



EMERGING ECONOMIES: DIFFERENT ECONOMIC PROBLEMS, SAME COMPETITION LAW?

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The views in this presentation are those of the author and not necessarily those of the OECD. They should absolutely not be construed as specifically about my personal experiences in running a competition authority in an emerging economy. Thanks for helpful discussions to John Davies, Eleanor Fox, Bill Kovacic, Hassan Qaqaya, participants in a recent ICN breakout Session on this topic and many others.



Outline

- Motivating observations
- International comparisons of economic environment
- Basic model
- Conclusion



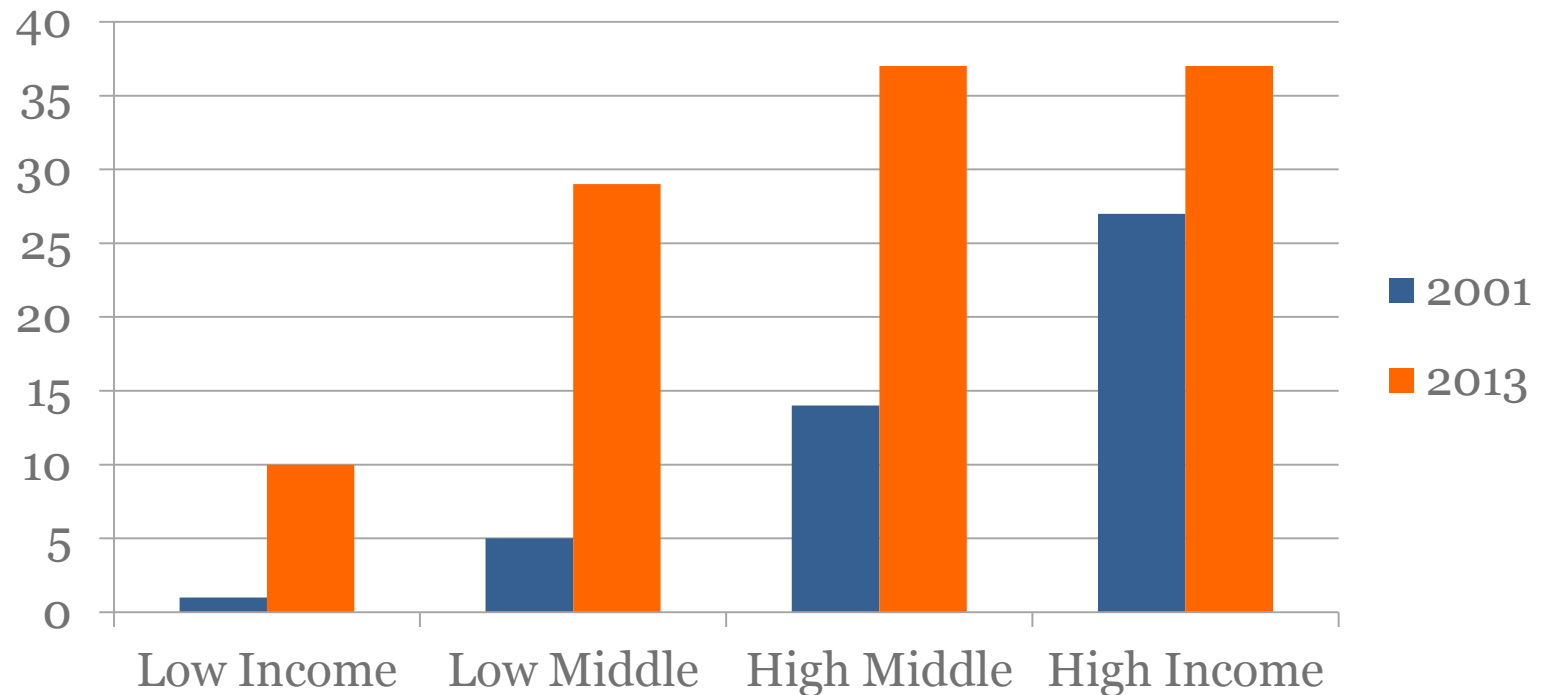
Context

- I am not speaking with my current OECD hat, but with perspectives developed as the head of a competition authority in a middle income country, working with many other low and middle income country authorities.
- I am not speaking specifically about the country where I worked.
 - Though not a high-income country, Mauritius ranks very well by the international indices that follow
 - The observations made are not directly about my personal experience
- Analysis grounded in data rather than personal stories
 - Data typically from outside sources, but its use does not imply an endorsement of sources or the method of calculating their indices
 - Limited to comparing those countries with competition authorities
 - Divides countries by World Bank's income ranking



Growth in Competition Law Enforcement

Number of countries with competition authority by income category: 2001 - 2013

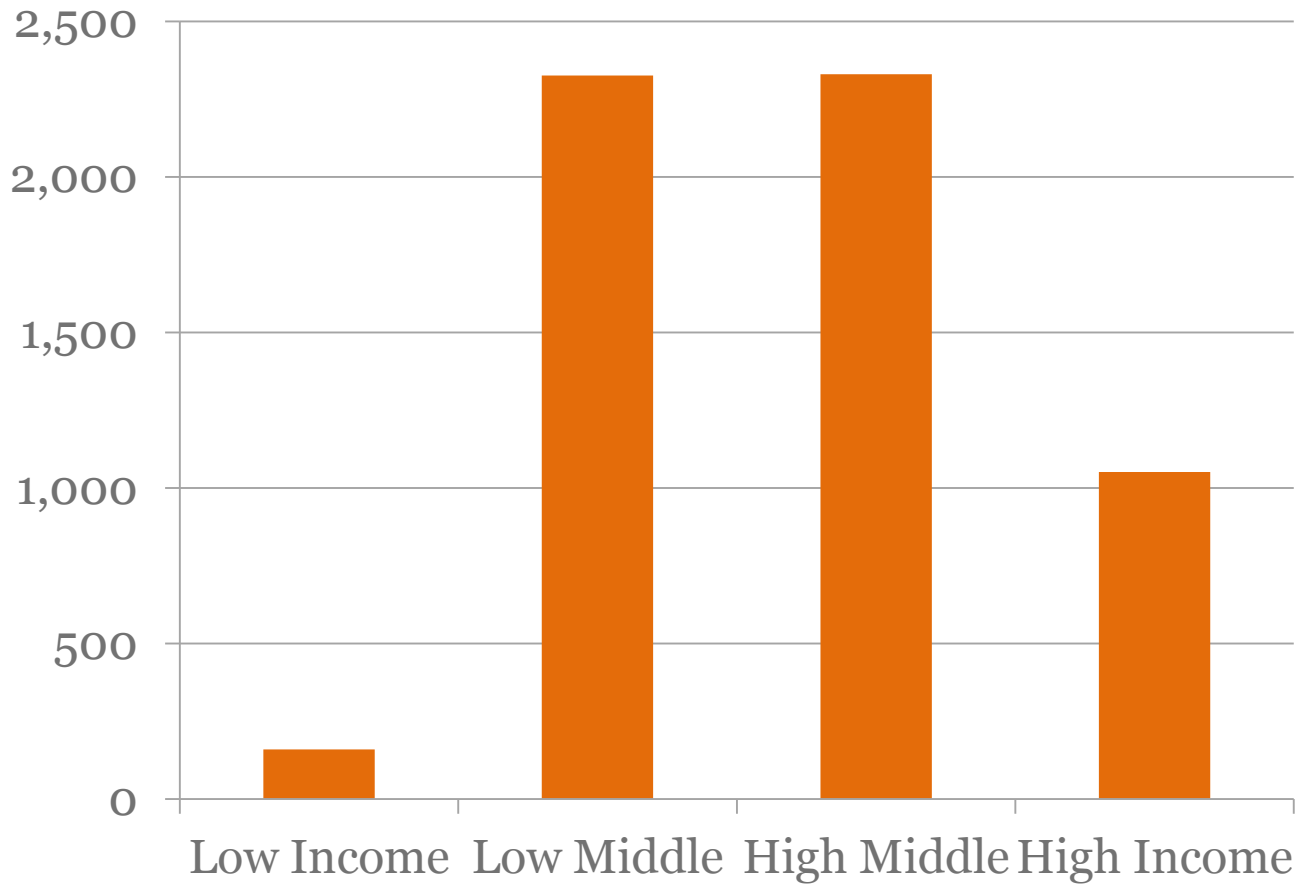


Source: Author's calculation



Population coverage

Population covered by competition law, by category of economy, 2013 (in millions)



Source: Author's calculation



Questions

- 85% of world's population is covered by active competition law
 - 18% of these in high income economies
 - 79% of these in middle income economies
 - 2.7% of these in low income countries
- Most precedent and methods have been developed in the high-income countries
- Economic law is developed in the context of the economic needs
- Are the economic needs the same in all countries?
 - Those in the countries that are not high income are of a fundamentally different form and depth, in many cases, from those faced in high income countries. This is not to say challenges of developing countries, such as state favouritism, do not exist elsewhere.
 - But in many countries cartel enforcement may not do much good because sectors are monopolised
- What would be the consequences of identical enforcement strategies?
 - The main legal violations (anti-competitive mergers, abuse of dominance, collusion) could be converged comfortably with those of developed countries
 - But convergence over all techniques of enforcement may lead to outcomes in which economic needs are either, at best, not addressed or, at worst, comfortably ignored on the basis of living up to international standards.

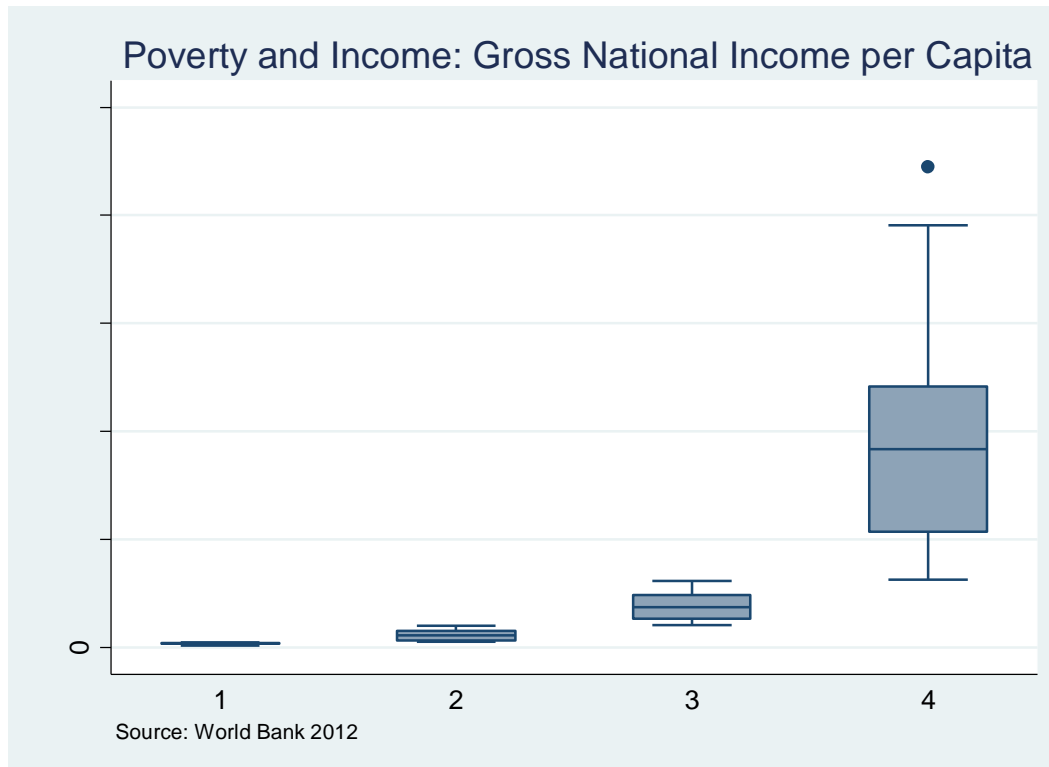


Economic differences

- The economic challenges in developing economies and emerging markets are different in nature and scope from those of developed economies
 - Macroeconomic differences
 - High poverty levels
 - Small market size (often, due to lower income levels)
 - Limited access to finance, poor capital markets
 - Business environment differences
 - Concentrated ownership structure
 - Favouritism
 - Unclear property rights
 - Corruption
 - Legal system challenges
 - Government environment differences
 - Unreliable government funding of agencies
 - Infrastructure differences
 - Limited or no regulation of monopoly
 - Unreliable electricity
 - Unclean water
 - Poor transport and telecommunications infrastructure

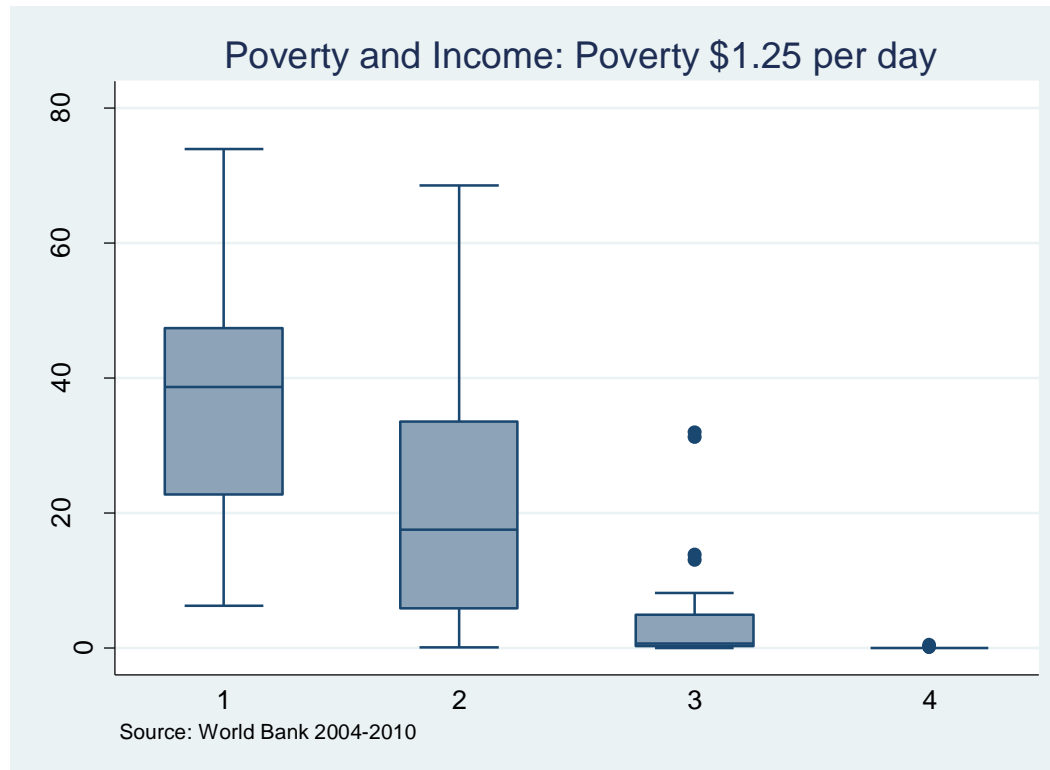


Poverty and income: Income per capita



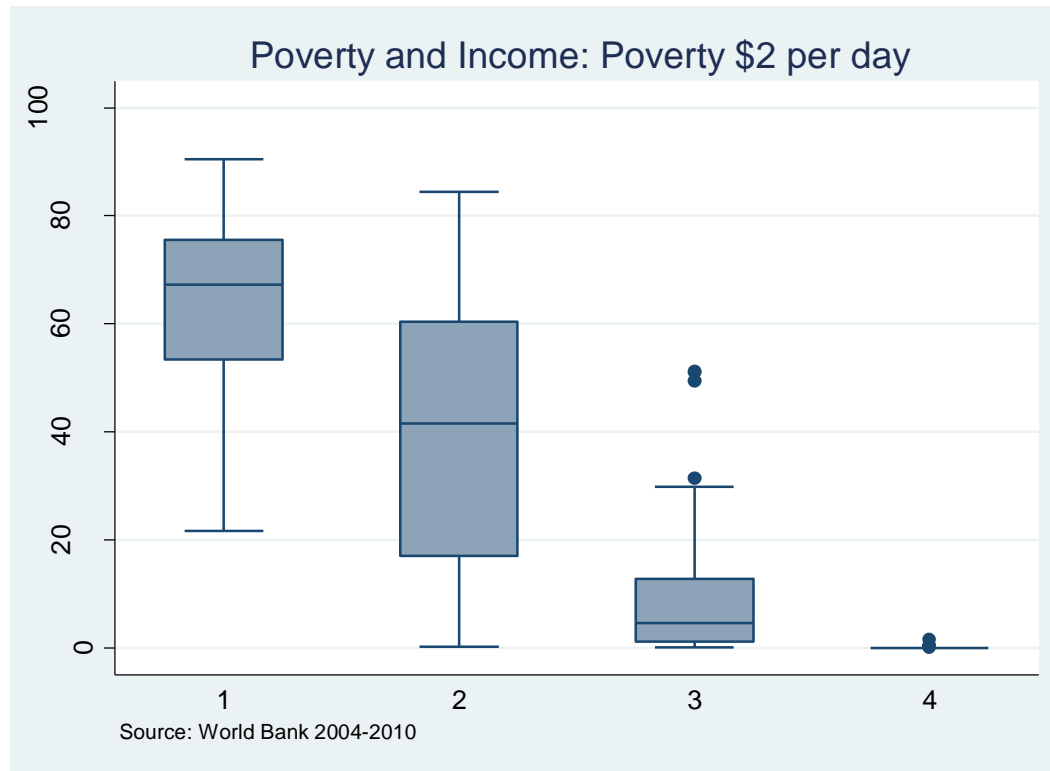


Poverty and income: Poverty threshold at 1.25 USD/day



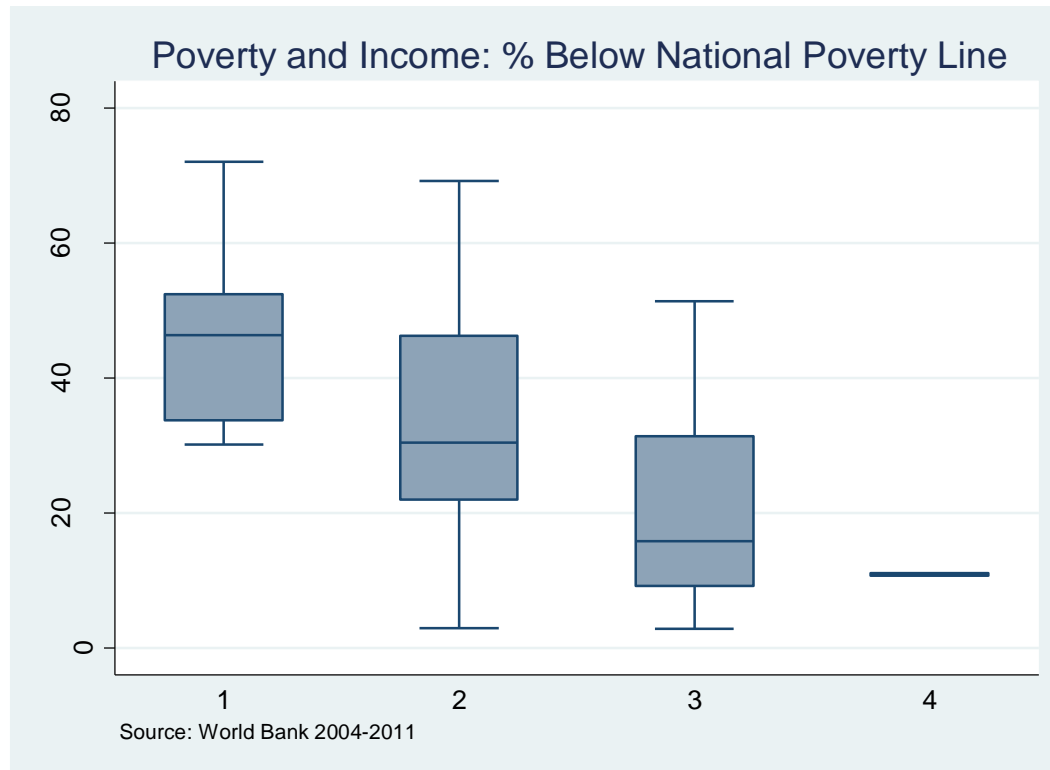


Poverty and income: Poverty threshold at 2.00 USD/day



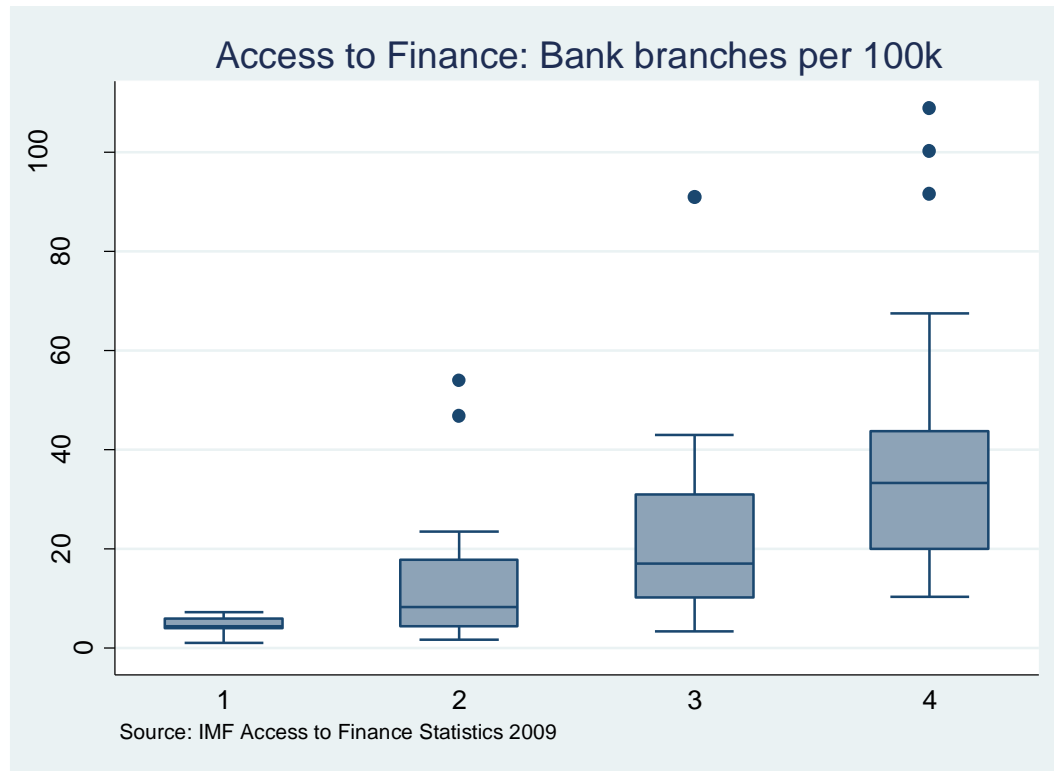


Poverty and income: National poverty line



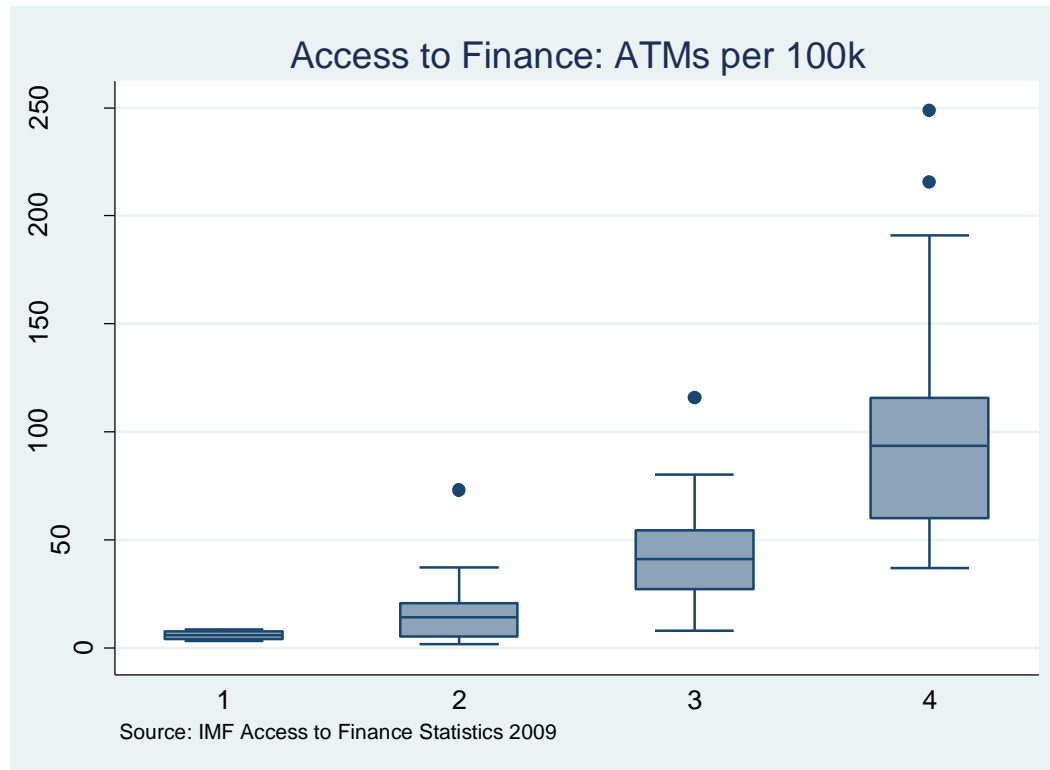


Access to finance: Bank branches



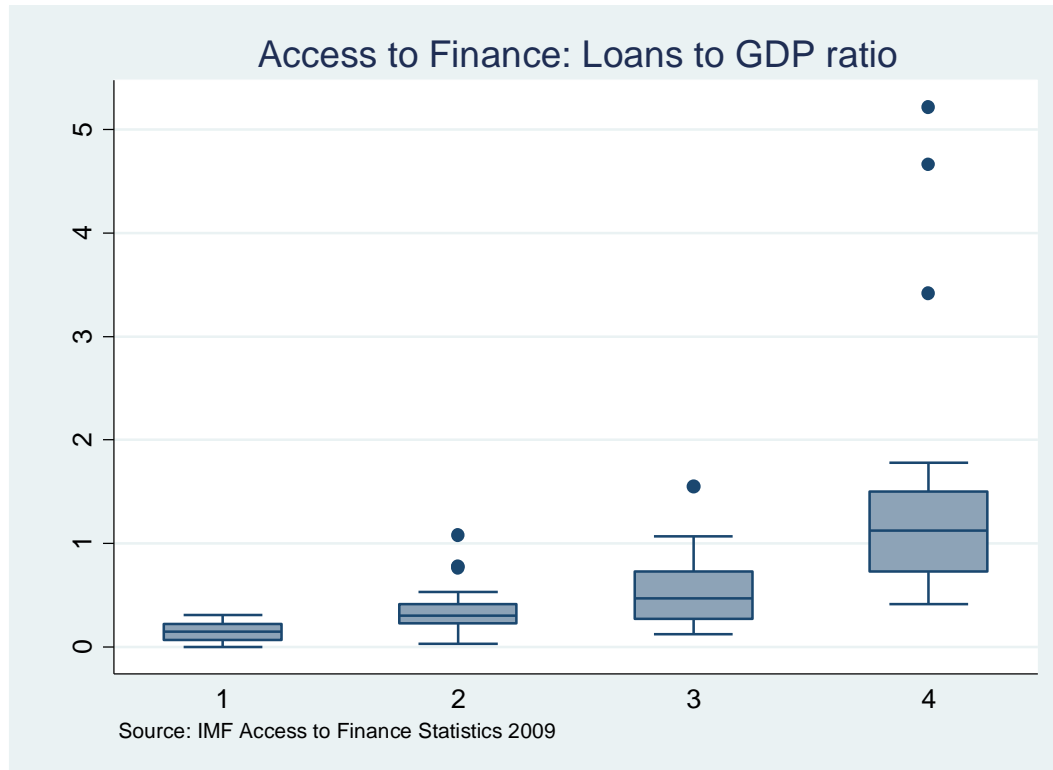


Access to finance: ATMs



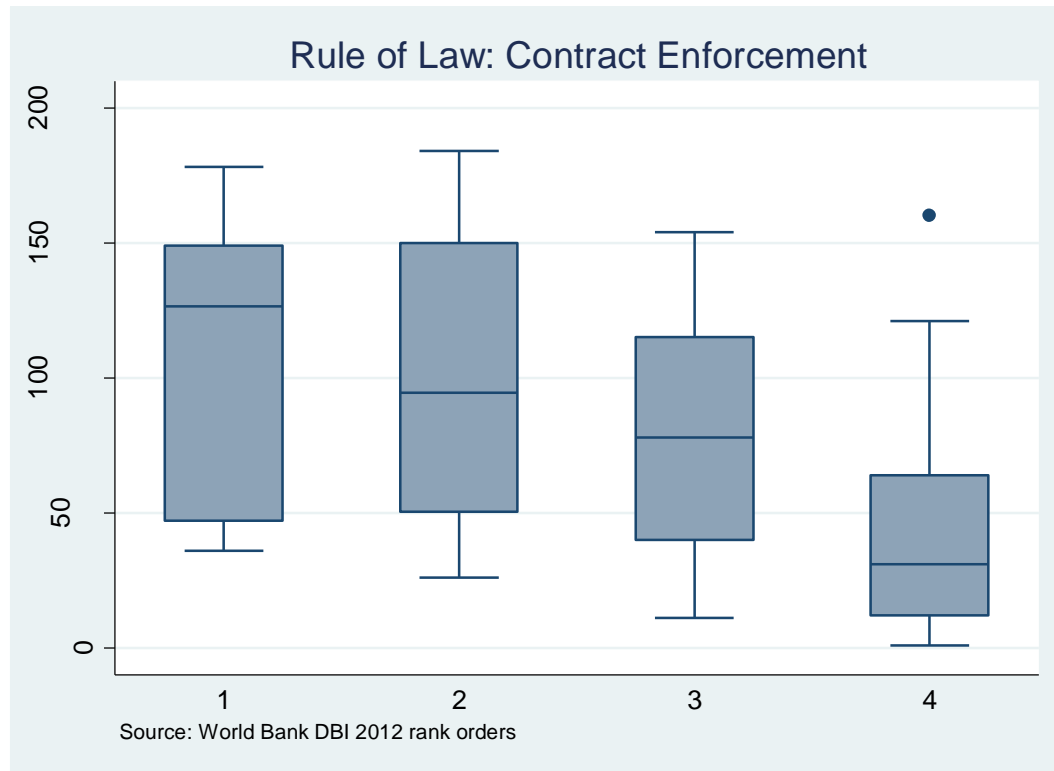


Access to finance: Loans



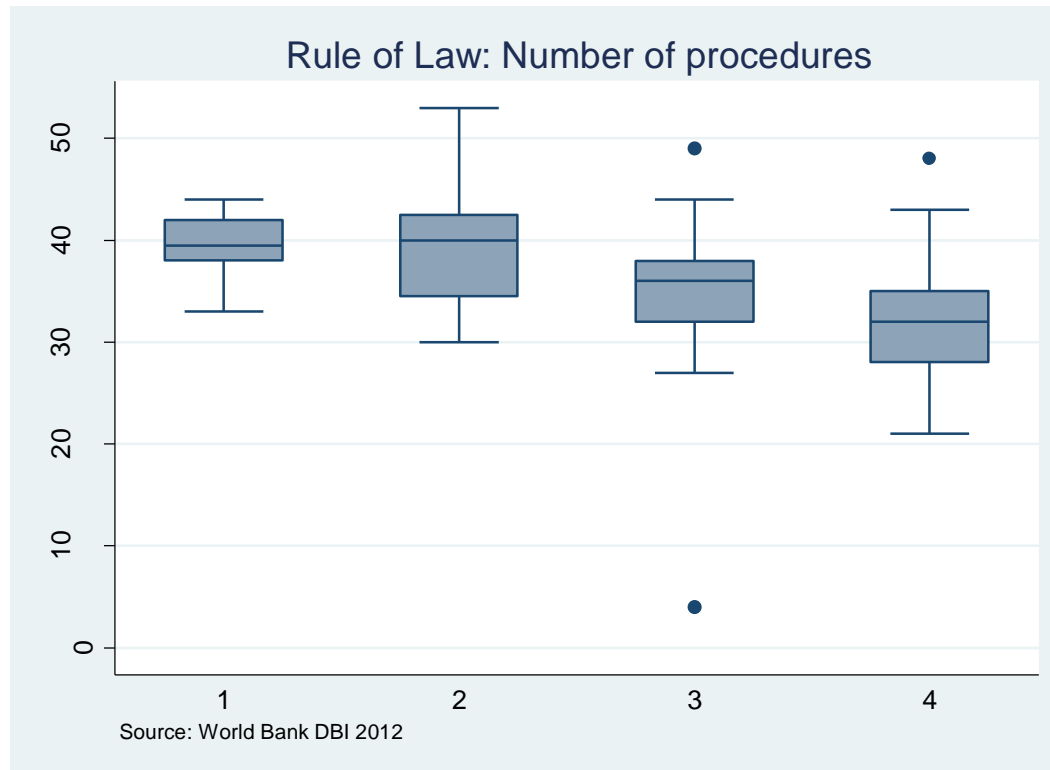


Rule of law: Contract enforcement



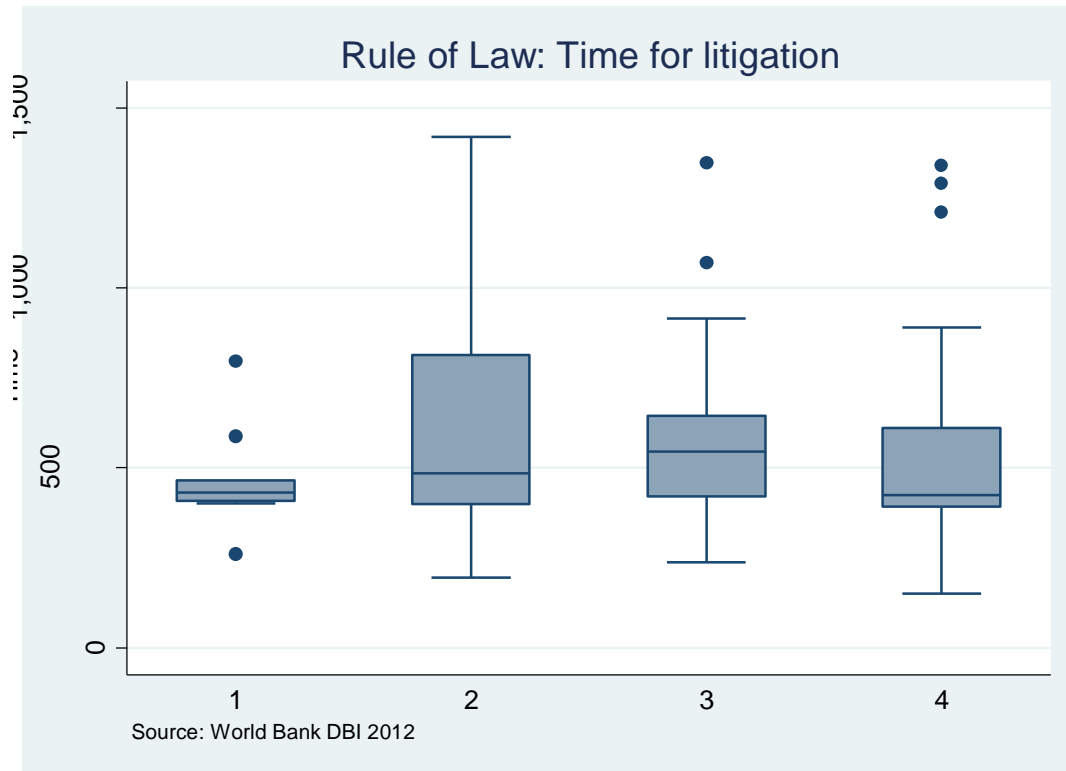


Rule of law: Number of procedures



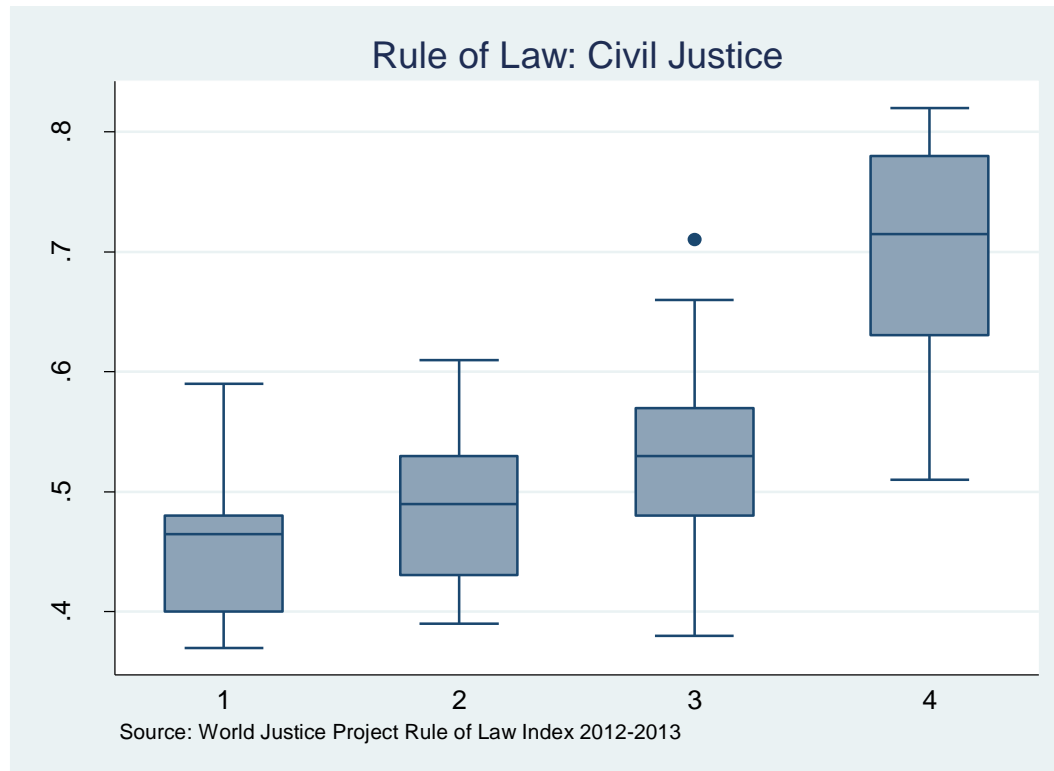


Rule of law: Time for litigation



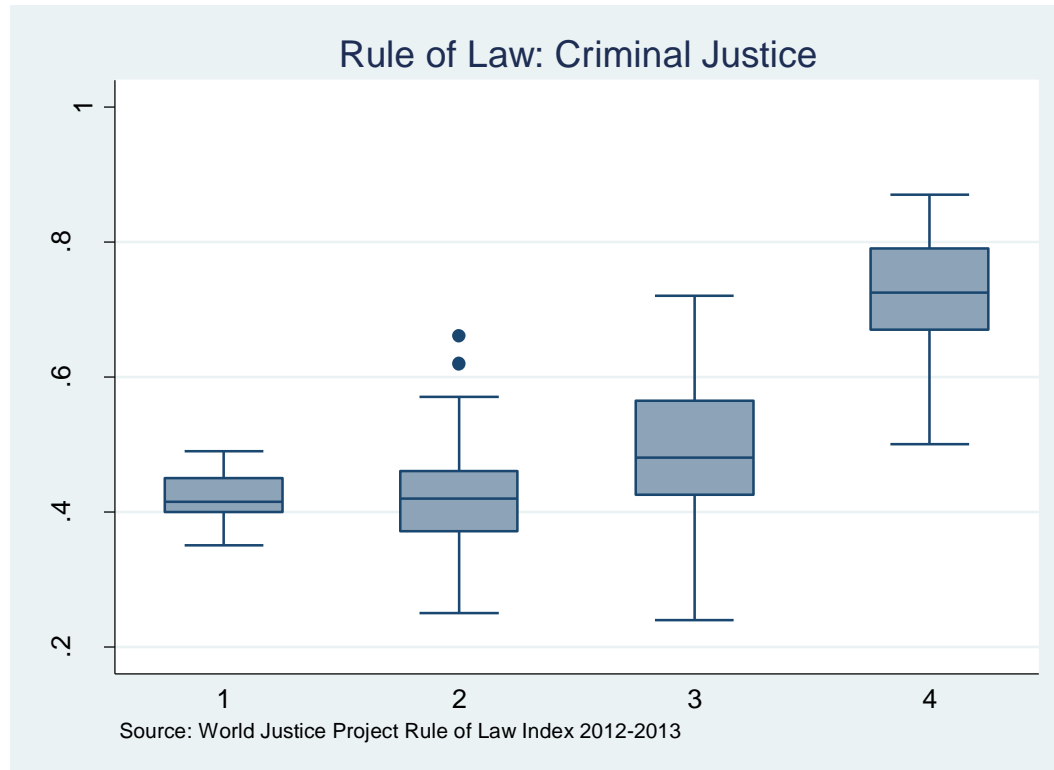


Rule of law: Civil justice



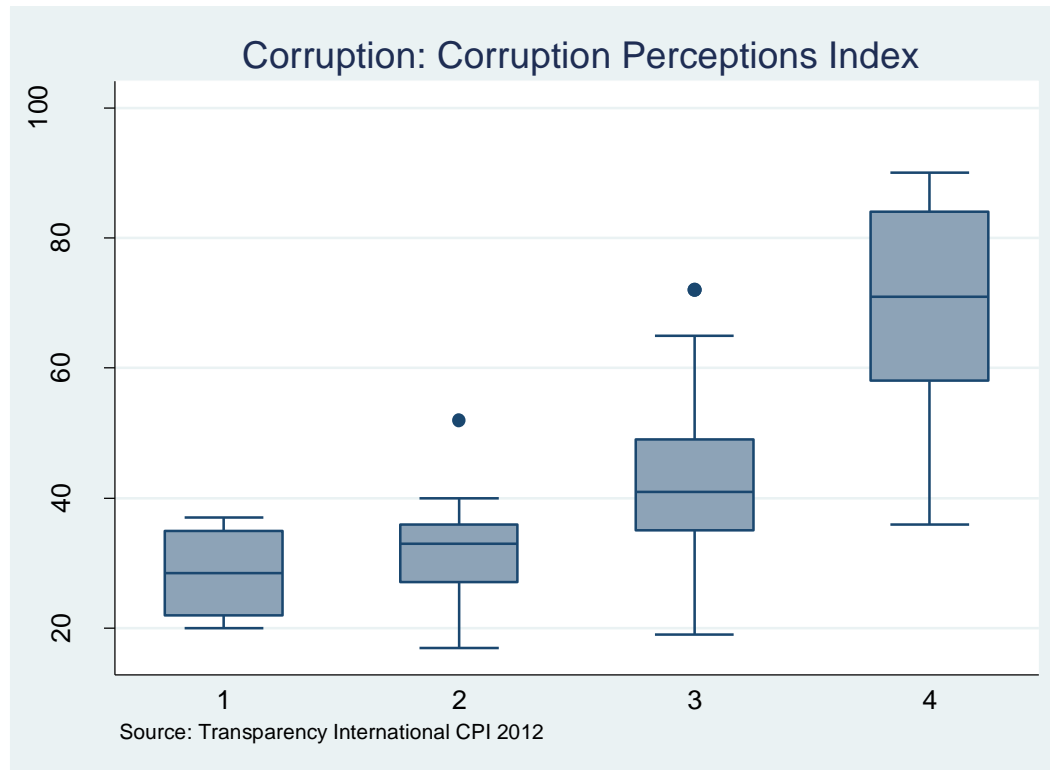


Rule of law: Criminal justice



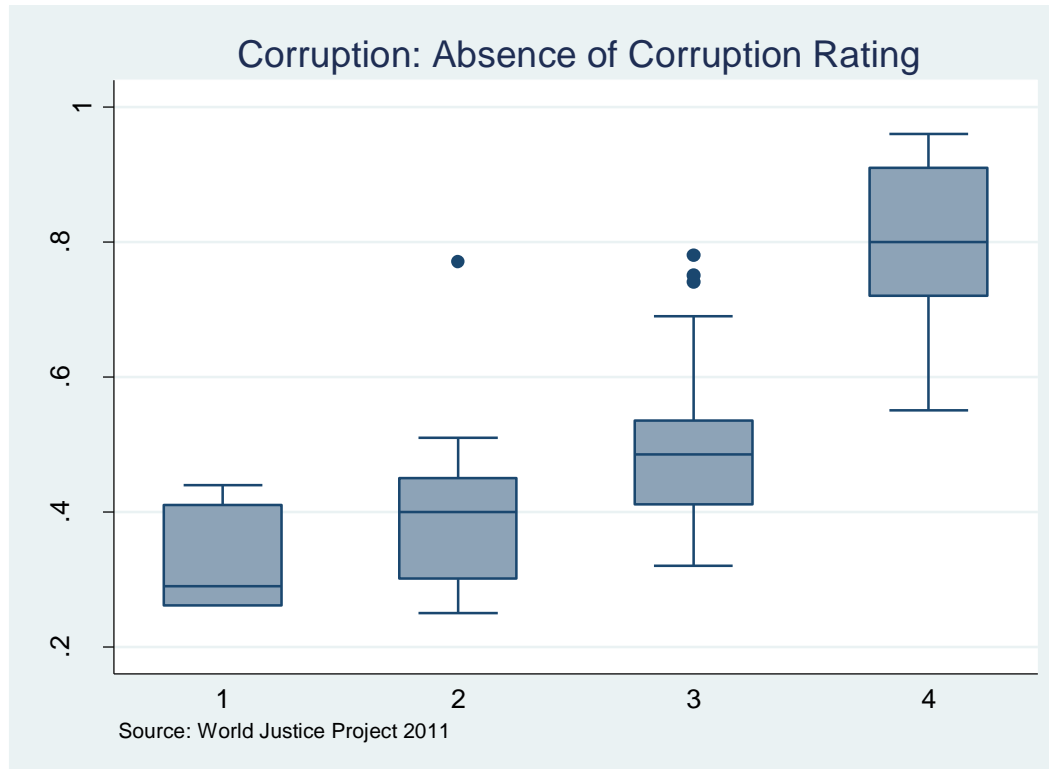


Corruption: Perceptions index



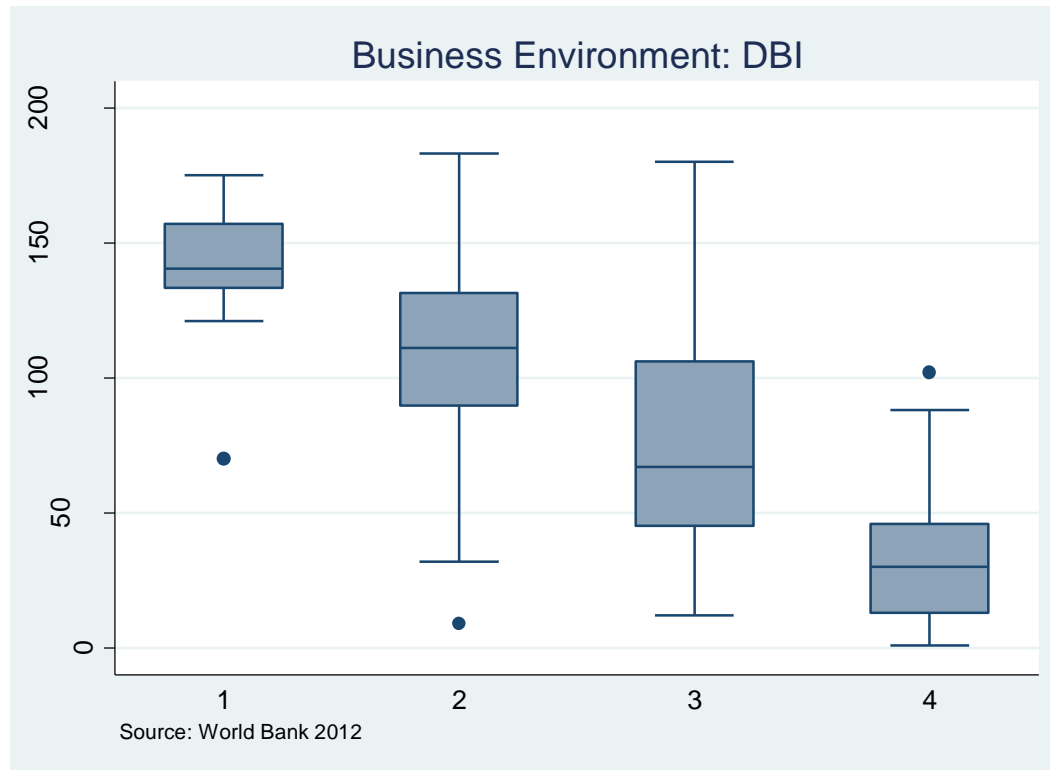


Corruption: Absence of corruption rating



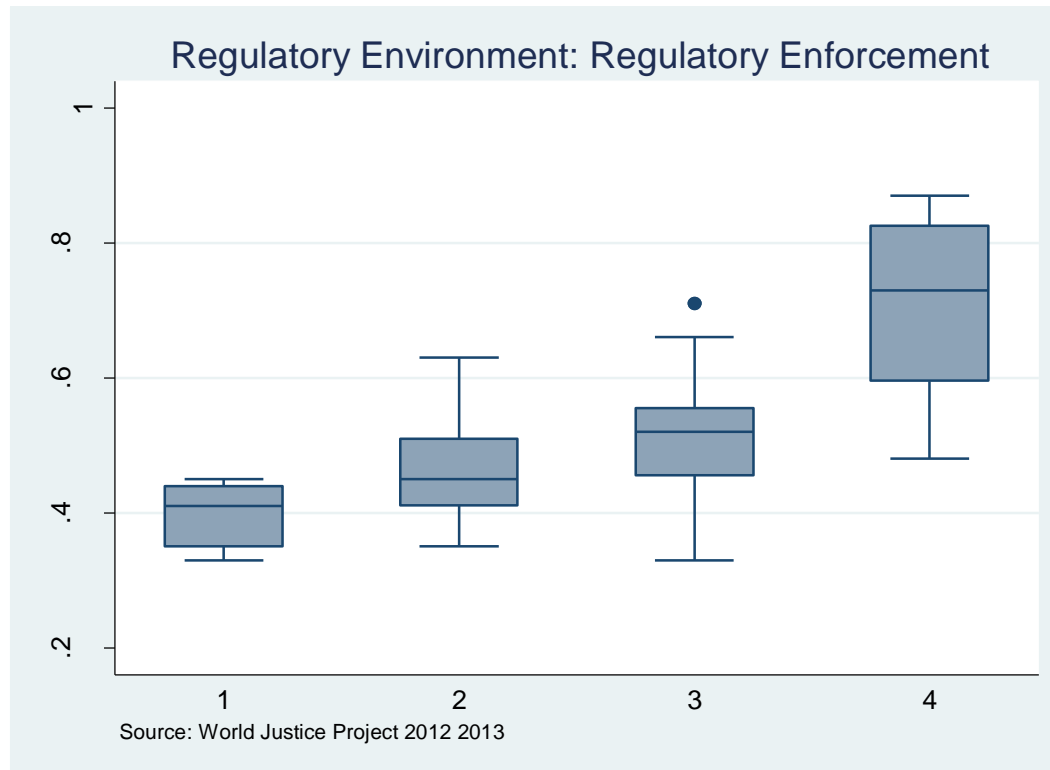


Business Environment: Doing Business Ranking





Regulatory environment: Regulatory enforcement





Overview: differences in economic environment



- Poverty

- Access to finance

- Rule of law

- Corruption

- Regulatory environment



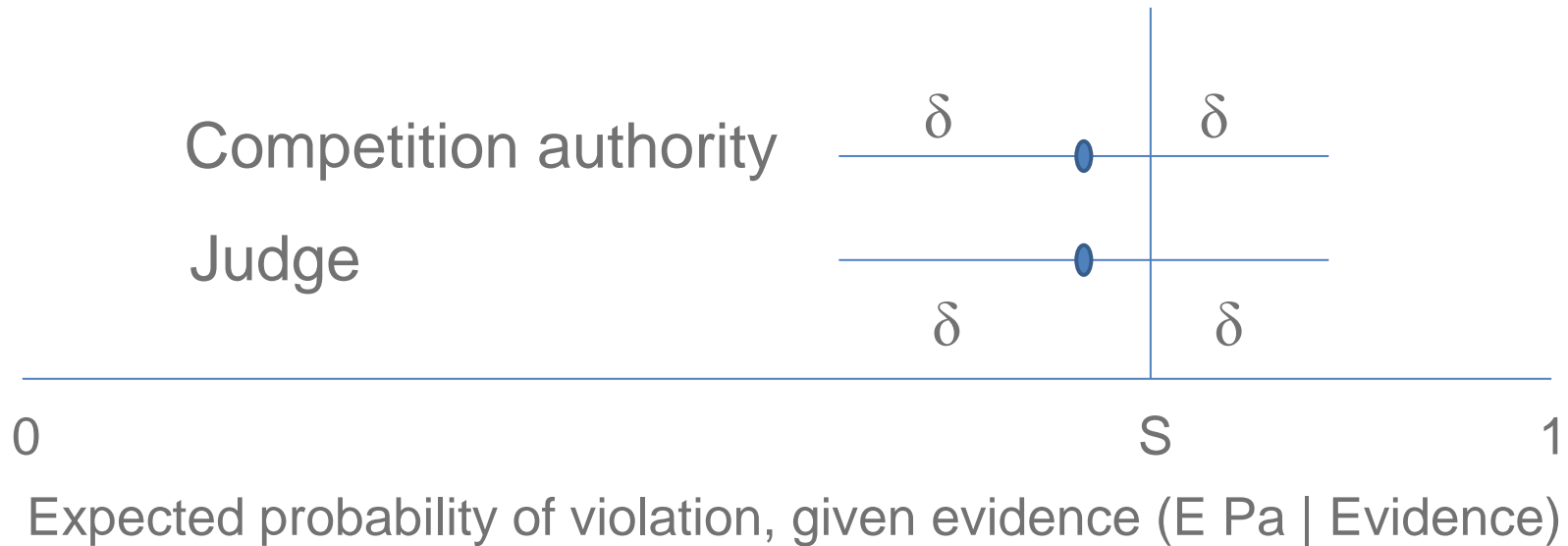


Other points

- Economic environment different in other ways besides those measured by indices
- State favouritism and state patronage
- Uncertainty over financing
- High concentration
 - Implication: Recommendation to focus on cartel enforcement may be inappropriate
- Frequency of abuse of dominance
 - Implication: Important to address abuse of dominance
- At times, relative focus on mergers/abuse/cartels may not reflect relative importance to the economy



Basic model: Assessing cases

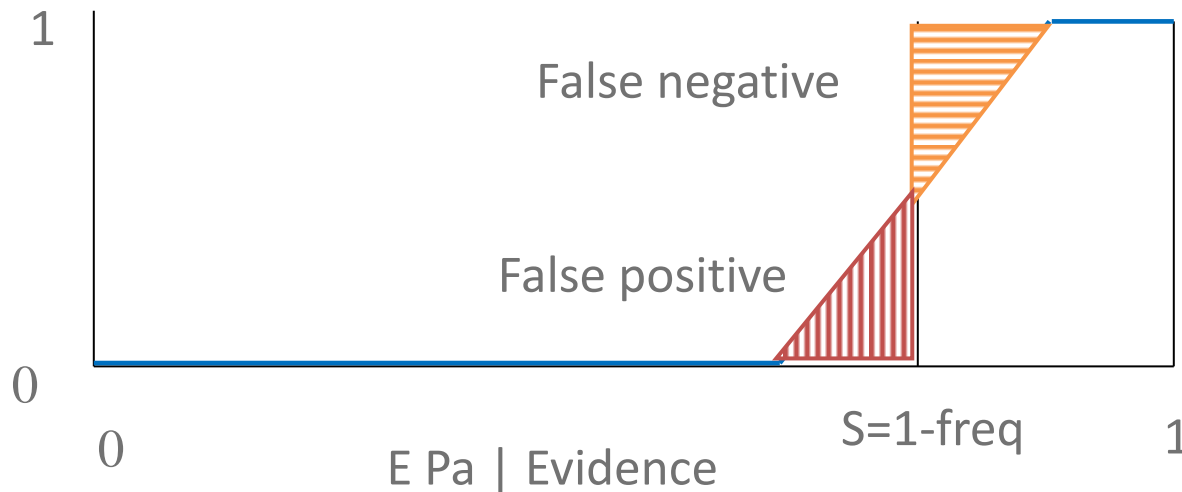


- S is probability and depth of analysis cut-off
- δ is bound of evenly distributed and symmetric error around value of expected probability of violation based on evidence available
- Evidence may be strong when no case and reverse
- Competition authority default rule:
 - Bring case if assessed probability of violation exceeds requisite probability and depth of analysis



Base case: Frequency of violation closely mirrors standard of proof

Probability Case is Brought



False negatives and false positives are both of about equal weight



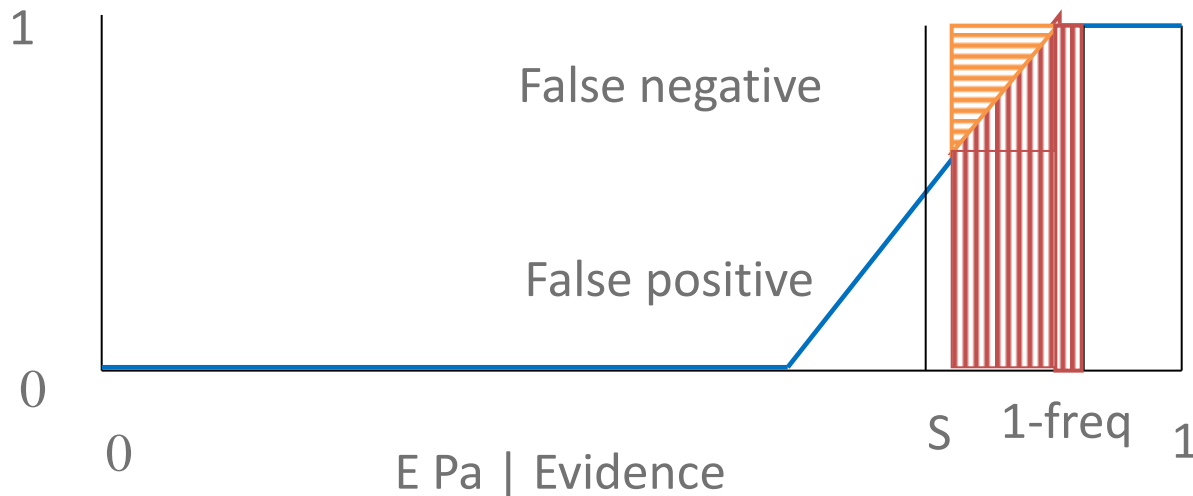
Law and economic environment

- Laws, presumption and standards of proof emerge in the context of local economic conditions
- In a large, developed economy, may presume that markets work well and that, in natural monopoly industries, when the markets do not work well, regulation will serve as a substitute
- In developing and emerging economies, cannot make this presumption, and, depending on local circumstance, sometimes better presumptions are that markets do not work well and that, where natural monopolies are present, regulation is not restraining market power.



Low frequency of violation (high income?)

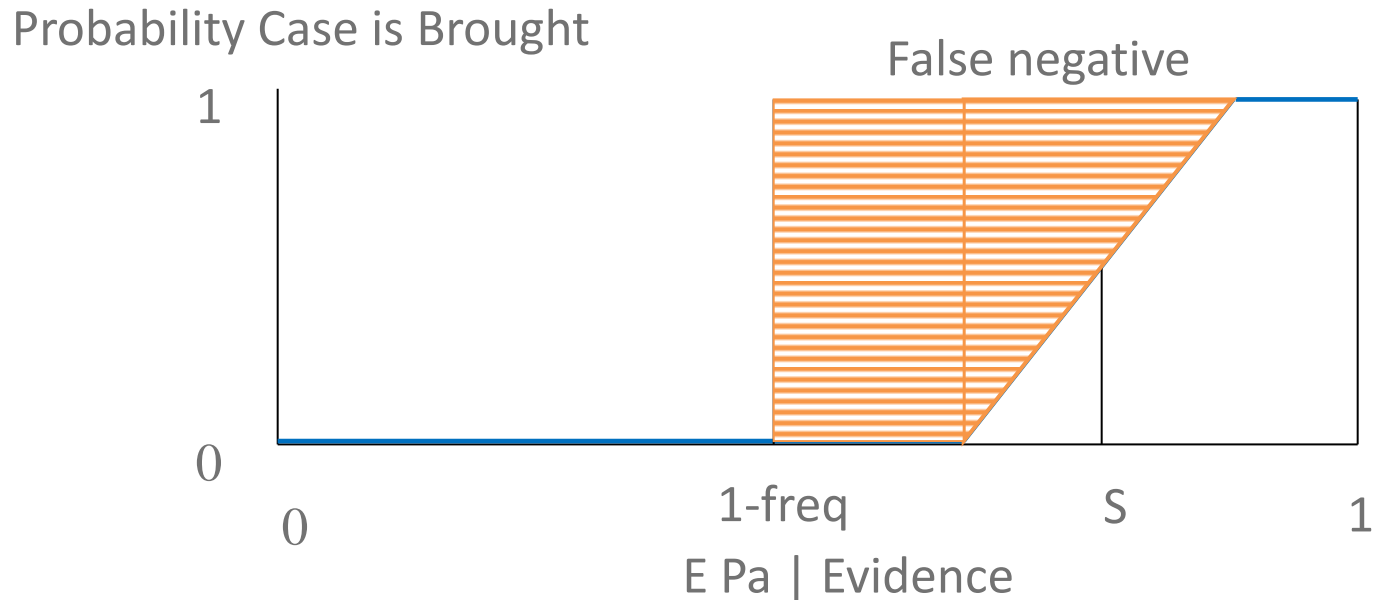
Probability Case is Brought



- False positives are a real concern, outweighing false negatives.
- Actions often restrict otherwise beneficial economic activity



High frequency of violation (certain emerging economies?)



- False negatives are a predominating concern
- Competition authority will potentially ignore harmful economic activity



Conclusion:

Convergence not a simple formula

- There is substantial convergence over what constitutes a competition law concern
- Substantial convergence on the discourse and analysis
- Some types of differences in application of the legal texts may exist to better adapt law to local conditions:
 - Market share rules
 - No effects analysis
 - Rules of thumb
 - Changed burden of proof for certain elements of a case
 - Clear framework for imposing structural remedies
 - Fee-based financing
- Key point: risk of not achieving objective of competition law enforcement objectives could be greater in emerging economies than high-income economies, due to differences in economic environment.