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**Competition Policy in
Emerging Economies**

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COMPETITION POLICY IN EMERGING ECONOMIES

Bruce M. Owen

Abstract

Well over one hundred countries now have antitrust (laws promoting competition), and the majority of these are poor countries. Antitrust generally came to these nations as part of a package of market-oriented reforms after the final collapse of the Soviet economic model in the last decades of the twentieth century. Antitrust law in poor countries adopts the language of Western models, but frequently reflects little understanding of the economic objectives of modern Western antitrust enforcement policy. The effectiveness of such laws relies almost entirely on the presence of well-trained enforcement bureaucracies, which, if they exist at all, typically are understaffed and subject to severe political constraints. Moreover, few poor countries have a legal system capable of establishing a set of reliable expectations as to the legal status of particular economic transactions, practices, or property claims. The absence of the rule of law as a reliable institution is a significant impediment to economic development—one that greatly transcends mere antitrust concerns. Nevertheless, there are means by which antitrust enforcers in poor countries can work around this problem, largely by relying on administrative law isolated from the general legal system, and by serving as advocates for institutional reform within the government.

COMPETITION POLICY IN EMERGING ECONOMIES

Bruce M. Owen¹

1. Introduction

Of the world's roughly 6.5 billion people, more than 80 percent live in poor countries.² Poor countries are also referred to as “developing” countries or “emerging” economies, although in truth some—especially in Africa—are losing ground. Such countries lack one or more of the ingredients essential to sustained economic growth. Put differently, rich countries have had the good fortune, over the past two or three centuries, to enjoy a much higher rate of sustained economic growth than the rest of the world. Although the wealth of nations differed before the Eighteenth Century, no country or region appears ever to have experienced the sustained economic growth associated with the European industrial revolution and its aftermath.

There is a vast literature devoted to explanations of the sustained economic growth that differentiates rich countries from poor countries, and an even larger literature offering models and advice to poor countries seeking to improve the economic welfare of their peoples. There have been a series of fashionable growth and development models, none of which has achieved a lasting consensus, much less a record of successful policies. Recently, relatively objective economic, institutional, geographic and other such factors have been used econometrically in an attempt to explain why some countries are rich and other not. Among the factors that have been identified by one study or another as

¹ Gordon Cain Senior Fellow, Stanford Institute for Economic Policy Research, Stanford CA 94305. This paper is a draft chapter for a forthcoming American Bar Association monograph on issues in modern antitrust law. Please send comments to BruceOwen@Stanford.edu. Because this work is likely to be revised, please do not quote or cite without permission.

² US Bureau of the Census, *Global Population Profile: 2002* (issued 2004) at 12, A-3. “Poor” countries are defined as countries other than those in Western Europe and North America (excluding Latin America and the Caribbean), plus Japan, Australia and New Zealand.

essential elements of sustained growth are natural resources, an educated population, a cultural devotion to hard work, entrepreneurship and saving, democracy and good government, “capitalism” (private property and free markets), a favorable climate, geographic proximity to trade routes, and a sound legal system.³ It is discouraging to note that many of these factors are difficult or impossible to change.

No one has suggested that antitrust is an essential ingredient of economic growth. Indeed, the institution of antitrust law in a poor nation with few formal markets appears almost ludicrous, given such a nation’s other, more pressing, uses for the resources that might be devoted to antitrust enforcement. Nevertheless, competition policy is closely related to two conditions apparently essential for economic growth: competitive markets and a sound legal system. This connection will be explored in detail below. First, however, it is useful to describe at a general level the role of antitrust in developed economies, for it is this role that is urged upon poor countries.

2. Antitrust and the economic role of law in rich countries

Antitrust legislation and competition policies in poor countries are nearly always imported from rich countries, chiefly the U.S. and the E.U., with little or no modification to meet local conditions such as unsophisticated legal institutions. Often, antitrust terms of art such as “monopoly” are translated into local language as if the technical term had a similar local definition. Any assessment of the antitrust in poor countries must begin with an understanding of the economic and other purposes of antitrust in rich countries. The relevance of these purposes or goals to the problems and context of poor countries, if it

³ This literature is vast. A recent paper attempts to pull together and test some of the principal claims. Roberto Rigobon and Dani Rodrik, “Rule of Law, Openness, and Income: Estimating the Interrelationships,” Working Paper, August 2004, Sloan School, MIT and Kennedy School, Harvard. Rigobon and Rodrik respond directly to the criticism often made of such studies, that cause and effect are not identified. Another criticism, that the studies use misleading and inadequate measures of the quality of political and legal institutions, is explored in Kevin E. Davis, “What Can the Rule of Law Variable Tell Us About Rule of Law Reforms?” NYU Law School, Law and Economic Working Paper 04-026 (2004).

D R A F T

can be demonstrated, then provides a yardstick to measure the potential effectiveness of the imported policies and their enforcement.

Antitrust scholars and practitioners in the United States take much for granted, and the law reflects these assumptions. For example, analytical discussion of substantive antitrust policy frequently, though tacitly, assumes that a clear and unambiguous statement of the law is all that is required to achieve compliance by the public. That is, firms and persons often are assumed simply to comply with law rather than following more economically “rational” strategies that take account of the relatively small probability that law violations will be detected, prosecuted successfully and penalized substantially. Put somewhat differently, compliance issues are treated as if they were exogenous to the legal substance of competition policy. Worse, noncompliance is treated as a moral rather than an economic problem.⁴ As a result, even when the effects of antitrust policies are conceptualized in terms of the private economic incentives they create, and even when imperfect information and the costs of type I and type II errors by plaintiffs and courts are considered, the overall goal of antitrust enforcement policy, public or private, is seldom described in terms of optimizing net welfare.

Given the current disrepute of the populist component of antitrust law, both in federal prosecutions and in federal courts, there remains today no other substantive policy basis for antitrust but the pursuit of economic welfare—maximization of the economic pie available to be divided among the people.⁵ This goal does not exclude consideration of distribution concerns because it is widely agreed that distributional policies affect in-

⁴ Curiously, in my experience, this sense appears at least as strong among antitrust economists as among antitrust lawyers.

⁵ An old debate in U.S. antitrust policy is whether policy should seek to enhance consumer welfare or total welfare (i.e., the sum of consumer and producer surpluses). All rents or surpluses ultimately accrue to natural persons, through their consumption activity and through their ownership rights in the fruits of human and other capital stocks. Without prejudice to the separate issue of optimal distribution, it makes no sense to carve out and exclude from antitrust consideration surpluses accruing to consumers in their roles as owners or beneficiaries of corporate capital.

D R A F T

centives and hence output and aggregate welfare.⁶ Finally, antitrust policy in the U.S. pays relatively little attention to the process by which antitrust enforcement decisions are translated into private economic incentives through information channels and intermediaries (such as the bar) that are both costly and noisy.

The preceding general description of U.S. competition policy is incomplete, ignoring for example the general devotion of the system to the pursuit of competition (or more precisely, to the elimination of collusion among competitors and of overreaching among monopolists) and to the reduction of public and private barriers to competition. It is also overstated, in the sense that many of the indicated deficiencies are, in practice, taken into account by prosecutors and courts in their day-to-day decisions.

Most antitrust lawyers would probably be taken aback by the assertion that the primary goal of U.S. antitrust law should be to instill, among decentralized economic agents, incentives compatible with the maximization of aggregate economic welfare. Yet that is the logical implication of modern learning on competition policy. Indeed, antitrust is but one dimension of welfare-oriented microeconomic policy.

A more general modern articulation of the basis of microeconomic policy (a.k.a. “economic regulation”) is the belief that competitive markets tend to enhance welfare (and, more importantly, growth) except when subject to some serious pathology. Market pathologies include externalities, information asymmetries, economies of scale or scope that are large relative to demand, and monopoly, among others. In these cases, policy interventions should seek to alter private incentives in a way that corrects (or corrects “for”) the pathology. For example, the creation of tradable emission property rights may reduce the burden of environmental externalities more effectively than other, constraint-oriented, centralized approaches. Similarly, antitrust policy can create incentives that

⁶ Following the work of Rawls, *A Theory of Justice* (1971), who called attention to the ethically attractive notion that society should seek to improve the *incomes* of its worst-off individuals in preference to increasing such persons’ *shares* of economic aggregates, it is now widely understood that aggregate welfare is affected both by the allocation of resources and by the distribution of income and wealth, because distributional policies have incentive effects on labor supply, saving and investment.

make the expected net benefits of anticompetitive behavior or practices unattractively small.

This understanding of the goal of antitrust creates a benchmark for the evaluation of particular laws, policies, and cases. Policies should be assessed by probing their likely effects on incentives, backed up if possible by empirical analysis. Legislators, enforcement officials and appellate courts should be deeply interested in the effects of their decisions on incentives, rather than the doctrinal merit of the decisions.

But decisions and policies do not create incentives merely through promulgation. Essentially all of the antitrust and other microeconomic policy tools available to the government work through the law, which Oliver Wendell Holmes, Jr. famously characterized as “prophesies of what courts will do, and nothing more.”⁷ The strength of an economic incentive created through the operation of law is directly related to the reliability and to the price of such prophesies. If what courts will do (with given facts) can be predicted with great reliability, and if such predictions are cheaply available, the law becomes an extraordinarily powerful and potentially efficient remedy for market pathologies. The great swathe of commercial law—contract, bankruptcy, and securities law in particular—illustrates this potential. In the limit, if it were possible to know with certainty and at low cost what courts will do, courts would never be presented with cases. Of course, even in these extreme conditions it would remain essential for the law to be substantively “correct” in a sense to which the legal academy is only now awakening—that is, conducive to incentive compatibility.⁸

Making sense of antitrust policy in rich countries is a first step to making sense of antitrust in poor countries, because the concept of legal intervention to maintain and pro-

⁷ Holmes, “The Path of the Law,” 10 *Harvard Law Review* 497 (1897).

⁸ Even if out-of-court transactions costs were also zero, there may be circumstances where the Coase “theorem” fails to compensate for substantively erroneous legal rules. Further, welfare outcomes are also affected by the choice of legal framework, because some pathologies can be addressed alternatively by tort, property, or contract principles, with varying effectiveness. The term “incentive compatibility” refers simply to a consistency between actual economic incentives and those necessary to achieve welfare optimization.

D R A F T

mote competitive markets originated in rich countries, especially the U.S., and has now been exported to poor countries by the national and international development agencies of the rich countries. Poor countries may count themselves fortunate simply to have markets, and often lack anything resembling a legal system capable of creating in individual economic agents a coherent set of expectations about what “courts will do.” Making sense of antitrust in such a setting requires a very different approach than is taken in the developed nations. Given scarce resources and differing institutional and cultural conditions, the *particular* laws and policies of rich countries have no obvious claim to accomplish this goal in any given poor country. Still, the basic goal is, or should be, the same: using law and legal institutions to achieve compatibility between individual incentives and social welfare growth.

The simplified diagram in Figure 1 below illustrates the process by which the legal system influences the behavior of economic agents, including both sellers and consumers. Although the diagram was constructed with competition policy in mind, it is of more general applicability. Legislation describes what is unlawful (or in some cases, what is lawful) and the penalties for unlawful behavior. Enforcement decisions are made by government agents (prosecutors) or private parties (if private rights of action are created by the legislation). The behavior of enforcement agents is influenced by available resources and the consistency and clarity of policy. This behavior affects a few defendants directly as well as all non-defendants indirectly. The indirect effects are potentially far more important.

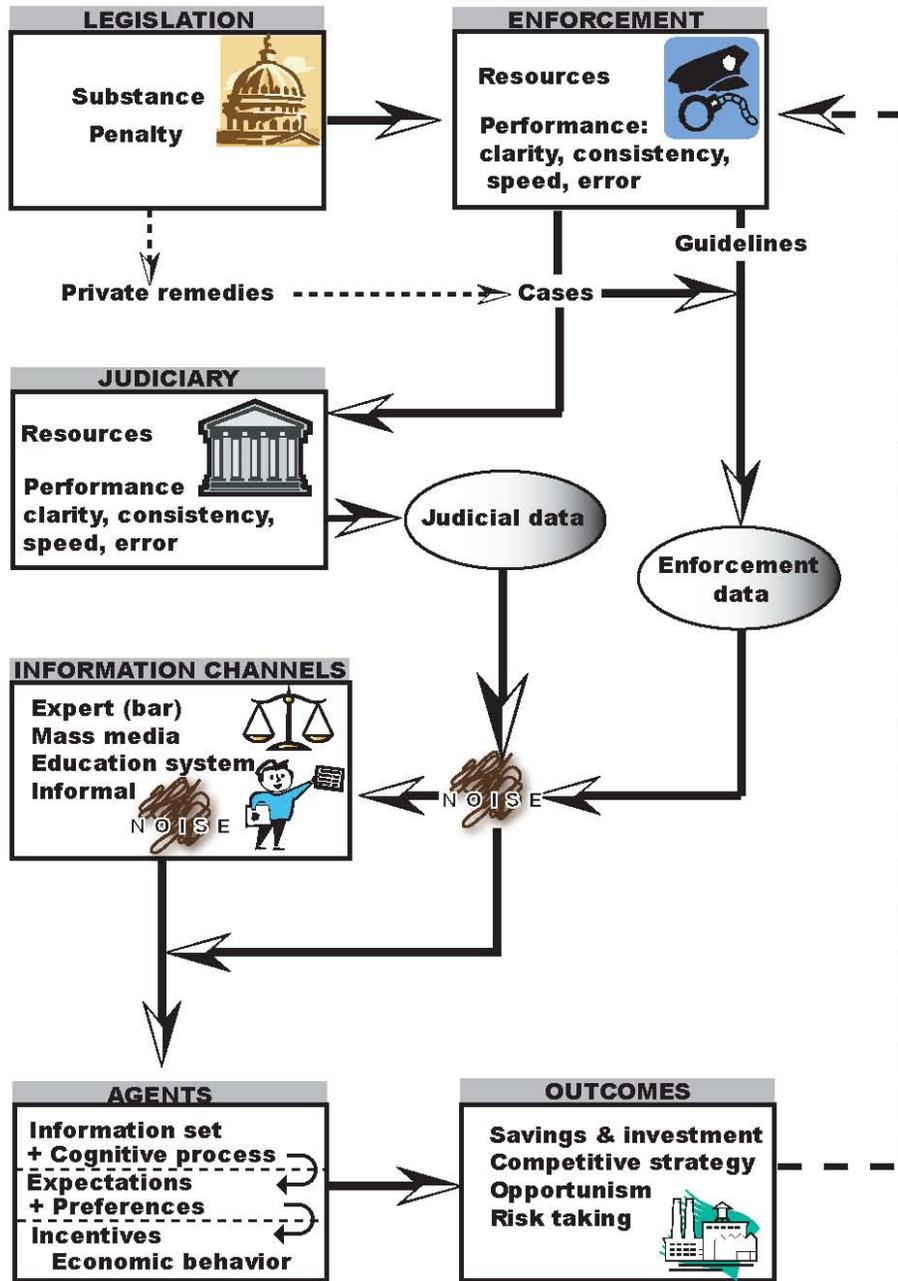


Figure 1: Determinants of Effects of Law on Economic Behavior

D R A F T

From the perspective of non-defendants, the behavior of the enforcement agents creates a data set that is one input into the formation of expectations. The enforcement data set is accessed directly or through various intermediaries, such as the bar and the mass media. The enforcement data set may be empty (because enforcement agent behavior is random or corrupt, for example).

Defendants are then processed by the judicial system, yielding a second data set, contingent on enforcement behavior, describing judicial behavior. The judicial data set becomes another input into the formation of agent expectations. Again, this set may be empty—it may contain no reliable information upon which predictions can be made.

For most economic agents the principal output of the legal system is information, upon which they will rely to form expectations of what courts will do. These expectations, other things equal, determine the expected values and risks associated with alternative economic strategies, including decisions about consumption, savings and investment. Information about enforcement and judicial disposition of cases, whether observed directly by sophisticated agents or indirectly through third party information channels is subject to “noise,” which may be random or perhaps, in some contexts, (statistically) biased. For example, the mass entertainment media, for dramatic purposes, systematically distort the public view of law enforcement, leading to unrealistic expectations of what courts, or the legal system more broadly, will do.⁹

Ultimately, individual agents form expectations about the probabilities of various future states of the world, contingent on their own actions, and these implicit “calculations” determine behavior, given agent preferences. Since only a tiny fraction of all

⁹ See for example Stefan Machura and Peter Robson, eds., *Law in film : Representing Law in Movies*, Oxford : Blackwell, 2001; David A. Black, *Law in Film: Resonance and Representation*, Urbana, IL University of Illinois Press, 1999; Astin Sarat and Thomas Kearns, eds., *Law in the Domains of Culture*, Ann Arbor, MI: University of Michigan Press, 1998; Anthony Chase, *Movies on Trial : The Legal System On The Silver Screen*, New York : New Press, 2002; John Denvir, Paul Joseph, Rob Waring, eds., *Picturing Justice* [electronic resource]. Electronic Access: [San Francisco, Calif.]: University of San Francisco, School of Law, [1998- <http://www.usfca.edu/pj/>]; Frankie Bailey and Donna Hale, eds., *Popular Culture, Crime and Justice*, Belmont: Wadsworth Pub., 1998.

D R A F T

agents become defendants, most of the effects of the legal system are indirect, through information flowing to, and influencing the behavior of, non-defendants.

In developing countries, the efficacy of information flows is impeded by distrust of government, cynicism, the cognitive dissonance that arises when traditional values are in conflict with economic and other reforms, controls on the press and other media, cognitive limitations associated with limited or no education, physical inaccessibility to communication media, and cultural norms at odds with the message of political liberalism insofar as it insists on the legitimacy of non-traditional secular law. In extreme cases, the only effective sources of information are those from trusted personal sources: opinion leaders among family, friends, and perhaps local authority figures. Understanding information flows and related changes in belief systems is far advanced in social psychology and marketing research, where flows of propaganda (whether from governments or commercial advertisers) are analyzed along with the influences of “word of mouth” and “opinion leaders” on the success of political ideas and new products.¹⁰ This knowledge needs to be applied to the problem of designing effective legal systems to support market and other economic reforms, and ultimately to antitrust policy design.

A very large fraction of academic analysis of competition policy is devoted to the legislative and the judicial stages of the process depicted in Figure 1. Analysis of government enforcement behavior is also available, but not in the depth applied to statutes and case decisions. Almost nothing is written about the process by which the information sets created by enforcement and judicial actions is transmitted to and processed by individual economic agents, or about the ultimate effects of the information on behavior and economic outcomes. This neglect might be defended in rich countries on the ground that the policy debates surrounding substantive statutory and common law and enforcement all take place in the same information consumption context. This defense is not very satisfactory, however, because the technology of information consumption would not be expected to affect different substantive policies equally and in the same directions. When it

¹⁰ An early classic on propaganda is Paul F. Lazarsfeld, “Public Opinion and Propaganda,” 12 *Public Opinion Quarterly* 496 (1948). For an example from the marketing literature, see Vijay Mahajan et al., “Diffusion of New Products: Empirical Generalizations and Managerial Uses,” 14 *Marketing Science* 97 (1995).

comes to poor countries, however, neglect of information transmission, consumption, and processing is a potentially tragic oversight.

Indeed, the pattern of modern law reform in poor countries offers little evidence that the relationships illustrated in Figure 1 are generally understood. Attention typically is focused on the adoption of statutes and codes affecting commerce, very often modeled on the corresponding laws of the developed countries from which foreign advisors have arrived. The statutes and codes of the developed countries have the virtue that they are known to be not inconsistent with the previous economic development of those countries, given their judicial systems, prosecutorial resources and policies, and information channels. It seems obvious that a different set of statutes and codes might be better-suited to the very different conditions of the poor countries, which lack effective and reliable judicial systems, and where information channels are often impaired by inadequate educational systems, poor or no legal training for the bar, controlled or non-competitive media, corruption, and so on. Effective legal reform in these conditions, with limited resources, might be achieved by more practical measures than the adoption of new statutes. But the important point is that measurement of the effectiveness of legal reform, in poor countries as well as rich, must focus on improvements in agent economic behavior traceable to new incentives created by changes in the information sets upon which agent expectations are based. Focusing on the first step in Figure 1, while necessary, is very far from sufficient to achieve significant practical results.

III. Antitrust in poor countries

1. Information sources and studies

The purpose of competition policy or antitrust law in a poor country should be to seek the same goal as in a rich one—growth in economic welfare—as part of a comprehensive system of interventions to make private incentives more compatible with the growth of aggregate economic welfare. The concern, of course, should be to make net incentives more compatible with growth, where “net” refers to the necessity to subtract

D R A F T

welfare losses associated with the unintended distortions of incentives created by government regulatory interventions. In antitrust, such distortions include, for example, benign or productive behavior deterred by misconceived policies, such as the Robinson-Patman Act in the U.S., or the erroneous application of sound policies, such as mistaking non-cooperative oligopolistic pricing for price fixing.

There are online sources of information about the antitrust statutes of most countries that have such laws.¹¹ A number of developing countries have web sites maintained by their antitrust enforcement authority or competition policy agency, but only a small number of these report enforcement actions and judicial decisions. There appears to be no source of statistical information, either for developed economies or emerging ones, regarding the reliability (predictability) of judicial outcomes, the accuracy of professional or lay expectations of what courts will do, biases in information channels, or the impact of any of these matters on economic behavior in general, much less in antitrust specifically. There are, however, published estimates, based on opinion surveys, of the degree of corruption in the government and the judiciary in various countries, and anecdotal evidence on this issue abounds.¹²

¹¹ The following URLs offer information on the antitrust statutes and competition policies of various nations. Most also offer hyperlinks to the Web sites of individual national authorities: Asia-Pacific Economic Cooperation (APEC) <<http://www.apeccp.org.tw/>>; European Free Trade Association <<http://www.efta.int/>>; Free Trade Area of the Americas <<http://www.ftaa-alca.org/>>; United Nations UNCTAD Competition and Consumer Policies <<http://www.unctad.org/en/subsites/cpolicy/index.htm>>; World Trade Organization (WTO) Competition Policy <<http://www.wto.org/%20>>; Organization for Economic Cooperation and Development (OECD) Competition Policy and Law Division <http://www.oecd.org/oecd/pages/home/displaygeneral/0,3_380,EN-home-71-3-no-no-no,FF.html>; International Bar Association, Global Competition Forum <<http://www.ibanet.org/general/CommHome.asp?section=SBL&Committee=SBL-C>>; <<http://www.globalcompetitionforum.org/>>; International Competition Network <<http://www.internationalcompetitionnetwork.org/index.html>>; U.S. Department of Justice, Antitrust Division, <<http://www.usdoj.gov/atr/contact/otheratr.htm>>; Competition Online, <<http://www.clubi.ie/competition/compframesite/WorldsBiggestAntiTrustSitesList.html>>; Yahoo <http://fullcoverage.yahoo.com/fc/Business/Antitrust_and_Trade_Regulation/> .

¹² See, for example, Daniel Kaufmann, Aart Kraay, and Pablo Zoido-Lobaton, Governance Matters, World Bank Policy Research Working Papers No. 2196 (1999). Kevin E. Davis is critical of the quality of the measures used in connection with the measure-

D R A F T

A corrupt judiciary or a corrupt administrative structure makes a mockery of any notion that antitrust will instill economically efficient incentives in the private sector. Wallis makes an important distinction between the modern Western concept of corruption, in which individuals bribe officials for private economic gain at public expense, and the earlier “systemic” or constitutional concept, in which the economy is merely a tool by which the powerful achieve or maintain political power.¹³ Many poor countries lack democratic limited government, and are systemically corrupt in this sense. Effective (peaceful) economic reform, such as the promotion of free, open and competitive markets, is very difficult when it is inconsistent with the survival of the state.

Studies of antitrust law in developing countries have been chiefly descriptive or prescriptive, focusing on the statutes and the enforcement agencies, sometimes on particular cases, but almost never on induced changes in behavior among non-party agents.¹⁴ The difficulties of such a task are immense, of course, but the chief reason for the absence of attention to this issue is a preoccupation with other measures of the success of legal reform, such as reductions in latency. There have, however, been empirical studies linking the existence of antitrust and regulatory reform to favorable economic outcomes, such as lower prices, or increased infrastructure investment, in telecommunications and

ment of corruption and institutional attributes. Davis, *What Can the Rule of Law Variable Tell Us About Rule of Law Reforms?* Working Paper No. 04-026, New York University, Law and Economics Research Paper Series, 2004. <http://papers.ssrn.com/abstract=595142>

¹³ John Joseph Wallis, *The Concept of Systematic Corruption in American History*, Working paper, October 2004, NBER and University of Maryland. See also, Susan Rose-Ackerman, *Corruption: A Study in Political Economy*, (New York: Academic Press, 1978); Edward L. Glaeser and Claudia Goldin, *Corruption and Reform: An Introduction*, NBER Working Paper 10775, September 2004 <http://www.nber.org/papers/w10775>; Toke S. Aidt, *Economic Analysis of Corruption: A Survey*, 113 *Economic Journal* F632 (2003).

¹⁴ Some descriptions of antitrust laws in developing countries appear in: BRUCE M. OWEN, SU SUN AND WENTONG ZHENG, *ANTITRUST IN CHINA: THE PROBLEM OF INCENTIVE COMPATIBILITY*, Stanford Law School John M. Olin Program in Law and Economics Working Paper 295, September 2004 <http://papers.ssrn.com/abstract=595142>; OWEN, *COMPETITION POLICY IN LATIN AMERICA*, Stanford Law School John M. Olin Program in Law and Economics Working Paper 268, October 2003 <http://papers.ssrn.com/abstract=456441> and Owen, “Imported Antitrust,” 21 *Yale Journal on Regulation* 441 2004.

similar industries.¹⁵ These studies do not seek to distinguish outcomes achieved by regulatory or antitrust fiat from outcomes achieved by changes in incentives facing decentralized agents.

2. The logic of lawlessness

Lawlessness is a common feature of the economic landscape in poor countries. Specifically, the state is relatively ineffective at protecting persons and property from appropriation, and the state itself, through its officials, is often the appropriator. The judicial system is often incompetent, corrupt, and dependent on or deferential to the executive power. As a consequence, there is widespread cynicism; economic agents expect nothing from the law, and seek shelter from risk and uncertainty through other means, such as alliances with politically powerful families or groups. In some circumstances informal markets backed up by community-enforced social mores provide a substitute for formal law.

The adverse economic effects of lawlessness are obvious. There is less incentive to save and invest because the payoff has a smaller expected value, due to appropriation, and greater variance, because the powerful are not deterred from arbitrary and capricious actions. The investment disincentive applies to human capital as well as traditional capital. Also, there is over-investment in relatively inefficient means of protection of property, such as high walls, bars, and razor wire, in place of police patrols. In some countries, well-off individuals require private bodyguards and even private armies. Clearly, the economic benefits of reform in such circumstances may be very great, so great that even dictators may promote reforms. The regime of General Pinochet in Chile is a recent example.

Imagine that American antitrust principles are inserted into an economy with the characteristics just described. Both state and private actions are brought before courts for

¹⁵ *E.g.*, SCOTT J. WALLSTEN, AN EMPIRICAL ANALYSIS OF COMPETITION, PRIVATIZATION, AND REGULATION IN AFRICA AND LATIN AMERICA 2 (May, 1999) (“[C]ompetition is the most effective agent of change, privatization without regulation may not improve service, and regulation is especially important when privatizing a monopoly incumbent.”), <http://econ.worldbank.org/docs/553.pdf>.

resolution, and the judges are (let us say) told to employ relevant U.S. case law (in common law countries) or a modern competition policy code (in civil law countries). This task will be beyond the capabilities of the judiciary. The outcomes of these cases, whatever they may be, will hold no lessons and affect no expectations, and economic behavior will, in general, be unchanged. No economic policy that relies on the judicial system for enforcement, or even appellate review of administrative regulation, can affect economic behavior in a country beset by lawlessness. If the lawlessness is merely venal, it may be remediable with education and reforms. If it is systemic (to use Wallis' distinction) reform is unlikely to be effective before the country has adopted a democratic regime of limited government, in which economic activity is an end, not a means to maintain political power.

3. Administrative approaches

If a competitive market economy is an important goal for the policy makers of a developing country, they should be provided with sound economic advice on achieving that goal. This requires a well-trained cadre of experts with influential positions in the ministries dealing with economic policy, such as finance and commerce. Because the judiciary is seldom a reliable vehicle for protecting property rights, and because judicial reform implicates far broader issues than competition policy, administrative enforcement of competition policy may be far preferable to an approach through the judiciary. An administrative agency, unlike courts, can establish a clear and consistent set of policies, publicized through guidelines as well as careful case selection and public explanations of case selection decisions. This in turn can create a set of expectations in the business community that influence behavior that does not come under review, because of the incentive to avoid such review.

An administrative agency approach is also useful for purposes of competition advocacy. Both national and local governments, and their regulatory agencies, are a common source of restraints on competition. Regulatory, franchising, and purchasing agencies of government seldom appreciate the potential dangers of foreclosing competition, and may even gain from it. Intervention by a competition advocacy agency, especially

one with either the legal power to review decisions by other agencies or with an influential position in the relevant ministry, can make the introduction of more competitive policies much easier.

4. Policy Goals

A poor country has limited means. It cannot reasonably devote a large fraction of its scarce resources of political attention and expertise to the pursuit of goals that are unlikely to have a significant payoff in economic growth and development. Competition policy in such a context must focus on the highest payoff issues, resisting the temptation, for example, to play to the grandstand by emphasizing consumer protection issues that can be addressed by other agencies. What are the high payoff issues? There is a consensus arising from the literature on development:

Lower trade and foreign direct investment barriers. Imports are an immediate major source of potential competition for many goods and services produced by inefficient domestic suppliers.

- Privatize government-owned suppliers. Government-owned suppliers must serve goals other than efficiency in order to satisfy political needs.
- Structure privatized sectors as competitive firms, not monopolies. Selling off a monopoly franchise to maximize short-run government revenues is short-sighted. If monopoly is unavoidable, regulation appears to produce better results than unregulated monopoly.
- Promote reduction in barriers to entry and competition in regulated industries, including local government franchising and purchasing operations.
- Promote reforms that reduce the transactions costs of commercial activity, including finance, contract, and bankruptcy laws.
- In domestic industries producing non-tradable goods and services, use careful case selection and abundant credible publicity to deter price fixing

D R A F T

agreements; avoid more difficult cases where inappropriate incentives would be harmful, such as vertical restraints cases and mergers with marginal effects on concentration.

In short, antitrust policy in the developing world is most productively conceived as the handmaiden of broader economic market reforms. Its role is fundamentally different from the role of antitrust in developed countries, where vigorous private competitive markets are the norm. The widespread adoption in poor countries of the antitrust laws and methods used in the developed world is likely to produce no greater harmony than the attempt of a marching band to render a baroque string quartet. The band needs to march to a different tune.