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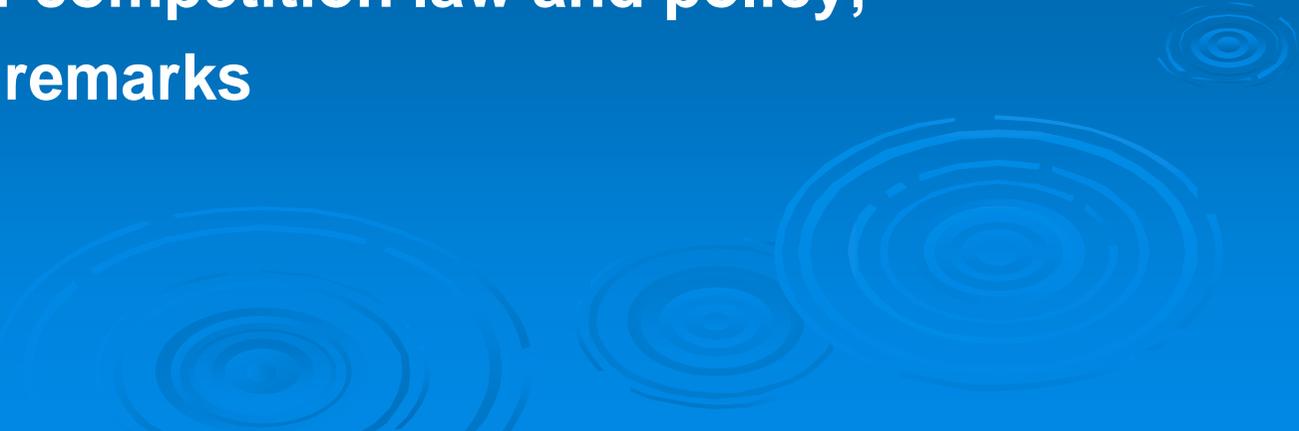
"Problems and effectiveness of Competition policy in emerging economies"

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outline

- **Problems and effectiveness of young competition agencies**
 - **Understanding Competition law and policy and their interface with other and public policies:**
 - **Challenges arising from initial economic and social conditions ;**
 - **Challenges in the design , implementation and outcomes of competition law and policy;**
 - **Concluding remarks**
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Understanding Competition law and policy and their interface with other and public policies

- For competition policy and institutions to effectively promote their objectives, they must flourish in the political, social and economic environment in which they exist.
- Those environments differ greatly. In some countries or territories, businesspersons and government appreciate the goals of competition and respect the institutions, and other objectives of society take competition into account.
- In others, businesspersons and government officials are learning to adapt to a competition regime and to appreciate its objectives, even if the law remains not quite adapted to the legal, economic and institutional establishment.

Understanding Competition law and policy and their interface with other and public policies

- Need to understand the objective of Competition Law and Policy: Protect competition as a process not competitors
- Need to understand what does competition law requires and the extend to which it encroaches (or not) on state sovereignty.
- Need to clarify the practical application of « public interest »

Competition policy and market opening



Challenges arising from initial economic and social conditions

Competition matters most in such markets

- Greater impact of « discipline incentives » to spur competitiveness of firms where weaker markets lack corporate control
 - Reduce managerial slack
 - Improves selection (closure of poorly-managed firms)
 - Spurs innovation

Challenges arising from initial economic and social conditions

- **Inadequacy of business infrastructure**
 - **Physical:** low level and restricted access
 - **Institutional:** inadequate legal & regulatory frameworks and implementation capacity; legacy of excess intervention and weak governance; uneven playing field.

3. Challenges arising from initial economic and social conditions

- **Special problems within markets:** more substantial information asymmetries in credit and product markets; missing or insufficiently dense markets.
- **Insufficiently informed and organized civil society:** industrial and end-use consumers lack understanding of benefits of competition; key beneficiaries of competition lack voice.

Challenges arising from initial economic and social conditions

- Competition Policy should ensure that government business should not enjoy any net competitive advantage simply as result of their public sector ownership.

Advantage may include: tax exempt status; or lower costs of finance; disadvantages may include employment or higher accountability requirement.

Challenges arising from initial economic and social conditions :

Importance of policy coherence ?

- Governments pursue many objectives that may not always be compatible.
- Policy coherence has an impact across all development-supporting sectors.
- To avoid duplication, tensions or unnecessary conflicts between policies.
- Policy coherence has a positive impact at national, regional and international level.

Challenges arising from initial economic and social conditions

Steps for achieving coherence ?

- The need for policy makers to be aware of the possible impacts of the policies they are designing.
 - Coordination between Ministries/other government organs.
 - Importance to maintain a good balance between competition policy and other policies.
 - Importance of separation of powers between different actors.
 - Developing coordination mechanisms between competition authorities and sector regulators.
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Appropriate design of competition regime

- **The differing environments imply that the design of the competition regime should differ too.**
- **However, there are some features that characterize efficient public regulatory bodies. Among these are:**
 1. **independence; transparency; accountability; assuring due process; being well funded in proportion to the mandate; being staffed by well-educated, well trained and non-corrupt persons; and having an appellate process that itself is well structured and non-corrupt.**
 2. **More recent discussion about competition agencies indicates that evaluation is necessary too.**
 3. **Among the internal processes, defining objectives and priorities, appropriately allocating resources, and taking effective decisions are necessary to an Effective competition agency**

Appropriate design of competition law and institutional framework

Assessment of initial conditions

- Pre-reform assessment of existing conditions
- Scope of economic reforms

Substantive content of the law

- Approach to assessing harm to competition
- Type of prohibitions and exemptions
- Type of remedies and sanctions
- Enforcement powers

Institutional design

- Autonomous agency or part of government
- judicial review
- Accountability

Foundations of effective competition agencies



Priority setting and agency effectiveness

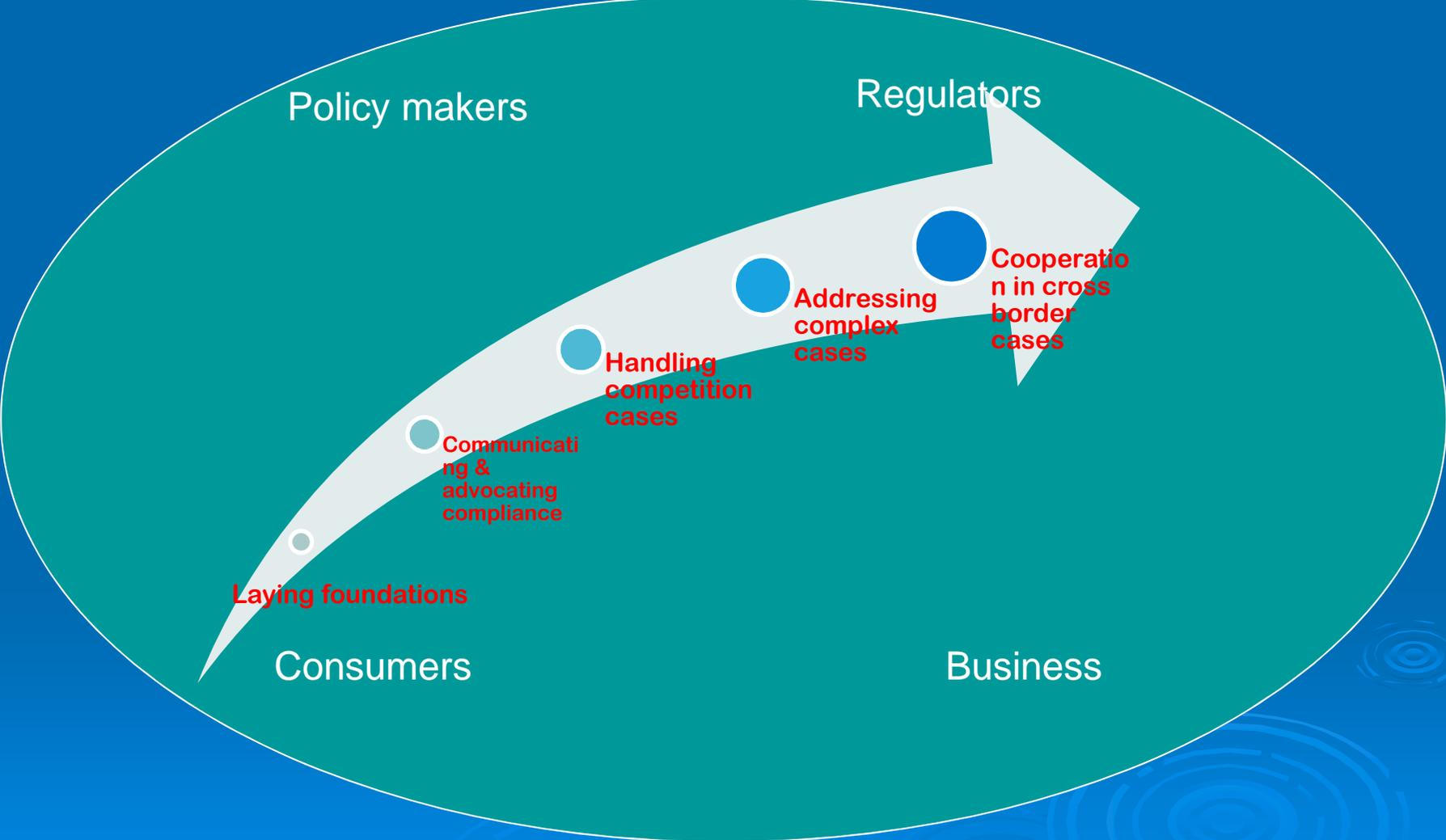
Criteria for effectiveness

- **Independence**
- **Enforcement Powers**
- **Transparency**
- **Accountability**
- **Portfolio of priorities**

Priority setting and resource allocation

- **Provides high level of freedom**
- **Determines the scope of application of the law and indirectly priority setting**
- **Requires communication on priorities and resource allocation**
- **Constraints the degree of freedom**
- **Provides high level of freedom but requires coordination with other institutions**

Life cycle of young competition agencies



Priority setting and effectiveness



Challenges in the design , implementation and outcomes of competition law and policy

➤ Starting small is better than not starting at all

- Given that markets are not functioning sufficiently well, desirable to have a small **responsible entity**
- **Gradual build-up** of human capital and expertise
- **Focal point** for efficiency and consumer welfare, to deepen « culture of competition »

➤ A key focus of the competition institution should be to **promote entrepreneurship** (entry & exit)

- **Preserve rewards from productive entrepreneurship** by focusing on fundamental investment climate issues
- **Foster « grass-roots » enterprises** that spur innovations

Challenges in the design , implementation and outcomes of competition law and policy

➤ Competition law more important as a complement to trade and investment liberalization

- Greater proportion of « localized » (non-tradable) markets
- More limited distribution channels
- Greater propensity for institutional public and private barriers that cannot be disciplined by imports.

Challenges in the design , implementation and outcomes of competition law and policy

- Infrastructure services and other essential inputs may be more subject to monopolization and foreclosure
 - Legacy of SOEs
 - Imperfect, less dense markets
- Emphasis on access policy through supply side
 - Eliminate barriers to grass-roots entry
 - Facilitate access to essential business services

Challenges in the design , implementation and outcomes of competition law and policy

- Focus enforcement resources on **detecting collusive agreements or exclusionary practices aimed at foreclosing access to essential business services**
 - Focus on **ensuring provision of essential inputs** such as localized real estate and banking, transport, distribution warehouses, communication & professional business services
 - E.g. **examine exclusive supply or distribution contract** (including shipping, importing and local supply)

Challenges facing young competition agencies

- (a) Legislation is inadequate in terms of not properly addressing the anticompetitive conduct actually engaged in in the domestic economy, and in terms of not allowing effective enforcement by the agency;
- (b) Cooperation and coordination with particular government ministries and other regulatory bodies is not sufficient;
- (c) Budget is not large enough for the agency to operate effectively;
- (d) There are too few skilled professionals; they are either not present in the country or are not attracted to the agency given the civil service salary structures;
- (e) Judiciary is unfamiliar with competition law and its economics;
- (f) A “competition culture” among the business community, government, media and general public is not developed.

A concluding remark

- The Law itself can never guarantee that markets will function effectively unless a broad range of other government policies conform to the basic market principles

And

- Creating an economic climate conducive to growth and investment across all regions and sectors

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