properly define the relevant market of the free newspaper, in order to establish whether a municipality-published newspaper is competitor or not for another local newspaper. Having considered that in addition to official news of the municipality and information attracting public interest the local government's newspaper published advertisements, articles, comments, notes, advice on how to grow plants and flowers, horoscopes, cross-word puzzles, etc. the Competition Council took the view, that this newspaper may be deemed as competitor of the other local newspaper. The dominance was stated, since the issued number of copies of the newspaper published by the Mayor's Office was far higher than that of the other newspaper, and, in addition to this, the subsidy provided for it from the budget of the local government made possible the avoidance of insolvency in the long run. The abuse was manifested by the fact that the free nature of the newspaper based on the gradually increasing subsidisation of the Mayor's Office and not on the effectiveness of this newspaper. Consequently, the Competition Council stated the infringement, prohibited the continuation of the practice and a symbolic fine was imposed.

(ii) The decision of the Competition Council was fulfilled in a peculiar way. The municipality maintained the high number of copies issued, as well as the free

of charge character of the newspaper, but it limited the scope of the content to municipality news. In this way the Mayor's Office left the relevant market and the newspaper became 'official journal' of the local government. In its post-investigation the OEC found that the magazine-type character of the newspaper was terminated, so the free of charge publication of the newspaper cannot be challenged any more. The decision has not become effective, since the municipality requested the revision of the decision from the court**."**

B4. Korea

The following example demonstrates that a competition agency can be given powers to encourage the restructuring of business groups, which sometimes engage in coordinated under-investment.

"Since the economic crisis in the late 1997, the Korean government has been carrying out structural reforms across the 4 major sectors: corporate, financial, labor and public. The corporate reforms are ongoing according to the 5 major tasks agreed by politicians and businesses in Jan. 1998 and the additional 3 tasks added in August 1999.

(i) 82. Among them are the elimination of debt guarantees among the affiliates of chaebols, the prevention of undue support and the deterrence of mutual investment, which were enacted and enforced by the KFTC.

(ii) 83. It contributed to deterring leveraged management and improving financial structure of large business groups. In the financial market, structural imbalance and risks of serial bankruptcy been redressed. By the end of March 2000, cross debt guarantee which reached a whopping of 33.6 trillion won as of the end 1999 was all cleared.

(iii) 84. Through 9 times of investigations since 1998, the Commission uncovered and addressed the 29.5 trillion-won undue internal transactions ensuring that independent management system can take hold by removing the harms of "fleet-style" management. To curb multi-level mutual investment, the KFTC reinstated "Investment Ceiling" and went into enforcement in April.

Chaebol Policy and the KFTC

Chaebol, unlike large conglomerates in other countries, is a unique socioeconomic phenomenon of Korea. The Korean competition authority has paid its attention to chaebol groups realizing that competitive environment cannot be created without addressing the issues concerned.

The Korean economy has deep-seated monopolistic structure woven around chaebols and is still lacking effective regulating tools to address it. Taking advantage of circular investment, cross debt guarantee, or internal transactions, they gained and has retained monopoly over the input market resulting in the distortion of capital and manpower distribution.

This distortion as a national problem has hampered the market mechanism from functioning. It brought about external diseconomy by protecting internal players from market competition and transferring risks to the external players such as independent companies, minority shareholders or the entire economy.

The competition authority stepped in to address the external diseconomy and then make the market rules work for the full establishment of the market economy.

Mutual investment, cross guarantee, internal transactions, etc among affiliates have the "entrenchment effect." The companies under these internal supports block new entry and drive competitors out of the market. Even financially unviable affiliates are still living on such forms of financial support. The chaebol regulating policy in Korea's competition law provides institutional restraints such as investment ceilings, mutual payment guarantee prohibition, internal transaction regulation with an aim to prevent or reduce the entrenchment effect and ultimately build up a sound frame for competition."

Some competition enforcement agencies are given the right to advocate or propose regulatory reforms. In the second example, an initiative by the Korean competition agency has cleared the way for smaller firms to make investments and enter a market.

"Lowering conditions for Beer Manufacturing:

The minimum conditions for awarding license for beer manufacturing business were substantially eased. The KFTC submitted its policy suggestions: Maximum tank volume should be abolished or lowered from the current 60 to 100 and production quantity should be set over 60.

The Regulatory Reform Committee agreed on the principle that it should make it possible to make beer on a small scale and ordered the Ministry of Finance and

Economy (MOFIE) to lay a detailed measure before the Committee by the end of August 2001."

B5. Mexico

In this first example enforcement action was taken against private firms conspiring to rig the bids for state contracts for medical equipment, a form of public investment.

"Grupo Sutinmex vs Internacional Farmacéutica and others

(i) The Federal Competition Commission (FCC) initiated an investigation regarding collusion in public auctions of medical equipment. The companies involved were Grupo Sutinmex, Internacional Farmacéutica, Serral, Le Mare Internacional de México and Matur. During the investigation the public auctions summoned by The General Hospital of Mexico and the Institute for Social Security for State Workers were analysed. In both cases, a behaviour pattern among the bidders could be set.

(ii) One of the most important pieces of evidence considered in the investigation, was the tight difference among the bids, which differed in all cases only by few pesos. During the investigation, the companies involved confessed to the existence of collusive practices. Therefore, the FCC decided to impose a fine to each of the implicated companies and to issue a warning to refrain from acting contrary to the FLEC in the future."

In this second example, a boycott by suppliers undermines the viability of the operations of a downstream buyer (to the benefit of another buyer.) Investments by such buyers are likely to be constrained, if not completely prevented, should no reasonable expectation of access to materials be assured.

"Boycott

(i) Harinera Seis Hermanos (HSH) filed a complaint charging Cargill de México and a civil association of agriculture product suppliers, Asociación de

Proveedores de Productos Agropecuarios (APPAMEX), with blocking its access to imported wheat supplies.

(ii) The FCC enquiry provided evidence of a boycott, leaded by Cargill against HSH which could have the aim or effect of displacing the latter from the market. Following HSH cancellation of a wheat purchase contract, Cargill required the payment of costs incurred, which HSH refused to reimburse. By providing information to APPAMEX's members, regarding HSH's refusal to pay Cargill's cancellation costs, HSH was placed in disadvantage before its providers.

(iii) The relevant market defined was the commercialisation of hard wheat imported from the US and Canada, including the varieties Hard Red Winter, Hard Red Spring and Canadian Western Red Spring. These varieties differ from Mexican wheat in their high protein content.

(iv) Although no evidence was found regarding APPAMEX members refusal to sell HSH imported wheat, the FCC considered the intent to displace HSH from the market as an infringement to the FLEC. Pressure was exerted at the request of Cargill through the association, which was found to hold substantial market power, mainly on the basis of its market share. The FCC therefore concluded that both, Cargill and APPARMEX, were responsible for implementing a boycott and imposed fines on them. In addition it ordered APPAMEX to modify its regulations given that they fostered the commission of relative monopolistic practices.

(v) The FCC's decision was challenged through the filing of an appeal for review. However the final judgement confirmed the original decision in all its terms."

Notes

[1] See Appendix A for selected facts about the enactment and implementation of competition laws in developing countries. Although I will not refer to every table or figure in that Appendix, readers may find the information contained therein of interest useful in assessing the current state of competition law and enforcement in developing countries

[2] Although see section 2.1 below for a summary of the principal hypotheses.

[3] By which I mean outcomes in developing countries that might be broader than economic outcomes.

[4] It should be stressed that the weight given to these two components has tended to vary across jurisdictions and over time.

[5] Given the focus here is on competition law, it may be useful to report that UNCTAD (2002) has identified the following five state measures that tend to be enacted through competition legalisation:

- Measures relating to agreements between firms in the same market to restrain competition. These measures can include provisions banning cartels as well as provisions allowing cartels under certain circumstances.
- Measures relating to attempts by a large incumbent firm to exercise independently market power (sometimes referred to as an abuse of a dominant position).
- Measures relating to firms that, acting collectively but in the absence of an explicit agreement between them, attempt to exercise market power. These measures are sometimes referred to as measures against collective dominance.
- Measures relating to attempts by a firm or firms to drive one or more of their rivals out of a market. Laws prohibiting predatory pricing are an example of such measures.
- Measures relating to collaboration between firms for the purposes of research, development, testing, marketing, and the distribution of products.

In addition, some national competition laws give the agency entrusted with enforcing these laws the right to comment on, or otherwise intervene in, the formation of competition policies more generally. When a competition agency comments on the policy proposals of another state body, or when it makes the case for greater inter-firm rivalry, it is said to be engaging in *competition advocacy*. Although the tendency is for many economists (unfamiliar with competition policy) to sneer as “mere advocacy,” I would urge the sceptical to read the numerous submissions to the OECD and to the World Trade Organisation that bear on this subject before coming to a judgement. See, for example, section I.B.1 of WTO (2003) and the references contained therein.

[6] Or preventing reductions in such rivalry now or in the future.

[7] Of course, this is not to say that other government measures cannot promote such rivalry.

[8] For the purposes of the following discussion, it is worth noting that foreign greenfield investments and foreign mergers and acquisitions (that are paid for with foreign funds) count towards the reported amounts of inward FDI that a nation is said to receive.

[9] And, given the way that FDI is measured, such foreign takeovers are an element of inward FDI (if the takeover is financed with funds from outside of the country whose corporate assets are being acquired.)

[9] In the interests of openness and transparency, Clarke is a Ph.D. student of mine.

[10] In the interests of openness and transparency, Clarke is a Ph.D. student of mine.

[11] This type of merger review regime is known as a mandatory pre-notification regime. There are other two types of merger review regime; purely voluntary regimes and regimes that require notification after the merger or acquisition is

completed. Thus, in this analysis a country could have either no merger review regime or one of three types of such regime.

[12] The other two types of merger review regime were found to have no statistically significant effect on the value of cross-border mergers and acquisitions

[13] It is worth recalling here that, by their very nature, merger reviews involve judgements by officials about the likely consequences for prices etc. of a combination. These judgements are based (at best) on the facts at hand and on data about the affected markets. Errors can be made in making such judgements and certain evidence given more weight than others. To the extent that private sector participants perceive that an enforcement agency is taking a "tough line" on mergers and acquisitions those participants may fear the there is a non-trivial probability that a potentially benign merger will be found wanting and so do not propose the merger in the first place.

[14] This statement is true at the margin—it applies to incremental changes to those inter-firm arrangements

[15] Or deterring

[16] There is, of course, the very depressing possibility that officials may shift investment funds to projects where bid-rigging is possible precisely because these officials want to share the illicit profits with the bid riggers.

[17] A list of those costs and benefits can be found in part II of WTO (2003).