

A Systematic Review of Competition Policy Implementation: Institutional Mechanisms for Success

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Abstract

Literature reveals that the achievement of competitive outcomes in an economy can be facilitated by various factors, one of which is the presence of appropriate institutional mechanisms. Institutional mechanisms such as the extent of a country's institutional infrastructure development, attitude towards privatisation (Sengupta & Dube, 2008), consumer welfare and protection (Roberts 2008), application of the rule of law (UNCTAD 2010, Gomaa 2014) interdependence and setup of economic sectoral institutions (Gomaa 2014), all under the ambit of the government, are influential in the facilitation of successful enforcement of competition policy. The study is exploratory in nature and identifies institutional mechanisms that serve as mediators for the achievement of competition policy objectives.

A systematic review of literature was carried out using keywords associated with institutional frameworks, institutional mechanisms and competition policy after which a consolidation of the most common and recurring success factors required for successful competition policy implementation was done. The success or enabling factors identified are ranked on a macro level through the use of practical mapping tools. Results reveal that proper implementation of competition policy objectives is hinged on the effective use of institutional mechanisms domicile in an economy. Institutional Mechanisms (IMs) as found in literature are coded from IM1 to IM16. Autonomy and independence of a competition authority (IM1) was cited in 59% of the articles reviewed and is the second highest in terms of frequency and importance as an IM for proper competition policy implementation in countries seeking to adopt competition law and policy. An initial situation analysis strengthened by appropriate market monitoring mechanisms (IM9) scored the highest with a percentage representativeness of 62% revealed to be the most important factor for successful competition policy implementation.

JEL classification: O29; L52

Keywords: Competition Policy; Institutional mechanisms; Success factors, Mapping; Systematic review; Policy enforcement; Policy implementation; Institutions

1. Introduction & Background

Competition provides consumers with lower prices, value for money and freedom of choice which is essential for proper functioning markets [40] [31] [4] [36]. Competition is aimed at affecting enterprise behaviour, market and industry structures to ultimately allow allocative efficiency of resources and to increase the welfare of citizens in terms of price and quality [33] [34] [32]. Where firms are dominant and can in effect behave independently of other market participants, a signal that markets do not always work well is sent [12] [32]. In order for a country to promote business rivalry and make markets function better, a collection of policy instruments referred to as competition policy is employed [21] [23] [31].

Competition policy is a combination of policies within a country as stated by the government that would potentially influence competition levels in markets [12] [14] [33]. UNCTAD [40] presents a remarkable definition of competition policy as 'government policy to preserve or promote competition among

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market players and to promote other government policies and processes that enable a competitive environment to develop'. This definition implies that competition policy is in effect an enhancer of other economic policies. Falvey et al. [9] add that competition policy adopted by government is a series of measures implemented to allow an environment for fair competition across all participants. Competition law in essence is one of such measures as it can impact the behaviour of individual firms and the structure of industries [39]. In essence, competition law is a tool that governments can use to achieve efficient resource allocation [7].

Most literature have dealt extensively with the issue of competition policy and the developmental advantages that this affords. Competition policy as presented in recent decades seems to be a priority area for change and reform in many countries of the world especially developing economies. Godfrey [12] touches on the beneficial impact of effective competition policy on an economy and that a substantial number of countries face obstacles that render competition policy enforcement ineffectual resulting in a lack of competition in most markets in those countries. Gomaa [14] mentioned the difficulty faced in implementing competition policy, more so, experienced at a higher level in developing countries than in developed ones. The issue of development and improvements afforded by having competition policy in place would be briefly touched on but would not be the focus of this paper.

The research is focused on uncovering the best path countries should take after consideration of the precise institutional environment and institutional factors these countries face to have effective competition policy regimes. Ho & Chan [17] and Tobar-Martin [37] state that in the adoption of competition policy, the circumstances of a country known by carefully assessing the market structure, market participants, state of institutions and potential anticompetitive practices that exist in a country is vital. These are some of the mechanisms that contribute to the outcomes of competition policy that determine varying implementation success in various countries.

Subsequent sections of the paper are categorised as follows: Section 2 presents a discussion on the relevance of institutions and institutional mechanisms (IMs) for development. Section 3 contains the methodology and reference selection process undergone. Section 4 presents the findings from the systematic review process in form of a macro level mapping of institutional mechanisms for successful competition policy implementation. Section 4 also presents a description of identified mechanisms and the classification method adopted. Section 5 contains the discussion and conclusion.

2. Relevance of Competition Policy, Institutions and Institutional Mechanisms (IMs) for Development

Institutions are both formal and informal factors characterised as the unseen but important architecture of markets [40]. Institutions are also referred to as 'rules of the game' or simply as organisations [35], [29], [41], [6]. Institutions in essence both directly and indirectly coordinate human interactions and affect economic activities. Institutions, according to Goldstein [13] are composed of a collection of central ideas passed on into governmental establishments using legal mechanisms. Institutions formed, through this legal mechanisms, have an impact on a vast array of policies for very long periods of time. The feasibility and degree of freedom afforded economic activities depend on the institutional structures of the economy determining its direction towards economic growth, stagnation or repression. The forms of economic activities that institutions inherently allow reflect the opportunities institutions afford market participants in the context of ethnicities, customs, behaviours, religious edicts and formal procedures [29].

Contemporary institutional economists refer to an "institutional environment"- rules formed by governments or other establishments external to market participants, and "institutional arrangements" or "governance mechanisms" - explicit activities that participants in a market accept in light of the

restrictions and opportunities generated by the institutional environments [35]. Doward et al. [6] carefully differentiate institutional arrangements from the institutional environment³. The former being contractual in nature and the latter being contextual in nature. Virmani [41] notes that countries have differing institutional qualities and this would allow the same policy in different circumstances or countries to have significantly different effects. Voigt [42] concludes by stating that successful competition policies go hand in hand with good institutions. Successful competition policy regimes can be observed in the United States and in the European Union, where competition law and its practice have steadily developed and evolved over the years [37].

From literature reviewed, there is some consensus on the importance of having good institutions for appropriate and successful competition policy enforcement. Most studies suggest that competition policy enforcement suffers for want of good institutions and implementation mechanisms [41] [5] [38] [42] [32], especially in developing countries [4] [9] [39] [12]. Roberts [32] provides examples of a few countries that have managed to adopt competition law but that do not have proper mechanisms for enforcement and implementation. Philippines is one of such countries, as they have had antimonopoly laws since 1935, but a lack of proper institutional mechanisms such as a central competition agency, appropriate legal and administrative infrastructure to oversee and enforce legal provisions makes implementation difficult [32].

In drafting laws or in the design of institutions, a careful pre-analysis of the conditions in a particular market environment is desirable [21]. This would include an economic, social and political analysis of existing conditions preferably done by experts and possibly foreign consultants from countries that already have in effect functioning and successful competition law and policies. Cross-country collaboration is significantly noted to be important in competition policy enforcement. The Competition Commission of South Africa's collaboration with the European Union during the international merger of SmithKline Beecham PLC and Glaxo Wellcome PLC is of note and the United States support offered to Brazil has enhanced the latter's skill in competition implementation [4]. The desirability of competition law and policy is acknowledged, however, successful competition policy is hinged on the existence of well-functioning institutions and institutional factors or mechanisms in any country. UNCTAD [40] recognises institutional problems in various markets that potentially present enforcement difficulties. Sengupta & Dube [33] refer to effective institutions that possess key characteristics that enable the enforcement of competition law in a country.

A few studies allude that competition policy has to be in line with stated goals and the overall developmental objectives of countries [26] [9] [19] [23] [27]. An example is given by Nazifi [27] of Albania where though competition law does exist, in practice, implementation challenges are noticeable because of the structure of the Albanian economy. Most of the significant markets in Albania are oligopolistic and have very few market players as such players cannot be depended upon to provide reliable data resulting in coordinated behaviour being difficult to prove. Individuals in the Albanian economy are unaware of the anticompetitive effects of having few players in the market, as such general apathy exists in relation to competition issues.

A question of strategies to put countries on the right track on enforcement was raised in terms of how current institutions can be improved [5] [20]. Ma [24] emphasizes that developing countries hardly have the requisite institutional infrastructure that can support appropriate enforcement of competition law.

Authors highlight that since countries are at distinctive phases in their development process, the design and enforcement of competition policy should be sensitive to this reality [40] [20]. Godfrey [12] in his

³ Doward et al. (2005) define 'the institutional environment as consisting of general property rights, enforcement mechanisms and costs, expected human behaviours, power relations, communications infrastructure and information flows'.

paper refers to the need for an appropriate competition toolkit for effective competition policy adoption and implementation. He posits that the domination of markets in developing countries by large enterprises that have close links to government and rampant corruption are realities faced in many nations that have to be put into consideration for competition policy effectiveness.

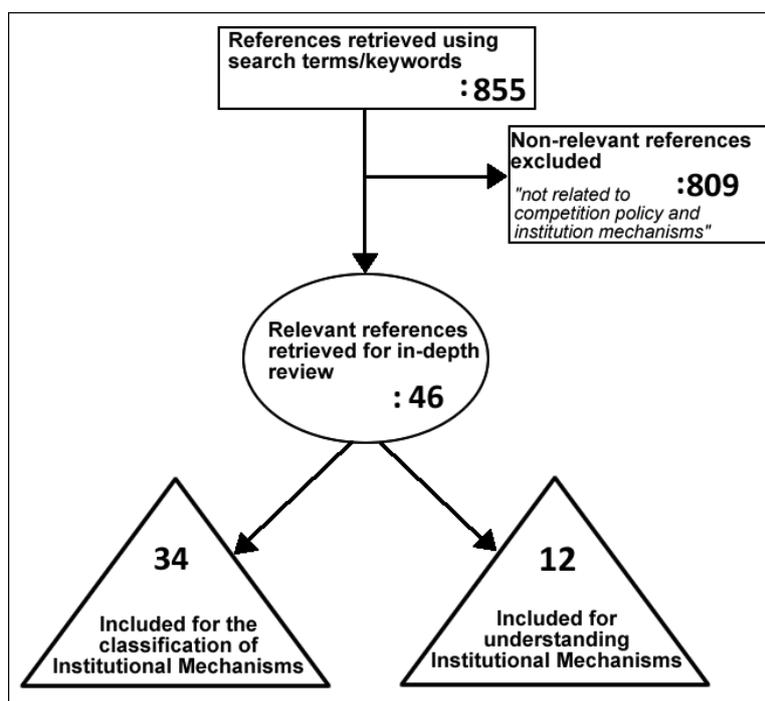
Good institutions come with skilled human resources to facilitate competition policy implementation. The Malawi Competition and Fair Trade Commission has in past years struggled to establish itself due to institutional obstacles such as insufficient finance and staff [33].

Lastly, some literature reveal that the legal framework, constitution, the rule of law and many informal rules and arrangements lead to an institutional culture that impact the way competition policy is received and implemented [12] [25] [27] [43]. Virmani [41] refers to the '*superstructure*' of institutions and that researchers working in specific contexts (countries) take the institutions' culture which is revealed as absolute. Other institutional mechanisms exist in literature that can ensure proper competition policy enforcement but this study aims to provide a prioritised list of IMs that is updatable.

3. Methodology

Electronic databases were utilised for the search: Search engines used are JSTOR, Competition Policy International (CPI), Journal of Competition Law & Economics, Science Direct, Journal of International Economics, a few articles were also obtained via Google Scholar. Keywords for the search were: Competition, Antitrust, Competition policy, Competition regimes, Implementation, Enforcement, Institutions, Institutional, Institutional mechanisms, Success, Enabling, Implications, Advocacy, Appropriate, Design, Institutional system, Factors, Methods, Effective and Effectiveness. These were combined with Boolean search operators like 'OR' and 'AND' in the various searches. References that contain any of the keywords either in their titles or in their abstracts are considered. References included are those that: i) address competition policy and the need for institutional mechanisms for proper development, implementation and enforcement of competition law and policy ii) have a global focus and that are also country specific. iii) focus on developing economies are given preference in the search and review process. iv) list necessary institutions for competition policy success and define institutions as they relate to competition policy, micro and macro institutional mechanisms v) rank institutional factors identified (more important versus less important institutional factors) vi) are published in English.

Figure 1 shows the numerical distribution of references retrieved from the literature search process. 855 references were retrieved in total. Of the 855 references, 46 proved to be relevant to the subject matter. 34 of these references formed the final number for the classification process.

Figure 1: Reference Selection Process

Source: Authors own calculations

In general, references that add knowledge to the research output to an extent are included. Both historical and current articles are included, but more recent articles are given preference. Allowance is given where institutions are not in paper titles but are mentioned in the abstract. Where references do not have abstracts, a review of the introductory part of the reference is done to evaluate relevance to the review process.

Papers that only have 'institutions' and in some instances only 'competition policy' are also considered for the review process and are included in the discourse based on their relevance in defining competition policy, institutions and institutional mechanisms for successful competition policy implementation. References that emphasize the usefulness of good institutional mechanisms for transition economies or developing countries are included. References were further screened to appraise the study's quality and its potential contribution to the review process.

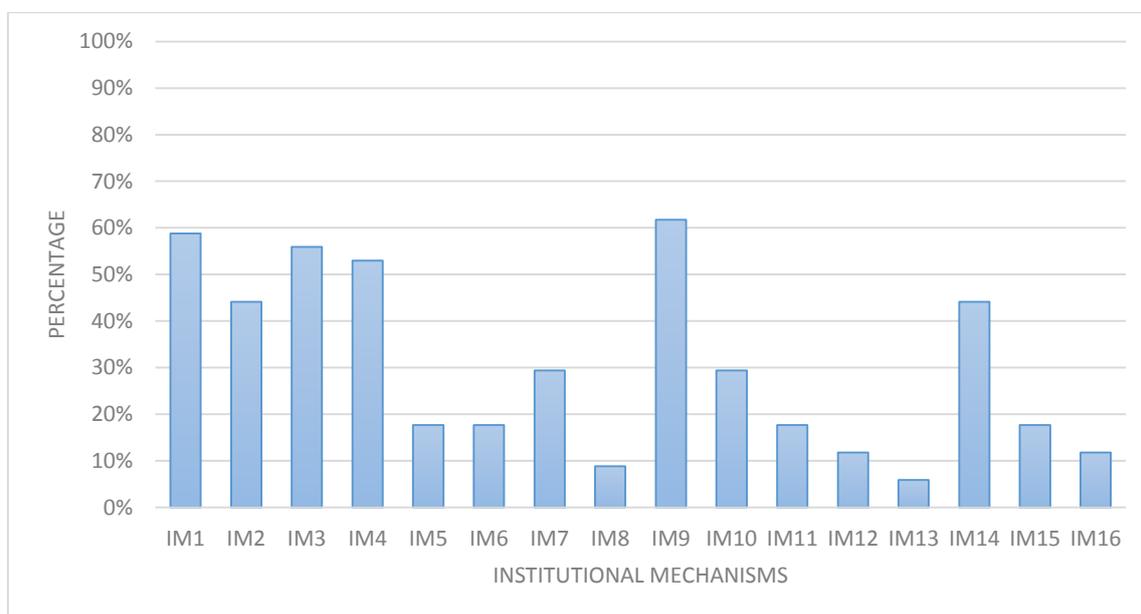
In order to classify the IMs, 34 of the papers that concretely highlight IMs in their study were reviewed. The keywords were compared for similarities and were categorised as such using themes that cover their definition and description.

4. Macro level mapping of institutional mechanisms for competition policy implementation

Competition law regimes should be designed and applied according to the institutional level of development of a country. UNCTAD [40] refers to "missing institutions" that alter the optimum enforcement of competition policy. Identifying the institutional factors that allow for the successful enforcement of competition law and policy in a country is discussed in this section. Tables and figures presented with recommended institutional mechanisms are not exhaustive and can be updated when new information is available.

Figure 2 details the representativeness and percentage ranking of each institutional Mechanism (IM) as found in literature. These IMs are coded from IM1 to IM16. For definitions of the IMs see Table 1.

Figure 2: Macro level Mapping of Institutional Mechanisms Identified



Source: Authors own calculations

Initial situation analysis strengthened by appropriate market monitoring mechanisms (IM9) scored the highest with a percentage representativeness of 62% for successful competition policy implementation. Most authors agree that an initial country assessment that enables competition policy to be tailored to the particular local realities of specific countries is necessary, otherwise, future constraints to successful enforcement and implementation of competition policy may result [14] [34] [40] [10]. UNCTAD [39] refer to the need to understand the economic position of a country; development level, size, relevance given to public and private sectors and foreign trade provisions. A sort of inquiry into the country to understand even the political climate of such environments is important.

Autonomy of competition authority (IM1) was cited in 59% of the articles reviewed and is the second highest in terms of frequency and importance as an IM for proper competition policy implementation in countries seeking to adopt or that have already adopted competition policy. To guarantee autonomy, Mehta [25] touches on enhancement mechanisms such as methods of appointing the director and other staff of the competition agency, legal provisions and budgetary oversight in the organisation. Knight-John (2002) emphasizes that independence must not be viewed separately from accountability that the agencies must have.

Competition advocacy, awareness and education (IM3) is the third IM identified from literature with a percentage rating of (56%). Kovacic [21] emphasizes that advocacy tools must be the prime focus of competition agencies and governments for successful competition policy regimes. Resources must be dedicated to the education of government officials and policy makers and all market participants about competition and the relevance of having a competition law. Mehta [25] competition advocacy activities strengthen enforcement of competition policy. Dawar [4] gives some examples of competition regimes that have been able to some extent imbibe a competition culture by practicing what they have learned from countries more advanced in the area of competition law (Brazil, Costa-Rica, Jordan and South Africa).

Other IMs identified are: Independent and effective judiciary system (IM2, 44%, 5), Resource availability and use (human, administrative e.g. IT networks) and financial (IM4, 53%, 4), Capacity competence development (IM5, 18%, 7), Experience and knowledge sharing mechanisms (both locally & internationally) (IM6, 18%, 7), Coordinated interrelationships, cooperation and dependency among relevant agencies /institutions, stakeholders and foreign enforcement agencies (IM7, 29%, 6), Impact of competition policy on other policies (IM8, 9%, 9), Transparent processes and system (IM10, 29%, 6), Regional collaboration of competition authorities (IM11, 18%, 7), Existence of effective competition policy (IM12, 12%, 8), Competition research development (IM13, 6%, 10), Effective and efficient enforcement mechanism (IM14, 44%, 5), Accountability (IM15, 18%, 7), Role & influence of sectoral regulators (IM16, 12%, 8).

Table 1: Institutional Mechanisms for Successful Competition Policy Implementation

INSTITUTIONAL MECHANISMS (IM)	Code	Percentage Distribution for IM	Rank	AUTHORS
Autonomy of competition authority	IM1	59%	2	[21] [33] [32] [15] [11] [24] [9] [25] [40] [1] [23] [7] [31] [43] [36] [4] [42] [39] [19] [5]
Independent and effective judiciary system	IM2	44%	5	[30] [36] [24] [7] [1] [11] [39] [18] [37] [27] [23] [40] [12] [14] [29]
Competition advocacy, awareness and education	IM3	56%	3	[21] [12] [25] [34] [37] [17] [40] [23] [27] [24] [7] [18] [30] [43] [4] [36] [39] [42] [9]
Resource availability and use (human, administrative e.g. IT networks) and financial)	IM4	53%	4	[11] [5] [9] [36] [43] [30] [4] [24] [31] [1] [37] [40] [28] [42] [23] [18] [21] [33]
Capacity competence development	IM5	18%	7	[32] [14] [23] [25] [22] [9]
Experience and knowledge sharing mechanism (local & international)	IM6	18%	7	[39] [4] [37] [23] [18] [40]
Coordinated interrelationship, cooperation and dependency among relevant agencies /institutions & stakeholders/ foreign enforcement agencies	IM7	29%	6	[2] [32] [40] [22] [28] [23] [27] [43] [39] [4]
Impact of competition policy on other policies	IM8	9%	9	[40] [42] [14]
Situation analysis and market monitoring mechanisms	IM9	62%	1	[21] [12] [14] [34] [40] [10] [17] [1] [16] [29] [37] [31] [24] [30] [38] [36] [42] [25] [9] [39] [4]
Transparent processes and systems	IM10	29%	6	[5] [11] [43] [9] [7] [30] [37] [24] [28] [31]
Regional collaboration of competition authorities	IM11	18%	7	[21] [30] [4] [37] [40] [9]
Existence of effective competition policy	IM12	12%	8	[9] [24] [21] [33]
Competition research development	IM13	6%	10	[21] [27]

Effective and efficient enforcement mechanisms	IM14	44%	5	[21] [2] [14] [33] [40] [22] [28] [23] [18] [43] [4] [24] [39] [42] [9]
Accountability	IM15	18%	7	[11] [5] [1] [30] [38] [24]
Role & influence of sectoral regulators	IM16	12%	8	[2] [16] [25] [24]

Source: Authors own calculations

5. Discussion and Conclusion

The paper structures IMs into categories for better understanding and consideration for various countries. Three most important steps towards the successful implementation and continued progression of competition law and policy in countries are Autonomy of competition authority, Competition advocacy, awareness and education and a Situation analysis with appropriate market monitoring mechanisms. Tobar Marin [37] highlights that countries must be cautious as the misappropriation of competition law could worsen competition, instead of promoting it.

On closer observation of the IMs categorised in this paper, the resounding conclusion that one can draw is that a competition culture is required for any country that seeks to implement competition law and this can be achieved by taking into consideration the IMs uncovered from literature reviewed. Mehta [25] emphasizes that competition culture can be further promoted and developed in society by passing across the benefits of competition and increasing this awareness within society. Competition authorities most times depend on evidence and supporting data and information to expose competition infringements. Only a knowledgeable and aware community will provide such cooperation and would provide substantive complaints to the relevant authorities.

Asides from having a competition culture, measures should be put in place to quantify a competition institutions effectiveness [40]. A continuous examination of competition legislation is thus required because local economies that lack competitiveness would be problematic for consumers [17]. For developing countries, their peculiar market characteristics, legal and enforcement struggles could make the implementation of competition policy much harder [40]. Hence, the need for a proper consideration of the IMs is required.

Another important mechanism is the recruitment and management of competent and skilled human resources for the competition authority. Kovacic [21] emphasizes the need for recruitment of considerably skilled lawyers and economists due to the fact that at the onset of competition policy implementation especially in developing countries, competition institutions should expect market participants to question its powers (i.e. procedural activities e.g. method and reason for obtaining information from individuals and businesses, substantial issues e.g. interpretation & scope of and sanctions and remedies imposed on the competition institution's ability to impose these). Competition institutions should be adequately shielded from legal backlashes by having a solid legal framework and intelligence infrastructure.

The IM categories presented cover the major areas of concern that many countries have in implementing competition policy. These categories are not rigid but are an attempt to structure the IM in a manner that is useful for policy implementers. Although, IMs have been placed into 16 macro categories, a few factors did not directly fit into defined categories and these could have introduced some bias into the IM categories presented. Factors such as consumer protection policy, decision making consistency, income level of competition officers, due process etc. did not seem to fall directly into specific categories highlighted because these were not clearly stated or explained in the particular paper

reviewed and were simply mentioned as IM factors. Hence, such factors were excluded from the categorisation process as they mostly represented outcomes of a good political environment rather than an IM for successful competition policy implementation.

Therefore, the possibility of extending the IM categories in future is acknowledged. Firstly, the factor mapping process is extendable with new knowledge from literature. Secondly, it is also possible to have macro and micro groupings of IM categories, hence creating a hierarchy of IMs which is implementable in various countries.

More so, further research is required to uncover for each of the IMs, step by step approaches that countries can implement to have proper IMs instilled in their competition regimes. This is a significant step towards designing and implementing country specific competition policy and enforcement mechanisms. The research will identify and harmonise local realities that culminate into successful competition policy adoption for different countries.

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