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**Competition Assessment in developing countries:
Policy challenges after the global crisis**

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Abstract: After the 2007-2008 global financial crisis, the world has been facing persistently low economic growth, particularly in many developing economies where the low growth environment is putting progress and shared prosperity at risk. In addition to this context, numerous laws, regulations and standards, have turned out to restrict competition in the marketplace further than necessary to achieve their policy objectives. This paper aims to address that developing countries, as those in Africa and Latin America, should adopt competition assessments for their new regulation in order to guarantee that their new rules and/or standards will not affect the competition environment in their countries. The paper concludes that governments and/or antitrust authorities should carefully provide a form of assessment, or a general methodology, for identifying unnecessary restraints and developing alternatives to enhance less restrictive policies that could still achieve government objectives.

Key words: competition and regulation; developing countries; standards; competition assessment; regulatory assessment, economic crises,

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Introduction

After the 2007-2008 global financial crisis, the world has been facing persistently low economic growth, particularly in many developing economies where the low growth environment is putting progress and shared prosperity at risk³. Furthermore, in the past decade, companies have gradually tried to recover from the impacts of the economic crisis in a scenario of high economic uncertainty and financial turbulence. At the same time, governments, sector regulators, competition authorities, and central banks have been working on policies and reforms to minimize the impact of the crisis on the economy, to stabilize the financial system, and to introduce and amend the regulations and institutions necessary to ensure that the crisis does not repeat itself.

Actually, governments have been trying to design their regulation focusing on different goals in order to achieve very different groups within society. To ensure that competition in the marketplace is not constrained, governments implemented over the years a set of policies and laws, known as Competition Policy, that usually involve two issues: (i) the enforcement of antitrust laws and state aid control; and (ii) the promotion of measures to enable companies' entry, contestability and rivalry.⁴

The recent discussion post-crisis, the recent globalization of competition law enforcement, and the increased adaptation between competition regimes, has permitted antitrust experts to speak about the idea of a common 'DNA' of competition policies.⁵ The fact that competition laws draw their core analytical framework from the same source of principles does not imply that there exist tensions within the free international landscape of competition enforcement, as each country has its own cultural, social and economic specificities to be taken into account. Some developing countries in Latin America and Africa, for instance, are alleged to have inferior levels of competition than other developing countries around the world, mainly when we compare the existence and enforcement of competition law, policy barriers to competition, trade and foreign investment policies.⁶

In developing countries, as those in Africa and Latin America, there are major forces working to keep markets closed and uncompetitive. Fox, for instance describes that anticompetitive practices tend to be more severe in societies "long dominated by state-owned firms, in which capital markets work poorly, barriers to entry are high, problems of

³ WORLD BANK GROUP. *Transforming Markets Through Competition*: New developments and recent trends in Competition Advocacy, 2016. p. 6.

⁴ WORLD BANK GROUP and OECD. *A Step Ahead: Competition Policy for Shared Prosperity and Inclusive Growth*. Conference Edition, 2016, p. 5

⁵ Ezrachi, A. Sponge. Oxford Legal Studies Research Paper N° 16/2015. p.4

⁶ WORLD BANK GROUP. *Boosting Competition in African Markets*. April, 2016.

capture are great, and social ties breed collusion and discourage detection”.⁷ In addition to this concern, it is important to note that those forces that keep markets uncompetitive are even more difficult to be fought in times of financial crises, or post-financial crises – when the companies and the policies might be more focused on restructuring the economy and to minimize its potentially devastating effects to guarantee a healthy competition environment.

From a Law & Economics perspective, restrictions on competition can be implemented at many different levels of regulation and can take many forms (technical, financial, and legal). Besides, they may arise from public sector actions as well as private sector ones⁸. An intrusive regulatory environment might damp down the spirit of entrepreneurship in several companies and therefore legislators should be more aware of the need to enhance suitable policies in order to avoid potential competition harms.⁹

Considering this background, this paper questions whether developing countries should have specific tools to revise regulation in order to guarantee a more competitive market. We address that, especially in times of economic crises, or post-economic crises, developing countries should adopt competition assessments for their new regulation in order to guarantee that the new rules will not affect competition in their markets.

The paper is organized as follows. The first part presents a literature review and some insights on how regulation and setting standards might potentially affect competition in developing countries. The second part analyses the principles and best practices related to the implementation of competition assessment, while focusing on the Regulatory Impact Assessment and showing the current experience of some African and Latin American countries. The last part of the paper leads to some preliminary conclusions and guidelines to those developing economies.

1. Competition and regulation

1.1. The scope of competition law in developing countries

Competitive markets allow new firms to enter, efficient firms to succeed and inefficient firms to fail and exit the markets. In addition, competition law and policies reduce uncertainty for companies regarding their investment decisions. A study conducted by Dutz & Hayri¹⁰, for example, found a strong correlation between the effectiveness of competition policy and economic growth in the OECD countries.

More recently, new studies have shown that competition in the marketplace matters for economic growth as it allows domestic firms to become more competitive in both intern

⁷ Fox, E. *Competition, Development and Regional Integration: In Search of a Competition Law Fit for Developing Countries*. NYU Working paper No. 11-04 October 2012. p. 10

⁸ OECD. *Implementing Competition Policy in Developing Countries*. 2007.

⁹ OECD. *Competition Assessment Toolkit*. Volume 1 and 2. Available at: www.oecd.org/competition/toolkit.

¹⁰Dutz, M. & Hayri, A. *Does more intense competition lead to higher growth?* CEPR Discussion Paper. 1999.

and external markets¹¹. For instance, increasing competition in Tunisia has been estimated to boost labor productivity growth by five percent in one year. According to the 2016 World Bank report, in Brazil, Kenya, Peru and South Africa improving regulations of services sectors that are currently restricting competition could add between 0.1 and 0.5 percentage points to GDP growth¹².

In specific terms, competition law and policies are essential to control or eliminate restrictive either arrangements among enterprises, or problematic mergers and acquisitions, or even abuse of dominant positions of market power. These restrictions limit access to markets and restrain competition, adversely affecting domestic or international trade or economic development.¹³ Considering the well-known recommended best practices regarding competition law and policies we can highlight:

- i) The design of the law should reflect the level of economic development of the country concerned, the structure of its economy and its constitution and culture. A competition law should not stand alone, but should be part of a well-designed package of government measures to create the right environment for competitive markets in pro of the consumers.
- ii) Competition policy should be considered by the annual and medium term plans and budgets of governments.
- iii) The main focus of a competition law should be staying as close as possible to the objective of promoting competition in markets.
- iv) There should be an effective working relationship between the regulators and the authority.
- v) A competition authority should be independent of government in its day-to-day decisions. Moreover, the authority should have an adequate budget and should be staffed by competent officials.
- vi) A new Competition Authority needs to prioritize its work carefully. A good rule of thumb, at least initially, is to concentrate on cases where entry barriers seem high, where prices seem high and where consumers will benefit most.¹⁴

In lower-income countries, the competition authorities should focus more on opening specific markets to competition and reducing anticompetitive regulation that may protect the companies that are less efficient.¹⁵ In his analysis of developing countries, Fox agrees that when one look to these countries, (i) the competition policies should end up

¹¹ Kitzmuller, Markus; Licetti, Martha Martinez. 2012. Competition policy: encouraging thriving markets for development. Financial and private sector development; note no. 331. Washington, DC: World Bank.

¹² WORLD BANK GROUP. Transforming Markets Through Competition: New developments and recent trends in Competition Advocacy, 2016. p. 6. *Based on* Purfield, Catriona Mary; Marek Hanusch; Yashvir Algu; Tania Priscilla Begazo Gomez; Martha Martinez Licetti; Sara Nyman. 2016. South Africa economic update: promoting faster growth and poverty alleviation through competition. South Africa economic update; issue no. 8. Washington, DC: World Bank Group; Brazil - A Short Review of Competition-Related Regulatory Restrictions in Legal, Accountancy and Architecture Services based on the OECD Product Market Regulation, WBG (forthcoming); and Vostroknutova, Ekaterina; Rodriguez, Alberto; Saavedra, Pablo; Panzer, John. 2015. Peru - Building on success: boosting productivity for faster growth. Washington, DC: World Bank Group.

¹³UNCTAD. *Model Law on Competition: Substantive Possible Elements for a Competition Law, Commentaries and Alternative Approaches in Existing Legislation*. 2010.

¹⁴ OECD. *Competition Assessment Toolkit*. Volume 1 and 2. Available at: www.oecd.org/competition/toolkit

¹⁵ For example, check: WORLD BANK GROUP. *Making Markets Work for Development through Effective Competition Policies*.

with government barriers to entry, encourage growth and mobility and prevent new barriers and privileges and (ii) the competition laws should define the prohibitive restraints regarding abuse of economic power and guarantee the ideal enforcement¹⁶. Indeed, there is the need to consider the main cultural, legal and institutional features of the country to analyze the challenges for enhancing competition policies.

At this respect, there is a broad literature about legal transplant that highlight the importance of considering the characteristics of the country on modeling laws in general, and this can also be applied to competition law and policies. Carbonara & Parisi, for example, discuss the idea that countries reduce legal differences through non-cooperative and cooperative adaptation processes that alternatively lead to legal transplantation or harmonization.¹⁷ Also Ezrachi takes some insights in this sense, when he created the expression ‘sponge’ to characterize the dynamics of competition laws – as they stretch or narrow its application and harness it, at times, to protect a wide range of social goals. The author argues that legal systems are embedded in their society’s evolving norms of justice, morality and fairness, that is to say, national legal systems have distinct social, economic and political foundations. As competition law is not immune to all these dynamic factors, different levels of economic development, market realities, government and enforcement structure all dictate potential differentiation in the composition of national competition provisions and their implementation¹⁸.

In a complementary approach, Fox introduced the idea that developing countries – like those in Latin America and Africa – must try to develop their own competition law and resist to pressures to copy international standards. In addition, the author suggested that low-income countries should also find a way of defining a common ground for rules and standards regarding competition policy. For example, African countries should not only look at the best practices of competition authorities in the European Union or in the United States, but internalize the experience of implementing Competition Law of countries with similar economic, social and political realities where the potential challenges for implementing rules might be comparable¹⁹.

1.2. How do regulations affect competition?

Market features and dynamics – entry barriers, rivalry, countervailing power, etc. – indicate challenges for the behavior and performance of firms. In other words, the market competitive conditions indicate whether companies are more willing to compete, cooperate or collude.²⁰ Rules, standards, sector regulations, might directly affect this market

¹⁶ Fox, E. *Competition, Development and Regional Integration: In Search of a Competition Law Fit for Developing Countries*. NYU Working paper No. 11-04 October 2012. p. 4

¹⁷ Carbonara, E. & Parisi, F. *The Paradox of Legal Harmonization*. Public Choice, 2007; George Mason Law & Economics Research Paper No. 05-40; Minnesota Legal Studies Research Paper No. 07-14. Available at SSRN: <http://ssrn.com/abstract=870519>

¹⁸ Ezrachi, A. *Sponge*. Oxford Legal Studies Research Paper No. 16/2015. p.8

¹⁹ FOX E. *Supra* n 16, p. 18

²⁰ ICN (International Competition Network). *Understanding competition at the regional level: an assessment of competitive dynamics in the cement industry across Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia*. Draft paper for presentation at pre-ICN conference, 22 April 2014., p.27

competitive conditions and should be carefully assessed by Competition Authorities, especially in times of economic crises or post-economic crises when the competition environment itself is too fragile.

Considering the nature of regulations, there are several types that might affect competition, as rules (i) that create barrier to entry in the market or directly affect the number of suppliers; (ii) that limit the capability of suppliers to compete; (iii) that reduces the incentive of suppliers to compete; (iv) that limit the choices and information available to customers; among others.

According to the microeconomic price theory²¹, those types of rules tend to reduce the rivalry in a specific market and therefore the ability of individual suppliers to raise prices can be increased. The decline in rivalry also might reduce incentives for companies to be efficient and innovative in the long-term.²² In this setting, Governments should be particularly be concerned about rules/regulation that have the aim of:

- a. granting exclusive rights for a supplier to provide goods or services;
- b. establishing a license, permit or authorization process as a requirement of operation;
- c. limiting the ability of some types of suppliers to provide a good or service;
- d. significantly raising cost of entry or exit by a supplier;
- e. limiting sellers' ability to set the prices for goods or services;
- f. limiting freedom of suppliers to advertise or market their goods or services;
- g. significantly raising costs of production for some suppliers relative to others;
- h. creating a self-regulatory or co-regulatory regime;
- i. requiring share of sensitive information regarding outputs, prices, sales or production costs;
- j. exempting the activity of a particular industry or group of suppliers from the operation of general competition law;
- k. limiting the ability of consumers to decide from whom they purchase;
- l. reducing mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers;
- m. Fundamentally changing information required by buyers to shop effectively, among others.²³

1.3. How do standards affect competition?

Standards can be defined as a set of technical specifications that seeks to provide a common design for a product or process.²⁴ Standards of a particular product or of a technical specification in product or services markets can take different forms, grades or sizes. For example, standards can establish quality parameters that define product characteristics related to safety, performance or efficiency; set parameters for types of

²¹ Example of literatures that discuss Microeconomics and Price Theory are: Friedman, David D. *Price Theory: An Intermediate Text*. Published by South-Western Publishing Co, 1986. Mankiw, N. Gregory. *Principles of Microeconomics*, 6 Ed. by South-Western Publishing Co, 2012.

²² An extensive literature can be found at: Motta, M. *Competition Policy: Theory and Practice*. Cambridge University Press, 2004.

²³ All these items are described and exemplified at: OECD. *Competition Assessment Toolkit*. Volume 1 and 2. Available at: www.oecd.org/competition/toolkit

²⁴ Geradin, Damien and Layne-Farrar, Anne, *The Logic and Limits of Ex Ante Competition in a Standard-Setting Environment*. Competition Policy International, Vol. 3, No. 1, Spring 2007. p.3

information about a product, such as labeling standards; define criteria for professional performance ; ensure that two or more related products or processes may fit and operate together; among other examples.²⁵

Most of the times, in order to fulfil the target of such rules, cooperation among market players are required. For instance, Forums among industries aim to discuss those standards that generally referred to as standard setting organizations (SSOs). In more details, according to the OECD²⁶ there are five broad categories of standards e: quality standards, informational standards, uniformity standards, professional conduct and certification standards, and interoperability standards.

When talking about general regulation, there are also several types of standards that might also affect competition. The standard setting process can also create barriers to entry in the market or directly affect the number of suppliers - for example when regulatory requirements are difficult and costly for them to meet. These standards can limit the ability of suppliers to compete in a context where rules reduce price competition or restrict advertising; or even reduce the incentive of suppliers to compete by allowing broad discretion in the application of regulations or by establishing regulations that favor certain firms.

The *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements* defines several anticompetitive effects that might be considered in this setting standard context. Among others:

“ (...) companies engage in discussions in the context of standard-setting might collude and therefore this could reduce or eliminate price competition in the markets concerned, thereby facilitating a collusive outcome on the market; (...) standards that set detailed technical specifications for a product or service may limit technical development and innovation. Once one technology has been chosen and the standard has been set, competing technologies and companies may face a barrier to entry and may potentially be excluded from the market; (...) standardization may lead to anti-competitive results by preventing certain companies from obtaining effective access to the results of the standard-setting process (that is to say, the specification and/or the essential IPR for implementing the standard). If a company is either completely prevented from obtaining access to the result of the standard, or is only granted access on prohibitive or discriminatory terms, there is a risk of an anti-competitive effect; (...) standard terms become industry practice, access to them might be vital for entry into the market. In such cases, refusing access to the standard terms could risk causing anti-competitive foreclosure.”²⁷

Another approach to the anticompetitive effects of standard setting focuses the procedure in which standards are set and the role of SSOs. This approach considers that standard setting might facilitate exclusion of competitors in the market – what means that the board of companies that usually define the standards might have incentives to create

²⁵ OECD. *Setting Standard*. 2010. p. 10

²⁶ OECD. *Setting Standard*. 2010. p. 22

²⁷ See paragraphs 265-272 of the *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements* published in 2011.

criteria that are costly or difficult to implement, and, in some cases, they are not absolutely necessary to guarantee the quality/safety of products²⁸. Those companies that cannot bear the higher costs imposed by those standards are somehow excluded from the market. In other cases, standards can have different cost impacts among firms, and also in these circumstances, the firms that are more dependent on the evolution of the costs of those standards will have a competitive disadvantage and, as a result, they can be slowly excluded from the market.

The economic consequences of preventing the entry of competitors in a specific market can be expressive, especially in developing economies in Africa or Latin America. These consequences are due to the fact that in developing economies that seek economic growth excessive standard setting might directly harm economic growth.

Besides, those standards might promote coordinated higher prices. The added costs of complying with the industry standards incurred by businesses might be directly translate to higher prices paid by consumers, and to the reduction in the variety of products and services available, such as the Competition Authority in Kenya warned:

“For example, food and beverages clearly need to be safe for consumption, but pushing quality and content to higher than necessary levels can have the effect of reducing the variety offered to consumers and raising prices. Likewise, housing and construction codes are necessary, but setting standards too high and limiting supplies of buildable land could lead to considerably higher housing prices that may result in many lower-income individuals being denied access to the market.”²⁹

Considering this background, the next item will discuss the need of interface between competition authorities and sectoral regulators as this alliance and cooperation among them might help preventing firms from exercising market power.

1.4. The interface between competition authorities and sectoral regulators

There is a number of reasons why governments intervene in the markets by adopting sectorial regulations. Regulated sectors generally include major public utilities that are important for consumer welfare. Indeed, economic regulation deals with regulation of prices, quality, profits, market entry by firms, among other variables. Sector regulators are required where competition cannot work effectively.

In other words, the rationale for economic regulation stems from the presence of market failures. Under certain conditions, the market system may not lead to desirable outcomes. Such conditions include, for example, the presence of natural monopolies³⁰, public goods,

²⁸ OECD. *Setting Standard*. 2010.p. 32

²⁹ Competition Authority of Kenya. *Assessment of Regulatory Impact on Competition: Guidance for Policy Makers*. November 2015.p. 23

³⁰ At this respect, we should point out that natural monopolies are subject to: (a) economies of scale (after the initial investment, average costs decline with each additional unit produced); (b) high sunk and fixed costs; (c) long-term maturity of investments, requiring special financial conditions in order to mitigate financial risks

asymmetric information among parties, externalities and a twisted distribution of income. In those circumstances, the regulators should intervene in order to correct those failures. In some cases, however, regulations can bring about negative effects on the functioning of the markets by eliminating firms' incentives to compete³¹.

Both competition law, policy and regulation aim at defending the public interest against monopoly power. The agencies can interact in several forms, for example: (i) regulation might contradict competition policy, for example, when regulators permit price coordination in a specific market, prevent advertising or require territorial market division; (ii) regulation can replace competition policy in case of natural monopolies, controlling the market power in a more direct form - setting prices (price caps) and controlling entry and access; (iii) regulation can replicate competition law and policy, aiming at defending the same goals and principles, and finally and more relevant for the purpose of this article (iv) regulators can use competition institutions' instruments to achieve market incentives and competitive dynamics³².

Nevertheless, as we presented above, there are several types of regulatory obstacles to competition, as such regulations that alter entry conditions in a specific market. These obstacles create discriminatory conditions among players; limit businesses' strategy options, and harm consumer's choice. For this reason, it is important to understand (a) *what target* a particular rule/standard imposed by regulators is seeking to achieve and, then, (b) *what are the less restrictive policy* options that can achieve the same policy objective³³.

associated with the mismatch between costs and cash generation; (d) generation of externalities; among other features. For more details, please see: Tirole, J. *Market Power and Regulation*. Economic Sciences Prize Committee of the Royal Swedish Academy of Sciences, 2014. Available at: https://www.kva.se/globalassets/priser/ekonomi/2014/sciback_ek_en_14.pdf

³¹ WORLD BANK GROUP. *Unlocking Growth Potential In Kenya: Dismantling Regulatory Obstacles To Competition*. November, 2015.

³² UNCTAD. *Model Law On Competition: Substantive Possible Elements for a Competition Law, Commentaries and Alternative Approaches in Existing Legislation*. 2010. – See Box 3, p. 19.

³³ WORLD BANK GROUP. *Unlocking Growth Potential In Kenya: Dismantling Regulatory Obstacles To Competition*. November, 2015.

2. Competition Assessment

Governments and or the antitrust authorities, mainly in times of economic crises or post economic crises, should carefully provide a form of assessment, or general methodology for identifying unnecessary restraints and developing alternative, less restrictive policies that still achieve government objectives. Even knowing that, in practice, there are several approaches tools to review the rules and standards in order to guarantee a competitive environment, this paper focuses on the most well-known assessment tool: the Regulatory Impact Analysis and its Competition Assessment.

2.1. Regulatory Impact Analysis (RIA)

Broadly speaking, Regulatory Impact Analysis (RIA) is a method for analyzing the cost and benefits impacts of policy making. Indeed, it is a way of assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. RIA can be understood as a practical guide to help policy makers in developing countries to identify and focus on the key barriers to competition. The assessment of government initiatives can have a significant role for promoting and to protect public policy.

As part of the Regulatory Impact Assessment, the “Competition Assessment” itself is an expression to deal with the procedure of evaluating government regulations, rules and/or laws in respect to their effects on markets’ dynamics. It is a revised tool that helps regulators to identify the risks of proposed standards³⁴. As of 2011, the OECD, as part of its studies related to Regulatory Impact Assessment, published a Toolkit about Competition Assessment presenting a “checklist” of items that should be identified and analyzed by national regulators before promoting or not a particular law/standard in their countries.³⁵ The key issues of the proposed “checklist” involve the identification of rules (i) that create barrier to entry in the market or directly affect the number of suppliers; (ii) that limit the capability of suppliers to compete; (iii) that reduces the incentive of suppliers to compete and; (iv) that limit the choices and information available to customers.

When any of those items are identified in public or private sector actions, an estimate should be made of the likely extent of the harm that results from the rule. An assessment should conclude with a conclusion on whether there are competition problems in the sector that require correction, and if so, which the most appropriate remedies are.³⁶ It is worth noting that are several major sectors where competition assessments will often be found to be desirable which are basically the sectors that have better potentials for monopolization, such as energy and telecommunications.

As it is presented below, developing countries as those in Africa and Latin America are not that much familiar with such tools.

³⁴ OECD. *Competition Assessment Toolkit*. Volume 1 and 2. Available at: www.oecd.org/competition/toolkit

³⁵ OECD. *Competition Assessment Toolkit*. Volume 1 and 2. Available at: www.oecd.org/competition/toolkit

³⁶ OECD. *Implementing Competition Policy in Developing Countries*. 2007.

2.2. Competition Assessment in Africa and Latin America

According to the report prepared by ICN, just few developing countries in Africa and Latin America have adopted any kind of competition assessment in their policy development process³⁷. To address this topic in more details, we will present a brief sum-up on how competition assessment has evolved after the 2007-2008 global crisis.

For instance, South Africa passed through a major regulatory reform during the last decade. While competition law has been introduced in the country, a proliferation of new legislation and regulations that businesses, both big and small, have to comply with.³⁸ The South Africa's Competition Law³⁹ indicates the functions designed to the Commission – national competition agency. Among these functions, the responsibility to elaborate the Competition Assessment refers to the revision of legislation and public regulations and the report of any provision in such legislation or regulation that has the potential to harm competition. In other words, the national competition law expressly empowers the Commission to comment on competition matters that arise in any legislation or policy and in all tiers of government.

In Zambia, the national authority provides guidance to the government on the impact of draft or existing legislation and policies on competition in relevant markets. Besides, it also offers advice to specific sector regulators to observe competition in their markets. For example, the Commission has recently written a note to the national Government asking why it should not compel all Government institutions to have only Zambia Telecommunications Company be the sole provider of internet services to these institutions, in order to guarantee effective competition in the internet service industry. Also in Zambia, there is a specific legal basis for an agency to conduct both ex ante competition and ex post Competition Assessment or market/sector studies⁴⁰.

Regarding the antitrust authority in Tunisia (Conseil de la Concurrence or “Competition Council”), it provides market analysis and conducts Competition Assessment through its enforcement and advisory powers. Among the roles of the agency, we can highlight the analysis of y: (i) the effects of individual or collective practices on competition; (ii) the effects of draft legislation, regulation or policy on competition; and (iii) the effects of mergers or exemptions on competition. In addition, the Competition Council has broadened its scope of activities by using powers assigned to its Rapporteur general to carry out market studies to assess the state of competition in priority sectors of the economy⁴¹.

³⁷ Please see ICN. *Framework of Competition Assessment Regime*. Prepared by ICN Advocacy Working Group. Presented at the ICN 14th Annual Conference. Sydney, April 2015.

³⁸ Sibanda, F.K. *Regulatory excess: The role of regulatory impact assessment and the Competition Commission*. Paper prepared for the Conference on “Pro-Poor Regulation & Competition” hosted by the Centre on Regulation and Competition (CRC), University of Manchester, UK and the School of Public Management & Planning, University of Stellenbosch. Cape Town, 7 - 9 September 2004.

³⁹ Please check Section 21 of South Africa's Competition Act, 89 of 1998.

⁴⁰ For more details of this case, please see ICN. *Framework of Competition Assessment Regime*. Prepared by ICN Advocacy Working Group. Presented at the ICN 14th Annual Conference. Sydney, April 2015.

⁴¹ ICN. *Framework of Competition Assessment Regime*. Prepared by ICN Advocacy Working Group. Presented at the ICN 14th Annual Conference. Sydney, April 2015.

Finally, in Gambia, the national authority also conducts Competition Assessment as part of its functions⁴². The agency, in this case, has been mandated by law since 2007 to advise government or any public body on any action taken or proposed that may adversely affect competition in the supply of goods and services.

In Latin America, Mexico is a relevant reference regarding the implementation of Regulatory Impact Assessment (RIA) and, therefore, Competition assessment practices. In 2015, the Trade & Competitiveness Global Practice (T&C) along with the Mexican Regulatory Improvement Agency (COFEMER) designed an innovative methodology to confront regulatory barriers to competition in the country. According to the 2015 report published by the World Bank ⁴³ the proposed methodology focused on helping Mexican states in identifying regulations that “(i) restrict the number of firms or private investment in specific markets; (ii) set prices and other market variables that increase business’ risks or facilitate anticompetitive behavior or; (iii) discriminate against certain firms or lack competitive neutrality”.

In this context, the Mexican government enacted a decree that adopts this new methodology as one of the tools of the federal and subnational governments for improving regulation in the 50 Mexican states. One important fact is that COFEMER is directly working with the Mexican antitrust agency (COFECE) on a new common agenda to block the barriers to competition at the subnational level. This initiative complements their previous work on regulatory improvement at the federal level.

Considering the recent evidences, the tables below clearly show the countries that have adopted Competition Assessment regimes (Table 1) in Africa and Latin America and the differences between the current practices.

Table 1 – Competition Assessment in Africa and Latin America (2015)

What does competition assessment apply to?	African and Latin American countries
New legislation/ regulations/ policies only	A ⁴⁴ :Colombia B ⁴⁵ : South Africa
Both new and existing	A:Mexico B:Gambia; Tunisia and Zambia
Competition assessment forms part of broader framework to assess impact of policies on areas other than competition	B:Zambia

Source: Adapted from ICN. Framework of Competition Assessment Regime. Prepared by ICN Advocacy Working Group. Presented at the ICN 14th Annual Conference. Sydney, April 2015.ICN (2015).

⁴² The national authority in Gambia is called Gambia Competition and Consumer Protection Commission (GCCPC).

⁴³ WORLD BANK GROUP. *Mexico: Transforming local markets through competition*. Trade and Competitiveness. June 2015.

⁴⁴Letter A will represent the Latin American countries.

⁴⁵Letter B will represent the African countries.

The following tables shows some other features of the African and American selected countries Cir Competition Assessment regimes, such as the body responsible for conducting the competition assessment (Table 2); the indirect or informal involvement in it is not directly responsible for Competition Assessment (Table 3); and finally the tools used to facilitate Competition Assessment (Table 4).

Table 2 – Body responsible for conducting the Competition Assessment

Body responsible for conducting the Competition Assessment	African and Latin American countries
Competition agency	A:Colombia and Mexico; B: Gambia; South Africa; Tunisia and Zambia
Other government department/ regulator	B:South Africa; Zambia
Other, e.g. research institution/ consulting group	-

Source: Adapted from ICN (2015).

Table 3 – Indirect or informal involvement of the competition agency in Competition Assessment

Competition Agency	African and Latin American countries
Competition agency consulted by the body responsible for competition assessment	A:Mexico B:Tunisia
Agency provides opinion informally to legislature/ executive/ regulator	A:Colombia and Mexico

Source: Adapted from ICN (2015).

Table 4 – Tools used to facilitate Competition Assessment

Tools used to identify targets, facilitate and conduct competition assessment	African and Latin American countries
Specific criteria are used to assess the impact on competition	A:Colombia
The competition agency provides guidance on competition assessment and/ or support to other bodies conducting competition assessment	A:Colombia B: Tunisia
The competition agency monitors government and legislature work programmers	A: Colombia and Mexico B: Gambia; South Africa and Zambia
The competition agency considers the work of stakeholders, academia and/ or NGAs to identify targets for competition assessment	A: Colombia and Mexico

Source: Adapted from ICN (2015).

From this section and the above-presented tables, it is clear that both African and Latin American countries are in an embryonic stage of applying competition assessments to their policy agendas. If we take Africa as an example, from the 54 (fifty-four) countries⁴⁶ in the whole continent, only 4 (four) of them have any type of competition assessment regime, meaning that less than 10% of the countries. The same in Latin America (2 of 21 countries⁴⁷ – meaning less than 10%). And for the countries that do have tools of competition assessment, such as Colombia, Mexico, Tunisia, South Africa, Zambia and Gambia, as described above, further qualitative research is needed to understand to what extent these tools have been actually used and/or well applied.

3. Final considerations

After the 2007-2008 global financial crisis, the world has been facing persistently low economic growth, particularly in many developing economies, as those in Africa and Latin America, where the low economic growth environment is putting economic progress and shared prosperity at risk.

In this scenario, a reliable and efficient antitrust law is crucial to promote economic growth. This paper described that in developing countries, there are major forces that keep markets closed and uncompetitive. To make the competitive challenges even worse, there are several types of regulations and standards that affects competition, for instance, by creating barriers to entry, by limiting the ability of suppliers to compete, by reducing the incentive of suppliers to compete; by limiting choices and information available to customers

In a globalized context, this excess of regulation and the process of standards setting may lead the companies to an international competitive disadvantage vis-à-vis their counterparts in other countries which may not be subject to similar rules⁴⁸. In order to avoid those restraints in the global competition scenario, several types of policies might be introduced by the national antitrust authorities and regulators in order to improve the officials to do a more efficient assessment in regard to competition policy constraints⁴⁹. The Competition Assessment, as part of the Regulatory Impact Analysis (RIA), is an example of tool to be used by regulators.

⁴⁶ List of African countries: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African, Republic (CAR), Chad, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

⁴⁷ Latin America includes: Mexico in North America; Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica and Panama in Central America; Colombia, Venezuela, Ecuador, Peru, Bolivia, Chile, French Guyana, Paraguay, Brazil, Argentina and Uruguay in South America; Cuba, the Dominican Republic, Haiti, and Puerto Rico in the Caribbean—in summary, Hispanic America, Brazil, and Haiti.

⁴⁸ Sibanda (2004) indicated similar concern in regard with South Africa in the mid 2000's.

⁴⁹ WORLD BANK GROUP. *Making Markets Work for Development through Effective Competition Policies*.

The recent evidence shows that just few developing countries in Africa and Latin America – less than 10% - have adopted any kind of competition assessment in their policy development process. Apart from this quantitative analysis, further qualitative research is needed to understand to what extent the tools in Colombia, Mexico, Tunisia, South Africa, Zambia and Gambia, have been actually used and/or well applied.

Finally, together with the use of competition assessments policies, as a practical guide to help policy makers in the country to identify and focus on the key barriers to competition, governments in developing countries should set safe harbor's guidance for policy makers and enhance transparency of the law making and setting standard under debate.