1. Introduction

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OVERVIEW

The fundamental goal of competition law is to support productivity and innovativeness, but in fact the short-term effect of enforcement actions is very commonly to reduce product prices. Consumer welfare gains are a by-product of competitive markets and effective competition policy enforcement. This book presents market studies of a range of goods and services markets in ten developing countries, focusing on the effects on consumers. The markets cover foodstuffs, pharmaceuticals, items purchased to support publically financed activities, TV distribution and international money transfer services. The countries include three in Africa (Mali, Morocco and Zambia) four in Asia (Armenia, Uzbekistan, India and Vietnam), and three in Central and South America (Argentina, Costa Rica and Jamaica).

The studies find a pervasive – although not total – lack of competition in those markets, with identifiable harm to final consumers. Conversely, it may be possible to use the tools of competition policy to bring about gains for consumer welfare. The studies describe the types of investigations undertaken by national competition authorities to understand competition problems within their jurisdictions, the scope of their actions and the influence that competition policy interventions can have on economic outcomes and policy.

PURPOSE OF THE BOOK

The purpose of this book is to give an international profile to the work done by staff and academic associates of young competition authorities, to provide material for discussion in national and international forums and to add to the evidence base for more informed economic policymaking in developing countries.

Studies of competition policy in developing countries have traditionally focused on the effects on producers, that is to say the value of the

competitive process to production efficiency, innovation and competitiveness (Hoekman and Holmes 1999). Relatively few studies up to now have addressed competition policy from the consumer perspective, even though competition is not, in the view of some practitioners, an end in itself but an instrument designed to achieve a certain public interest objective, namely consumer welfare (Csereš 2007). Some recent empirical studies (notably by the World Bank, see Licetti 2015 and Kitzmuller and Licetti 2013) have begun to emphasize the impact on consumers. Even so, there is a missing element. Competition rules and enforcement agencies consider that the welfare of consumers comprises a broad pool of intermediate sellers and customers of firms; only occasionally do they consider the impact on the economic interests of final consumers.

Economists traditionally favour a total (production plus consumption) welfare standard on the basis that it generates the most for society as a whole and promotes the maximization of efficiency. Economists consider the consumer welfare standard as arbitrarily favouring one group over another, and possibly impeding the maximization of efficiency, innovation, competitiveness and economic growth. Still, efficiency should not be absolute. It should not be the end but the means to achieve social goals. Consumers usually have a weaker position in the process of bargaining, lobbying and litigation, such that a pro-consumer policy objective seems justified. Therefore, a consumer welfare standard can be seen as a kind of ‘rebalancing’ measure.

Welfare analysis tends to use a simple framework wherein firms sell products to final consumers; but producers’ outputs are most commonly inputs for intermediate actors who then sell on the products to the retail market. When intermediate firms have some market power they may not pass on production efficiencies (or lower producer prices gained as a result of their buyer power) in lower retail prices but keep the savings as rents (Csereš 2007).

This book therefore seeks to understand the characteristics and causes and the consequences for consumers of lack of competition, with interest not only in final retail prices but also in activities within the distribution sector, that is to say in all the businesses involved in transmitting products from the producer to the final consumers. The analysis is based on empirical studies whose authors are thoroughly familiar with the structural and political economy dimensions of the countries concerned.

The book covers the following topics. It reviews the *state of competition* in different economic settings in selected product markets and the distribution activities that lie behind them and identifies the effects on consumers. It describes the *investigations* undertaken by the competition authorities and reveals the kinds of difficulties they faced in so doing.

The studies were based on the assumption, common to all advocates of competition policy, that a workably competitive marketplace is achievable where private impediments to competition are removed and that government intervention to that end may both be necessary and possible. The book thus also discusses the *types of intervention and representation that the competition authorities could make* in each case, including both direct interventions aimed at correcting market failings and other measures intended to empower the authorities within their respective national governance systems.

MAIN FINDINGS ON THE STATE OF COMPETITION

The main general finding of this book is that lack of competition, often attributable to corporate strategies, is a key factor in the failure of markets to function well.

There are two apparently exceptional cases. First, Chapter 8 on the international money transfers market in Uzbekistan describes a spectacular success of the competitive market mechanism. Nevertheless it took several years to reach a non-exploitative market structure and consumers bore the cost in the interim.

Uzbekistan is a low-income country from which many members of the labour force leave each year to work abroad. The stock of workers abroad in 2010 was approximately 2 million people, which amounted to 7 per cent of the population (Ajwad et al. 2014). Remittances sent home by these workers to their households amounted to around US\$3.5 billion, equal to nearly 7 per cent of GDP, approximately 30 per cent of exports in 2012 (IMF 2013). At the time of the study, remittances were equivalent to four times the value of foreign direct investment into Uzbekistan.

The tariffs charged on remittance transfers are highly significant to migrant households; they have remained stubbornly high worldwide (World Bank 2013). In Uzbekistan, when the money transfer market opened in the early 1990s and the ‘first-mover’ company arrived, standard charges were 12 per cent of the amount remitted; some years later, after several other actors had entered the market, the average tariff had come down to 2 per cent. The competitive process was effective in this case despite the first-mover company’s attempt to try and exclude other providers from entering the market. However, its tactics proved ineffective in a rapidly growing market. No competition regime was in place in the financial services sector at that time. If it had been, and if action been taken from the outset against the attempted abuse of dominance, the costs to consumers could have been greatly reduced.

The exclusionary tactics of the first-mover company were simply ignored by the agents whose behaviour it tried to restrain and against whom it had no form of redress. The money transfer market displayed some distinctive features that undermined the corporation's exclusionary tactics. The market was expanding on the back of rapid, low-cost technological change and it offered those agents good prospects of providing their services profitably to the new entrants as well. (Such transactions were additional to those carried out for the first-mover.) The money transfer technology was widely shared and agents did not risk forfeiting access to this 'input' by side selling to other providers. These conditions do not apply in all contexts, for example, in the vertical agreements found in agricultural supply chains (Swinnen and Vandenplas, n.d.).

Another apparently competitive case is that of Zambia, discussed in Chapter 5. The study concerns a set of adjacent markets in protein foods (beef, chicken, eggs and dairy). These markets seemed quite well-functioning and competitive, even though the large beef segment was dominated by one very large market actor. The company's position in that segment was due to its superior operational efficiency and the high quality of its products, for which consumers were prepared to pay a premium. The company's marketing strategies included a franchise arrangement for fresh beef meat with the nationally dominant, large-format retailer. The study finds no evidence that the beef company had abused this arrangement. Nor could it be shown, as suspected, that it leveraged its resources into markets for other protein foods where it was also a large actor. However, the company enjoyed major scale economies. These may have served as a barrier to potential rivals if access to land and finance for investment was locally constrained. The study suggests that barriers to entry of any kind that render monopoly more durable may need continuing scrutiny from the competition authority. The authority may also have to urge government to take measures in other domains, in this instance the finance sector, to facilitate market entry and promote the competitive process.

Apart from those two country cases, the chapters all describe markets that are not functioning well, exhibiting a pervasive lack of competition. The main cause is a range of anticompetitive acts by market actors. Two main types of conduct are concerned: exclusionary unilateral conduct by dominant firms and collusion between two or more firms, acting together to generate or seek to acquire greater market power. The ten country studies in this book itemize various instances of corporate conduct of this kind and describe the effects on markets and the outcomes for consumers. Competition policy regimes generally have a third concern, mergers that may have a detrimental effect on competition, but mergers do not emerge as a factor in these studies.

The country chapters are grouped into four sections dealing with groups of related product markets. The themes and findings of anticompetitive acts in the countries in each group are discussed later in this introduction.

In examining the causes of ill-functioning markets, many of the studies also identify factors beyond features internal to, and activities within, the market which contribute to failures of the competitive process. Each country case illustrates the presence of one or more of these external factors. Some relate to the ways in which economic transactions are governed by the state, while others are related to a country's physical characteristics, the level of prosperity and the existence or absence of institutional structures needed to support market functioning. To that extent, the book points to wider problems than corporate strategy in the functioning of markets. It suggests that ambitions to improve market outcomes need to be tempered with a sense of realism and openness to the need to create or strengthen 'market making' institutions or arrangements. The book therefore also illustrates the power of competition analysis as a tool to the understanding of how markets function, or fail to do so, in real world conditions, well beyond the specific provisions and sanctions of competition law.

The toolkit for governance of economic transactions relies heavily on sector regulation, which is normally understood to fall into two categories: economic and social. Economic regulation generally involves a government-directed alteration of or derogation from the unconstrained operation of the market in a particular sector, typically undertaken in order to address market failure. Social regulation pursues predominantly 'social' aims such as personal health, product and service quality standards or environmental protection, without attention to the particular product markets concerned (Dunne 2015). Both types of regulation can have competition effects. The material in this book suggests that a third type, 'procedural' regulation, which does not obviously fall into either the economic or social category, can also put important constraints on competition. Four of the country studies (Morocco, India, Jamaica and Vietnam) exemplify the competition consequences of social and procedural regulation combined. Social regulations may serve as the basis for exclusion of new players into the market to a greater extent than is warranted, either for products, by means of health and safety standards or, for services, by means of accreditation requirements.

On the evidence of the studies in this book, procedural regulations may often play out to impede competition by fragmenting markets into a proliferation of niches. Market niches are insulated from each other in ways which may or may not have a basis in the real economy, but which jeopardize the contestability of the product market on the national plane.

For example, in Morocco, regional and local government administrations have their own procurement agencies. Each delineates a limited geographic market, each with its own familiar market actors. Few of these actors try to be active in more than one geographic market. Companies located in the central business axis of the country manage it better than others but they also tend to be nationally dominant in their line of business. Licensing restrictions set by sector regulatory authorities in the TV industry in Argentina and in pharmaceuticals in Vietnam and Jamaica also serve to limit the number of players in relevant product markets. Within niches, actors attain and can exercise dominance and exploit consumers. The small size of such niches does not make them irrelevant. Those consumers who are located within the scope of each niche are harmed, and the replication of niches throughout the country aggregates into consumer harm on a large scale.

The interesting question from a political economy perspective is the extent to which the market actors that benefit from social and procedural regulations are instrumental in designing and sustaining such regulations. The same question can be raised in relation to competition law itself, as a form of economic regulation. Among the country studies, Armenia's competition law, and the powers of the competition authority, stands out as having been particularly limited in the mid-2000s. Similarly, very weak consideration is given to competition effects in the regulatory instruments affecting public procurement in India. The consequence has included great wastage of public funds, and tarnished public perception of the integrity and competence of government. The situation is now slowly being rectified by the strengthening of the national competition policy regime and better understanding of the need for coordination between pillars of the regulatory framework.

Other instruments of economic governance are price controls and subsidies. These are designed to overcome failures of the market to generate socially equitable outcomes. They are directed at the operation of particular markets, with the intention of protecting particular population groups from their ill effects. Sometimes these interventions may be poorly designed and the negative impact on competition is unintentional. In such cases the competition authority might be able, on the basis of its evidence, to persuade the government to reverse or modify the intervention. Sometimes an intervention may be undertaken because it advances other social goals or because they are based on a more dynamic view of economic development than is promoted through the market mechanism. Mali provides an example of how subsidies can produce the desired effect in the short term, of protecting food security in this case, but at the cost of undermining the competition process on which the evolution of the economy depends.

The challenge is again to distinguish when policy measures legitimately embody – and in practice succeed in promoting – collective measures in pursuit of some non-market goal, from situations where the corporate beneficiaries of the policy exercises leverage, directly (on government, by providing material support) or indirectly (by manipulating public opinion), in order to sustain such distortive measures. A detailed competition analysis can help to assess the outcome of such interventions, reveal whether they do succeed in their social aims, and show the impact on market dynamics.

Finally, poor physical or institutional market infrastructure can also impede the competitive process. Mali, Uzbekistan, Argentina and Costa Rica illustrate this feature. Mali, and perhaps Zambia, has poor financial services. Uzbekistan's transition to a fully competitive money transfer market would have been faster if the national financial institutions had been integrated into international financial payments structures. Morocco's procurement regime would be improved if the governing framework had the status of law and if there were a public institution to monitor public procurements.

Development of physical infrastructure may be impeded by a country's unfavourable geography or by a pattern of widely dispersed settlement. Argentina, Mali and to a lesser extent Costa Rica also illustrate the influence of geography on competition. Investment in physical infrastructure is slow to yield results and may not be financially feasible without technological innovation. In the interim, poor infrastructure leads to market fragmentation. As in Costa Rica, a given product market may look competitive, but is in fact formed of many small, insulated and highly concentrated local markets. In such situations, it may fall to the competition authority to find imaginative ways of promoting competition and enforcing the competition law at the local level. This might be done by cooperating with local authorities responsible for social and procedural regulations. Having consumer protection within the operational scope of the competition authority can also be useful in this connection. In Peru, for example, the competition authority not only saw the possibility of scaling up its pro-competitive interventions through local authority structures, for example as regards the regulation of taxi services (done at local level), but it also learned that consumer complaints were correlated with competition problems in the relevant market (Joekes and Evans 2008). Another implication is that market studies and research into problems may need to be undertaken outside the capital cities, where competition authority staff may otherwise be forced to concentrate their efforts because of pressures on the operational budget.

NATURE OF THE INVESTIGATIONS

This book also reveals the barriers to research and the many sorts of practical difficulties that young competition authorities have to overcome in carrying out market studies. The book complements other volumes, such as by Lewis (2013), which examines the institution building challenges facing new competition regimes in developing countries. It may also be useful to the work of the community of international scholars and practitioners affiliated to the UN, OECD and the International Competition Network (among others), that are building up knowledge of competition law rulings in different jurisdictions and supply technical assistance for enforcement work on that basis.

First, the studies were carried out by the provision of an external research grant to supplement the authorities' normal operational budgets. All the studies were made possible by grants from Canada's International Development Research Centre,¹ with the exception of the Moroccan one.² The Centre developed a competition research grant-giving facility on the understanding that new authorities could be worthy beneficiaries of extra support. Most 'mature' competition authorities routinely carry out a number of market studies, which do not need to be triggered by a complaint or by an intention to prosecute a legal case. Young authorities in developing countries – whose need to increase their technical capacity and build up their knowledge of the economy is so much greater – could benefit from having the resources to do the same.

The IDRC granting mechanism also encouraged authorities to carry out the studies in collaboration with external researchers, of whom most were drawn from local universities. The balance of effort between the staff of the authority and external researchers varied from case to case: from a large role for the external researchers (in Argentina, India and Morocco), to cases where the work was almost completely carried out by authority staff members themselves (in Zambia and Jamaica). A variety of other arrangements were in place in the remaining countries. Although not strictly a condition, the grants were intended to enable working relationships of this kind to develop, partly to lever the authorities' own in-house capacity, and partly to broaden interest within the local research community in competition policy. Dissemination activities were also encouraged in the expectation that they could provoke discussion of the types of policy interventions that might be used to correct the harm to consumers caused by competition failures.

Second, the chapters reveal a range of practical problems that the research teams encountered in carrying out their market studies. In Armenia, the study arose from an attempt to overcome the lack of

information gathering powers given to the authority under the law, as well as uncertainty about which elements of a weak competition law could have traction in a setting where a relatively large number of product markets are monopolistic or heavily concentrated and the incumbents are believed to have political connections (World Bank 2013). In Zambia, the authority had limited in-house capacity and was not able to look into the technical issue of cross-subsidization. In Argentina, the fast moving nature of the TV industry reflected the rapidity of technological and economic change.

Several of the investigations required coordination with sector regulators both to enable evidence gathering and to define the type of recommendations that could feasibly be made to policymakers for promoting competition. The researchers in Mali, India, Jamaica, Uzbekistan and Vietnam all managed very well the need to instil a sense of confidence and common purpose with the respective sector regulators in order to facilitate their analysis and make feasible policy recommendations.

PRODUCT MARKET GROUPINGS

The country studies in this book are grouped into four sections examining markets in different parts of the economy. Three of the sections deal with the delivery of goods and services directly to the consumer: foodstuffs and household goods in Armenia, Costa Rica, Mali and Zambia, pharmaceuticals in Jamaica and Vietnam and TV and money transfer services in Argentina and Uzbekistan respectively. The fourth section deals with markets where the delivery to the consumer is indirect, through public procurement in India and Morocco.

The Distribution of Foodstuffs in Armenia, Costa Rica, Mali and Zambia

The four chapters in this section are all concerned with the distribution of foodstuffs. They examine the production, distribution and retail sale of food products in fixed location stores including hypermarkets, supermarkets, department stores, convenience stores, and traditional small corner shops. Despite its often traditional appearance on the street, the distribution services industry has been highly dynamic in recent decades and subject to considerable upheaval. The chapters on Armenia and Costa Rica deal with the structure and functioning of the groceries distribution market in general. Of the other two, the chapter on Mali examines the production and distribution of cereals and the chapter on Zambia deals with the production and distribution of animal protein foods.

The food distribution sector has been greatly affected by the two

main aspects of the market liberalization agenda over recent decades. Liberalization of trade reduced the prices of imports and incentivized distributors to seek out international sources of supply. In some countries, the trend towards liberalization of services and capital flows facilitated the relocation of distribution sector service companies. More importantly, the industry has also experienced rapid and extensive technological change, largely ICT based, that has improved inventory control and transportation, leading to scale economies that have supported a universal trend towards increasing size of retail outlets (WTO 2010).

These innovations were very disruptive of existing industry structure and inter-firm arrangements. An extensive literature has examined the employment and income effects of the entry of large international super-market chains activities into developing countries and the distributional aspects of changes in the relationships between retailers and local suppliers of foodstuffs (for example, Reardon et al. 2003). Local supply chains for fresh produce became concentrated as supermarkets sought to deal with larger scale, reliable producers of homogeneous, quality products. The distributional consequences of these changes were frequently considered to be negative. The most vulnerable, i.e., the smallest producers and lowest income consumers, were often marginalized by these changes. The associated redistribution of profit margins along actors in supply chains was often also a cause for alarm.

The four chapters in this section explore the incidence of horizontal restraints and the characteristics of vertical agreements in the respective countries. Horizontal restraints cover price fixing or agreements to restrict output among economic actors that would otherwise be rivals, producing the same good or service. Vertical agreements involve arrangements between actors in a supply chain, carrying out complementary activities. Vertical arrangements may be anticompetitive if they involve abuse of market power – downstream or upstream – by an actor that is dominant at its stage of the supply chain or if they create barriers to entry. Practices that have attracted attention for their possible anticompetitive effect in this regard include resale price maintenance, selective distribution, exclusive dealing arrangements, delineation of exclusive territories, predatory pricing, bundling, and listing, shelf and advertising fees. Some of these practices were found to be present in Costa Rica and Armenia, but they did not impact on the final consumer in ways that allowed for prosecution under the competition law.

The competition effects of vertical arrangements are complex and not treated in the same way across jurisdictions. Franchises, such as those studied in Zambia, are exempted from scrutiny under the competition law in some jurisdictions, such as the EU, on condition that they do not

include anticompetitive price setting provisions or territorial and resale prohibitions. Some countries do not rely on competition law provisions to regulate the distribution sector. Instead they have developed codes of good practice – often non-binding or a mix of self-regulatory and legal-regulatory approaches – to govern buyer–supplier relationships and to help prevent and resolve conflicts (WTO 2010). Chapter 3 on Armenia is concerned with market power and the behaviour of market actors in the retail distribution sector in general. First it is concerned to understand the features of the modern fast-evolving distribution sector, which does not in this case include foreign investors. The study focuses on vertical arrangements and examines whether dominant distributors (and suppliers) impose coercive provisions in their transactions in the market that may deter competition. In general, it finds that they do not.

The situation in Armenia is coloured by two special features that are of as much interest as the empirical findings. One is that a relatively large number of food product markets are supplied almost entirely by imports through importing channels that are heavily concentrated. Yet the competition authority had not been able to investigate possible abuse by these importers, partly for political reasons, given that the dominant companies are believed to flourish on the basis of close relations between the business owners and the political authorities. Second, the provisions of the competition law – although modelled on the EU's competition framework – reflected some key elements of the previous central planning regime. During that period, large-scale production was carried out almost entirely by state-owned enterprises, which priced their products on a cost plus basis and were not subject to public scrutiny. Few state-owned enterprises remain, but even so anticompetitive conduct was defined under the Armenian competition law as price rises (whether concerted or not) that are unjustified by underlying changes in costs. This definition had been a significant limitation on possibilities of competition law enforcement.

The Costa Rica chapter (Chapter 2) focuses on retail distribution in three cities. It explores the negotiations and the nature of the contracts struck between supermarkets and suppliers and their agents. It examines how the dominance of one, internationally connected supermarket plays out in the sector. In supermarkets in Costa Rica, market dominance and supermarkets' own-brand products can enable some retailers to reduce the profits and impose stringent conditions on their suppliers. The chapter also bears out the importance of spatial analysis, by showing the different competition status of markets in the three cities. In particular, the lower level of concentration of the market in one locality is associated with the formation of supplier associations. There, cooperation among suppliers significantly increases their bargaining power in negotiations with the

supermarket that has a dominant position at national level. This carries clear strategic and perhaps policy implications for redressing what might otherwise seem the overwhelming dominance of a large, internationally connected business in the supermarket segment.

In the study of the production and distribution of cereals in Mali (Chapter 4), the findings point to an external factor – access to finance – having a controlling influence in the cereal distribution market in Mali. The competitive process is also undermined by the government's subsidization of imports and ban on exports. Like the Costa Rican study, this chapter also points out that the presence of supplier associations and trader networks can increase bargaining power and influence the distribution of market power and the associated distribution of economic actors' margins along the supply chain.

Chapter 5 on Zambia examines the impact of the dominance of one 'industrial' beef producer in a country where meat is traditionally produced by small-scale herders and farmers. This is an international but not a foreign enterprise; it is locally owned and the company is expanding into other regional markets. The company is also active in chicken meat, eggs and milk production. The main element of its distribution strategy has been to operate franchised fresh butchery counters in the overwhelmingly dominant supermarket chain, a foreign-owned company. Beef meat prices are set above its rivals thanks to this arrangement. The company's market dominance is undisputed in the beef segment. The competition issue is to understand the extent to which its dominance of the beef market may be sustained by the barriers to entry set by the franchise arrangement, and whether it uses its market power to amass resources and cross-subsidize the other lines of business. The study concludes that insufficient evidence is available to open an official investigation into anticompetitive conduct in any of these markets. It is clear that the enterprise has vastly superior efficiency in beef production but it is not clear whether this producer surplus outweighs harm to traditional producers and consumers. On the one hand, the supermarket requires high product quality standards from which the consumer benefits. On the other, the producer does provide sales opportunities to traditional beef producers and gives them technical assistance to improve the efficiency of their operations. The findings of this study should not be seen as disappointing. It shows the competition authority was able to examine enterprise conduct in all its complexity and that it was ready to acknowledge efficiency improvements where they are found. Moreover, its analysis supported an important 'market making' recommendation that could lead to wider productivity gains without any costs to consumer welfare.

The Distribution of Pharmaceuticals in Jamaica and Vietnam

Almost everyone needs medicines at some point in their life; everyone needs the reassurance of knowing that pharmaceutical products are widely available and accessibly priced.

Almost one-third of the world population, mostly in poor countries, does not have access to the medicines they need to heal their disease or alleviate their suffering (WHO 2004). The World Bank estimated that chronic diseases would be the leading cause of death in the developing world by 2015 (Adeyi et al. 2007). Medicines to treat such diseases exist, but their prices tend to be far beyond the means of developing country governments and populations.

The affordability of medicines can be seen as having three components: national health policies; patent protection; and competition in the supply of pharmaceuticals.

National healthcare policies cover, among other things, the extent of health insurance coverage and a generic drugs substitution policy by the government. Together these determine which drugs are covered by health insurance schemes. In Vietnam (Chapter 7), the list of drugs that are reimbursed by health insurance has not been sufficiently developed on the basis of evidence of cost-effectiveness. The literature on access to essential medicines in developing countries has paid most attention to the role of patents, specifically the relationship between patent protection and high drug prices. The rationale for the patent system rests on the assumption that granting temporary monopolies to an inventor encourages innovation and allows the inventor to recover research and development costs. By the same token, however, patents allow monopolistic pricing and prevent competition for the limited period of patent protection.

The third issue, the structure of the pharmaceutical market, and the associated extent and misuse of market power, may contribute to the extent of competition in pharmaceuticals among drugs, including those with and without patent protection. Most of the literature has overlooked the fact that access to medicines might be restricted by anticompetitive conduct on the part of distributors in developing countries. In both Jamaica and Vietnam, researchers have reported excessive mark-ups among distributors. There are suspicions of abuse of monopoly rights by patent-holders in Vietnam and of companies exploiting their informational advantage to extend their market power in Jamaica (Chapter 6).

Generic drugs are the main source of competitive pressure on patented products. Generics are produced by other producers without a licence from the innovator company after expiry of the patent on the molecule that it designed; the patent-holder continues to produce its patented products

with their original name and branding. Thenceforth, both the original branded and the cheaper, generic version of the drug are available to consumers. Greater provision of generics could contribute to greater access to healthcare for all. The evidence shows, however, that in many developing countries this process has not been taking place. Why is this?

First, in most markets, consumers independently determine which product to purchase. By contrast, patients don't themselves make product choices but have to rely on expert prescribers. Furthermore, in general, consumers are able to assess the suitability of products by inspecting them prior to consumption (search goods) or in the course of consumption (experience goods). Medicines are a different case. Drug companies producing branded medicines are able to exploit their informational advantage over other actors to acquire and extend their market power because most patients do not have information or are not in a position to compare the characteristics of generic and branded medications. Asymmetry of information among different market players can be a barrier to the entry of competing products. It limits market competition and denies patients the possibility of purchasing cheaper products. In consequence, producers of patented products enjoy unjustified market power and impose excessive margins.

Second, the pharmaceuticals market is complex in other ways. It is fragmented among different kinds of ailments, for which substitution of products across fragments is not possible. Moreover, imported drugs and overseas companies play a big role in supplying – and limiting supplies to – the market. Both issues complicate analysis and policy recommendations.

There are some striking similarities in the recommendations of Chapters 6 and 7. They highlight two issues. First is the need to create a transparent drug market for consumers and other stakeholders by improving information flows. Information needs to be made available to consumers on medicine choices and prices, and to the public on legal provisions and companies' pricing policies and practices. The second theme is the need to improve drug certification with a view to establishing minimum standards and assessing suitability. Affordability and effectiveness need to be among the criteria in compiling a list of drugs that meet minimum standards.

The Jamaican study calls for reductions in the time needed for drug registration so that generic drugs can be distributed as soon as the counterpart innovator drugs are out of patent. The Vietnamese study emphasizes that governmental procedural regulations can be a source of entry barriers through licensing and other legal or administrative requirements. The business registration process in Vietnam, albeit simplified compared to the past, remains unfriendly, costly and time-consuming, and those factors deter entry. The Vietnamese study also suggests that authorities could

increase their room for manoeuvre by more actively exercising their right to list or delist a medicine from the health insurance reimbursement system in order to negotiate medicine prices with suppliers.

The Jamaican study suggests that seminars bringing together pharmacists and policymakers could provide both sides with more balanced and complete views of the market, and ultimately benefit patients. In Vietnam, creating a database on market structure is seen as a way to help create closer cooperation between the competition authority and drug administration and help increase their effectiveness in scrutinizing the conduct of dominant companies.

Overcoming information failures and market fragmentation are challenging problems for competition authorities. A competition authority can detect pricing anomalies but mitigation of information asymmetry of medicines needs knowledge on the bio-equivalence of medicines that is beyond its expertise. It requires a formal cooperation mechanism between the competition and health authorities. In 2007 accordingly, Vietnam issued an inter-ministerial circular between the Ministry of Health, the Ministry of Finance and the Ministry of Industry and Trade laying out a foundation for such a mechanism and detailing a procedure for cooperation among the sector regulator, the competition authority and the price regulator under the Ministry of Finance.

Selected Services: TV Distribution in Argentina and Money Transfers in Uzbekistan

Service industries take many forms. The two country studies in this section concern the TV broadcasting industry in Argentina (Chapter 9) and the international money transfer market in Uzbekistan (Chapter 8). These are not intended to be representative of the whole range of service markets but they show that competition analysis is pertinent and has an important part to play in understanding how well consumers are served or exploited in two very different industries.

The two markets are both very important to economic development. Migrant remittances, sent home by money transfers, are a major contributor to livelihoods and an important source of foreign exchange to many low-income countries. TV is a key source of both entertainment and information, and arguably the most important to relatively low-income groups, and TV's information provision function is a key public good in the functioning of effective and accountable systems of government.

The money transfer industry in Uzbekistan has featured intense competition in recent years, with many players now in the market. But the lack of competition provisions in the regulatory framework for the financial

services sector may have lengthened the period of time it took for this situation to become established. A standard competition analysis highlights the harm to consumers caused by the marketing advantages enjoyed by the first-mover company. It also documents the anticompetitive acts the company carried out in attempting to continue uphold rent-seeking, mainly by imposing exclusionary deals with retail outlets. A competition ruling would have pointed to the need for the government to act sooner than it actually did to bring other entrants into the market, reduce prices to the consumer and improve service provision.

TV distribution is shown to be a highly complex and wide-ranging market. In Argentina, as elsewhere, it involves multiple products, horizontal and vertical integration, and new opportunities from ever-changing technology. A well-functioning audio-visual market requires appropriate monitoring and sanctioning of collusive behaviour and anticompetitive practices, for example, to monitor the extent and effects of vertical integration. As elsewhere, while it may yield economic efficiencies that benefit consumers, vertical integration can also raise competition concerns. For example, an entity's control of television programming rights and distributor platforms may enable discrimination against competitors in the downstream market, unduly reducing their access to content. Discrimination can also occur when anticompetitive conditions in the downstream market unduly deny access of content producers to distribution platforms (WTO 2012). The dense web of cross-ownership and contractual arrangements in the Argentinean TV industry complicates the assessment. But the study reveals wide price variations in service provision across regions, associated with variations in the state of competition in distinct geographical markets. This indicates the need for scrutiny of the conduct of industry incumbents at the local level.

The key conclusion of both chapters reiterates a point that has emerged from many of the studies: the need for cooperation between the competition authority and sector regulators. In both countries, policy changes along these lines did follow. In Uzbekistan, the competition authority and the financial sector regulator (the Ministry of Finance) agreed that competition law should apply to financial services. The law was amended accordingly. In Argentina, by contrast, the government shifted the competition enforcement burden towards the industry regulator. This may have been because it recognized the competition authority's limited capacity to deal with the rapidly changing technology in the TV industry. But the outcome was also testament to a growing appreciation by the government of the need to institutionalize competition concerns throughout the economic regulatory framework.

Public Procurement in India and Morocco

The scope of this book is significantly widened by inclusion of competition analysis of procurement markets. Public procurement is an important component of domestic demand in developing countries. If the public procurement system is abused it not only involves wastage of scarce public monies, but also restricts the cost and quality of the goods and services that are provided for consumers by public authorities under procurement contracts and constrains access to other public services.

This topic has been gaining increasing attention in the competition community in developing countries, chiefly focused on restrictions to market competition generated by private suppliers through collusion and bid-rigging. The effect of public procurement regulations and administrative procedures and the distortions they can create in the market are underexplored. The aim of the chapters in this section is to address this knowledge gap by analysing the procedural mechanisms that serve to limit or distort competition.

Both country studies highlight the fact that new entrants face difficulties in accessing procurement markets. Barriers to entry are intrinsic to many aspects of procurement because in any type of tender procedure, procurement agents have the right to determine companies' eligibility to have their offers taken into consideration and the assessments made thereafter. The selection and evaluation criteria used by procurement officials are therefore key.

The main anticompetitive practices found by the authors of the two country studies are various barriers to entry that close off the contestability of procurement markets and concerted acts by suppliers undertaken in order to generate excess profits from procurement contracts and to exclude non-colluding rivals from market opportunities. The more concentrated are the product markets in which procurement takes place, the easier it is for incumbents to exclude any potential newcomers.

Public procurement activities are structurally distinct from other markets in that the procurement agency is a monopsony. This facilitates the establishment and perpetuation of collusive practices among suppliers. It does not undermine the strength of standard competition analysis. And where enforcement of competition law is possible, it complements possibilities of redress through administrative complaints and greatly strengthens the possibility of sanctioning abuse of the procurement system.

The Indian study (Chapter 10) mostly takes a legal perspective, focusing on the content of regulations and the rulings in administrative and competition authorities' investigations. The Moroccan study (Chapter 11) examines the competition outcomes of procurement acts drawing

on data from a sample of contracts awarded by selected procurement authorities.

In both cases, public procurement is largely decentralized. In neither country does a central procurement authority exist. Furthermore, public procurements are not subjected to legal provisions but to executive decrees. In India, a multiplicity of regulations applies that are not presented anywhere in a consolidated manner (although two states have come out with state-level legislation on public procurement). Investigations carried out by the respective administrative tribunals report many cases of abuse that include failures from the competition perspective and lead to payment of inflated prices in many procurement contracts. The national competition authority also has a role in sanctioning abuses. Chapter 10 examines six main procurement-related cases investigated by the competition authority, which covered possible barriers to entry in the terms and conditions of tenders, abuse of dominance by procurement agencies, and bid-rigging. Detailed evidence was provided in these cases of the alleged abuses. Yet most of the competition cases were dropped because the scope of the competition law is not clearly delineated in this area.

In Morocco, by contrast, the competition authority has not had any formal role in investigating procurement failures. The carrying out of the study can be seen as an attempt to demonstrate that it could usefully do so. In both India and Morocco, procurement procedures require that the price at which bidders offer to execute a contract should be the main determinant of contract awards. In India, price is unequivocally stated to be the main criterion for evaluating bids. In Morocco, the 'lowest bidder rule' plays a critical role in awarding contracts. Thus procurement seems to be driven by 'value for money' considerations. But the studies show that the way in which the regulations are implemented often undermines this objective.

First, the distribution of tenders by degree of openness greatly affects the contestability of procurement markets. Fully open tenders are the most competition promoting. In India, regulations state that open tenders are the preferred type, but in practice they account for a limited – for some procurement agencies, a very limited – share of procurement calls. The issuance of multiple, extremely small orders is often used to bypass open tendering. In Morocco, by contrast, the great majority of tenders are open. In some instances, however, competitive procurements can be transformed into 'calls for quotations'. These are infrequent but of much higher value than other contracts on average. Connections between suppliers and a contracting authority play a substantial role in access to calls for quotations as well as in general contract negotiations. In consequence, while both open tenders and calls seem to present opportunities for new entrants in

Morocco, both are biased against suppliers that have no connection with the contracting authority, however experienced they may be in the relevant line of business.

Even within open tender processes, some selection and evaluation criteria create entry barriers because they are unreasonably restrictive and the complaints and appeal mechanisms available to suppliers are weak. Biased evaluation criteria are shown to play a major role in India.

Finally, the chapters discuss the lack of contestability of procurement markets due to the conduct of suppliers, notably exclusion and bid-rigging by incumbents. The Indian study describes many confirmed cases of bid-rigging. The Moroccan chapter cannot examine the prevalence of the phenomenon directly. It uses two other techniques. First, it assesses the vulnerability of the regulatory framework to bid-rigging, using international good practice guidelines, and finds it to be high. Second, it analyses the bid rate for tender offers. It finds that the average number of suppliers bidding for contracts tends to be very low (less than three per tender) even though in many of the lines of business in which a procurement contract is on offer, the market is not concentrated. A number of reasons for this restrictive self-selection of offers are explored. This includes recognition by suppliers of the importance of connections with the procurement agency. It may also reflect horizontal agreements among potential suppliers seeking a high probability of success for their submission for each procurement contract. In the geographically fragmented markets that follow from the decentralization of procurement, some suppliers expect competitors to respect the special relationship that they have with particular contracting authorities. Conversely, they refrain from bidding in competitors' 'reserved' markets.

The two studies put forward similar policy recommendations. In both countries, it is considered vital to grant the status of law to the rules governing public procurement, to strengthen the appeal system and to protect bidders' rights. Equally important is to better define sanctions – either administrative or, if appropriate, criminal – to punish non-compliance.

Both countries are also thought to need to make better use of modern IT-based means of managing public procurements. Electronic procedures can reach a broader range of suppliers than traditional means of communications, structure and allow for monitoring of exchanges among actors in public procurement and reduce their physical interaction. They ease procedures and reduce opportunities for illicit agreements or favouritism. In India, online advertising requirements are not always followed and in numerous instances tender documents were not being adequately advertised. In Morocco, the shift to e-government has been slow. The public

procurement portal needs to be improved to facilitate access to documents and improve search quality. Delays in e-procurement penalize competition and increase vulnerability to harm from collusion. In general, however, there is a need to limit communication among the players in order not to facilitate collusion against the need for full transparency of procurement agents' actions. As in other areas of procurement policy, much international effort has been expended to identify good practice in this respect. Policies for improving public procurement can draw on the shared experiences that have yielded the guidelines.

Procurement systems also need well-trained officials to draft consultation documents and conduct tenders. Procurement officials in Morocco are almost entirely unaware of the risks of bid-rigging and the harms caused by it. It is estimated that nearly two-thirds of the practices that have competition-distorting effects are due to deliberate acts or negligence on the part of officials. Weak controls and the absence of effective sanctions allow these practices to flourish. Setting up an observatory of public procurement or similar institution to identify bid-rigging could overcome a key weakness in the present system, especially since solid approaches for detecting and preventing bid-rigging have been greatly improved worldwide in recent years.

In India, two reforms are currently under consideration that will have competition promoting effects. First, the international Integrity Pact (IP), a quasi-voluntary agreement between a government organization or department and all bidders for a contract, is being rolled out across government. The IP sets out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes or collude with competitors to obtain a contract. Only those bidders that commit themselves to the IP are considered competent to participate in the bidding process, such that signature of the IP becomes a preliminary qualification in the tendering process. The second reform under consideration is the prospective enactment of a comprehensive national law on procurement that takes competition considerations into account in an integral manner.

This leads to the final recommendation in both chapters. Sound implementation of procurement procedures will require a high level of coordination between the various authorities concerned, notably between procurement authorities and the competition authorities. There are strong complementarities between anticompetitive practices and corruption in public procurement. In both countries, enforcement of competition law and investigation of corruption has up to now been conducted separately, to the disadvantage of both.

CROSS-CUTTING ISSUES

This book illuminates six cross-cutting issues.

First, the hinterland of retail goods and services markets involves the distribution sector, which denotes all those economic activities supporting the transmission of products (goods and services) from producer (or importer) to the final consumer. The main economic actors are wholesalers and retailers, with agents, commissioners and other intermediaries in-between. Competition regimes all over the world find it relatively difficult to analyse and provide convincing evidence of the effects of vertical agreements that are likely to be especially evident in the distribution sector.

Horizontal agreements – between firms producing the same goods or services – are presumed to be damaging to competition and innovation and injurious to consumer welfare. They may reduce output and restrain firms from competing for customers in terms of product price and quality or in particular geographical areas. Horizontal agreements are generally considered as the most egregious type of conduct that are necessarily inimical to the process of competition. Accordingly, in most jurisdictions, collusion is taken as a *per se* offence and demonstrating the amount of harm caused to consumers is not intrinsic to building a case against the perpetrators. This book describes several successful cases of prosecution of horizontal arrangements in Argentina, Armenia and India, among others. The case of vertical agreements is very different. There is no presumption in economics that these are anticompetitive. Any harm that they cause has to be demonstrated and the extent of harm has to be estimated. Even if consumer harm is demonstrated, it has to be shown that it is not outweighed by dynamic efficiency gains supporting the growth of competitiveness in the longer term. In this connection, efficiency gains that rest on scale economies – the most common type – are likely to be particularly important in small economies. There may therefore even be a presumption in such situations that, on balance, vertical agreements are beneficial, generating economic benefit outweighing any potential harm that they may cause to competition or to consumers. Proof of the harm caused by vertical agreements is very demanding of data and technical analysis (UNCTAD 2010).

The material in this book provides illustration of these difficulties. The difficulty is unfortunate because consumers who make their purchases in retail outlets are very exposed to market structures and corporate conduct in the distribution sector. To gain broad public acceptance, competition policy needs to be able to demonstrate that enforcement of the competition law can immediately provide substantial protection and redress to consumers. The task would be easier if competition issues in the distribution sector could more easily be dealt with. Several of the studies suggest

that clearer definitions of anticompetitive conduct in vertical agreements are needed. This could include better understanding of coercive behaviour by dominant distributors vis-à-vis their suppliers. On the other hand, the complexity of the economic assessment of vertical agreements in the distribution sector points to the mixed nature of the outcome. Debates on retail distribution, especially as regards the entry of foreign supermarkets into developing countries, have been very contentious in countries such as India and Egypt (Franz 2010; Sebora et al. 2014). Awareness of the efficiencies and consumer welfare benefits brought about by improvements in supermarket logistics need to be part of the picture. Competition analysis adds some rigour to the debate by better defining the nature of the problem and suggesting appropriate policy responses.

By extension, a second cross-cutting theme is that several of the country studies argue for modification or revision of the national competition law, either to be able to address particular competition problems more satisfactorily or to guide investigations and enforcement actions. This approach is quite consistent with the fact that significant, rolling revisions to competition laws have been taking place in many countries.³ Thus in Armenia, the authors note the need for clarification in the competition law of exclusive provisions and better definition of unfair trading practices. Recent amendments have brought improvement in the enforceability of the law in some respects. In Costa Rica, better guidance on defining relevant product markets is needed. In Uzbekistan, the author argues that the competition law needed to be extended to cover financial services. And in India, revision of procurement regulations has more firmly integrated competition concerns. In some cases, these changes to the competition law were indeed enacted, either initiated by the findings of the studies (as in Uzbekistan) or reinforced by them (as in Zambia, and in Argentina where the balance of investigative authority was shifted to the industry regulator, in line with other countries).

Third, six of the studies have an international dimension. Argentina, Costa Rica, Zambia and Uzbekistan examine the conduct of foreign-owned market actors in the TV, supermarkets and money transfer services markets. Armenia and Vietnam examine matters of cross-border distribution, since in those cases the relevant product markets are often heavily supplied by imports. The ownership of enterprises is not problematic for competition analysis as such; nor are the respective actors exempt from the scope of the competition law. Had the market studies been part of formal investigations, however, the outcome might have been different. Inter-jurisdictional cooperation for information exchange can fail in such circumstances, especially between a small developing country authority and one in a large advanced economy. Multinational companies have even closed down local

operations in a developing country in order to avoid prosecution (Joekes and Evans 2008).

Another cross-cutting concern is the need for joint initiatives between the competition agency and other governmental departments or regulatory authorities in analysis, prescription and policy reform. Distribution activities are not subject to sector regulation in the normal sense of the term (although touched by other bodies of regulation, such as zoning laws). Even so, the studies demonstrate that a competition authority's examination of distribution activities frequently overlaps with the concerns of regulatory authorities. The chapters describe interactions between competition analysis and policy concerns with food security, public procurement, access to medicines, and financial services. One motivation of joint initiatives from the competition perspective is to explore how far promoting competition can strengthen other broad development objectives. This book describes how this process works out in many settings.

The studies also show that much work is often needed to inculcate a 'competition culture'. Most of the countries covered in the book are in a transition from a state-led economy of some type (not necessarily centrally planned) to a market-oriented economic regime. Competition policy is part of a broad set of policy reforms intended to manage that transition. Although there has been a remarkable surge of enactments of competition laws in developing countries under the recommendation of international organizations such as the Organisation for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), the EU and the World Bank, enforcement of the law is rarely perceived as a domestic priority. In many cases, indeed, policymakers perceive promoting competition as a negative factor that constrains sectoral and development policies. For example, national champions – often dominant in the domestic market – are seen to be needed for industrialization, and it is often thought that they do not need to face competitive pressures in their domestic market from foreign companies, such as would follow trade liberalization. More generally, there is lack of understanding and sympathy with the objectives of competition policy and its operation. This is not to say that competition policy should always prevail as an intervention strategy: its imperatives may be trumped by broad social goals or by social regulation. Rather its scope has to be carefully delineated.

A well-resourced competition authority can be appreciated for its supra-sectoral advisory function as well as its law enforcement role. The competition authority can make recommendations on market 'making', i.e., identifying market failures or defects and pointing to the necessary components of the institutional landscape and market-supporting infrastructure

that have a coherent justification in terms of competition (Dunne 2015). Recommendations of this type are not within the analytic or policy frame of – and are unlikely to be forthcoming from – any other body/government department. The competition authority can also help to establish and demonstrate the public accountability of business, which can be a difficult value to instil in transition countries.

Finally, the studies also show that institutional capacity of competition agencies often needs strengthening. In most countries covered by this book, the competition authorities had an inadequate mandate, either overly loose or too narrow, and limited resources; some were subject to political interference or dependent for support from the executive branch. In Mali, for instance, most of the staff work on fraudulent use of weighing and measuring equipment; similarly in Armenia, much of the authority's effort goes into maintaining a register of dominant firms and chasing up firms to provide operational data to keep the register up-to-date, diverting resources and attention away from investigations of anticompetitive acts in the market. Young competition authorities seek to be able to describe market structures, and assess the impact of corporate practices on consumer welfare – perhaps, in certain political contexts, giving it greater weight within the overall welfare calculus. They therefore need to have the technical capacity and the legal authority to investigate and detect harmful behaviour and impose sanctions. The public standing of competition bodies relies on their showing that they can be effective in helping to achieve just outcomes from the market mechanism.

NOTES

1. See www.idrc.ca.
2. It is notable that the Moroccan Competition Council was headed by an academic professor, M. Benamour, who understood the value of market studies and allocated funds in the organization's budget to this end.
3. Revisions to competition law took place in 44 countries between 1997 and 2007, according to Professor Frederic Jenny in his inaugural address to the CUTS conference on Promoting a Healthy Competition Culture in Sub-Saharan Africa, held at Gaborone, Botswana, on 14–15 February 2008; presentation available through the website of CUTS-CCIER.

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