PRE-DISTRIBUTION AND OWNERSHIP

SCIS Working Paper | Number 40

COMPETITION AND INEQUALITY IN DEVELOPING COUNTRIES

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Introduction

Competition policy loosely refers to a range of laws and policies that aim to protect competition in a market. This is done through policy that limits the extent to which high levels of concentration of companies within a specific market leads to their exercise of what is termed 'market power' or the ability of a firm group of firms to set prices above competitive levels. Exercising market power in this way can enable enables firms to either maintain higher prices, or lower levels of quality or variety, in a manner that is harmful to consumers and possibly competitors.

Competition policy typically includes laws that regulate mergers and acquisitions. This is to prevent the creation, or extension, of market power through enhanced market concentration. For example, if companies merge there are fewer competitors in the market. Another problem may result when the merging companies exclude other competitors in the market. To illustrate this, consider a merger between a large supplier and a distributor. Will competitors of the distributor still be able to access the product? Competition policy may also regulate other forms of anticompetitive behaviour, such as collusion on price and quality, division of markets, and similar arrangements.

Depending on the jurisdiction, laws that prevent monopolisation or abuse of dominance may also be in effect. Such laws may prevent firms regarded as 'dominant' in the market from practising anticompetitive conduct that is either exploitative, such as excessive pricing, or exclusionary, such as predatory pricing, or refusing to supply competitors. The implementation and impact of competition policy within a country differs depending on a range of factors, including the legal framework and country particulars. How competition policy is prioritised and implemented can have effects on the efficiency of a market. But also, as is discussed below, it can impact the distribution of economic power, profitability and ownership.

Economic inequality has increased in many countries over the last few decades, with wealth and income increasingly concentrated in the hands of the wealthier segments of society (Piketty, 2014). Inequality has impact on a range of economic and social factors, including social and political stability, education and healthcare outcomes, innovation and growth (Thorbecke and Charumilind, 2002). While policy levers that affect inequality typically include measures such as taxation and grants and subsidies, competition law and policy may have a role as a complementary tool. This is typically through changing prices, consumption, and income in a market.

This paper examines the link between competition policy and inequality, with a specific focus on the impact on inequality of concentration and competitive abuses by firms. In particular, the paper focuses on the role that concentration and a lack of competition have on inequality more generally and specifically within the context of developing countries. Developing countries have contextual factors, such as concentrated product markets and labour markets characterised by high levels of unemployment. These factors may lead to variation in outcomes relative to those seen in more developed economies. It may also necessitate differences in prioritisation and implementation of competition policies. The paper concludes by providing some recommendations for how competition law and policy can be used to reduce inequality.

The relationship between competition and inequality

Competition between firms can have an impact on inequality through various mechanisms. Lower levels of competition impact negatively on various economic outcomes, including, among others, on consumption, ownership and distribution, and labour markets. This section first outlines some of the key conceptual relationships between competition and some of these core economic variables. Secondly, we discuss some of the market and context specific factors that shape these relationships. Thirdly, we discuss how these links have been assessed in the academic literature.

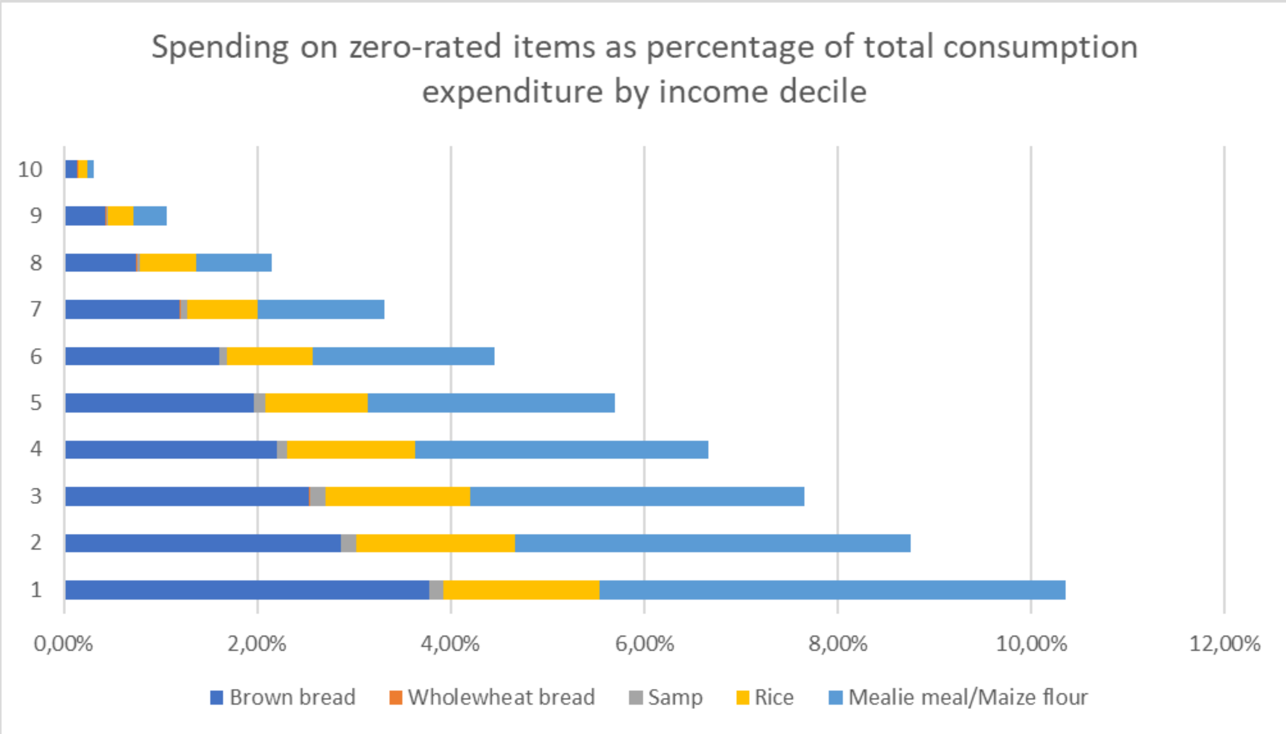
Consumption

Levels of competition and competitive behaviour in the market ultimately impact price levels and the variety of products and services available. The impact on different groups of customers will vary. It depends on the product, its target market, the consumers who buy it, and the portion of an individual's budget it comprises. As a result, it impacts on the consumption levels possible for people at different income levels – and thereby impacts on well-being.

Anticompetitive conduct in the basic products that the poor consume is likely to have a disproportionate effect on their well-being. This is because the products poor people buy typically make up a larger part of their budget. As shown in Table 1 for South Africa, for a family in the lowest income decile the amount spent on brown bread makes up 3.78% of the budget. For a family in the highest income decile, it makes up only 0.14%, despite the likelihood that the volume they purchase is more. As a result, anticompetitive competitive conduct that raises the price of bread, as occurred with a bread cartel in South Africa, will have a disproportionate effect on the well-being of lower income consumers.

While anticompetitive behaviour in luxury products would conversely affect wealthier households more, these products are typically more elastic as opposed to essential products. As such it would generally have a less egregious effect. The cumulative effect of anticompetitive behaviour that results in price increases in basic products therefore has greater chance of pushing households into poverty and thereby increasing levels of inequality.

Table 1: Spending on VAT zero-rated items as a percentage of total consumption expenditure by income decile in South Africa



Source: Data from Woolard et al. (2018) Recommendations on Zero Ratings in the Value-Added Tax System, Report by Independent Panel to the Minister of Finance South Africa.

Ownership and distribution

Competition may impact on firms' levels of profitability as well as the dividends or returns they are able to provide to shareholder groups. A lack of competition can reinforce existing ownership patterns by allowing capital to accrue to those that already have shareholdings in incumbent operators. For example, take a case where lack of competition creates an increase in prices. This impacts consumption on the one hand and increases the value of stocks on the other. The effect of market power on individuals would depend on the distribution of consumption relative to the distribution of shareholding.

In a country like South Africa, shareholding is highly concentrated in the hands of the wealthiest. The top 10% hold 99.7% of stocks and bonds (Chatterjee, 2020). As a result, increases in the costs of products which affect household consumption (by increasing the amount households pay for them) results in increased profitability to companies that would accrue to wealthier households. Wealthier households who own shares in those companies would benefit from increased capital gains, or dividends. This effectively creates a transfer of wealth from poorer to wealthier. Enhanced competition could increase variety in ownership if such competition brings in new business entries. However, this may not happen if a new entry is financed by companies that are already in the market and expanding to adjacent sectors, or if it is financed by venture capital or investors that already have shareholdings in the industry. At the same time, improving the competitive structure of the market is more likely to bring in diverse ownership.

Market power can affect both individuals' and new firms' ability to enter markets; it may impact the distribution of businesses and concentrate growth in individuals who have existing businesses. This can be due to barriers to entry established as a result of:

- market power held by incumbents in the market who may frustrate access to customers or suppliers;
- barriers such as standards and accreditation that may also involve gate-keeping by incumbent firms; and
- the effect of buyer power which may limit the routes to market and margins possible for small firms.

For example, supermarkets charge producers a range of fees to allow them access to supermarkets' shelf-space. This is called 'category management fees'. Supermarkets are able to charge these fees due to their buyer power since manufacturers have limited alternative channels through which to sell. Supermarkets also use their power to limit smaller storeowners' access to shops in malls. This is because of exclusive contracts entered into by dominant supermarket groups. This may prevent new entrants and smaller companies from physically accessing supermarkets as a supply chain, or from accessing desirable retail space.

Another example of buyer power is when medical aid schemes and insurers assign designated providers. In circumstances this can result in exclusive arrangements or preferential pricing for certain – often corporate – groups often to the detriment of smaller and independent providers. This is likely to be complicated further in our digital age when platforms may provide routes to entry for small firms through e-commerce platforms and channels, but it may also lead to the platforms themselves exerting pressure over smaller companies.

Labour markets

High levels of concentration have a direct impact on labour markets and a knock-on impact on inequality through various channels. Dominance in a particular product market may lead to a company, or a few companies, having monopsony labour power over workers. Monopsony is where there is only one company buying something; in this case it is buying labour. This may lead to suppression in wages, and a lower share of the company's economic profits for workers, thereby increasing income inequality.[1] Whether a company is able to use monopsony labour power depends on the extent to which there is labour supply. If workers have bargaining power, a company's ability to exercise monopsony on labour would be dampened, as is sometimes the case with skilled labour.

More competitive markets may lead to expansion in employment when they allow for entry that results in increased output, in contrast to output-limiting scenarios. The latter is common with monopoly and oligopolistic markets.

Improvements in competition may reduce inequality in earnings between firms. There are also theories that connect rising worker inequality to increases in inequality between firms. Studies suggest that this inequality between firms has led to higher levels of workers' wage compensation at some firms and lower levels at others. This increases the inequality between workers at different types of firms due to some changes in competition and market structure.

Aggregate effects

A lack of competition in an economy may have aggregate effects on GDP growth due to reducing the level of dynamism and innovation. This would have additional negative spillover impacts on the poor.

Market-specific factors that shape outcomes

In summary, the effect of lack of competition on inequality depends on a range of market-specific factors, which we turn to now.

1. The composition of consumption bundles across the rich and poor

The extent to which firms with market power manufacture, or sell, products poor households use has an impact on the poor household's consumer surplus. This is because when these companies exert market power it results in higher prices or lower-quality products. Even if a product is used by both wealthier and poorer consumers, if it forms a higher proportion of a poor household's consumption, the welfare loss from insufficient competition will affect the poorer households more than the wealthier households. This increases inequality through its impact on consumption.

2. The structure of dividends and capital investment

When capital is invested in companies with market power it may create benefits for shareholders and/or other providers of capital. This would exacerbate inequality in instances where shareholders are concentrated as opposed to being dispersed across a broad base. This can also affect inequality in instances in which there is a level of concentration in investment and funding.

3. The structure and flexibility of labour markets and the bargaining power of labour

This determines the extent to which the surplus accrued from the exertion of market power is divided across groups within a company. In particular, this depends on the extent to which the surplus is shared with lower-income workers as opposed to higher-income workers, and to labour as a whole as opposed to being paid out as dividends to shareholders.

4. Barriers to entry

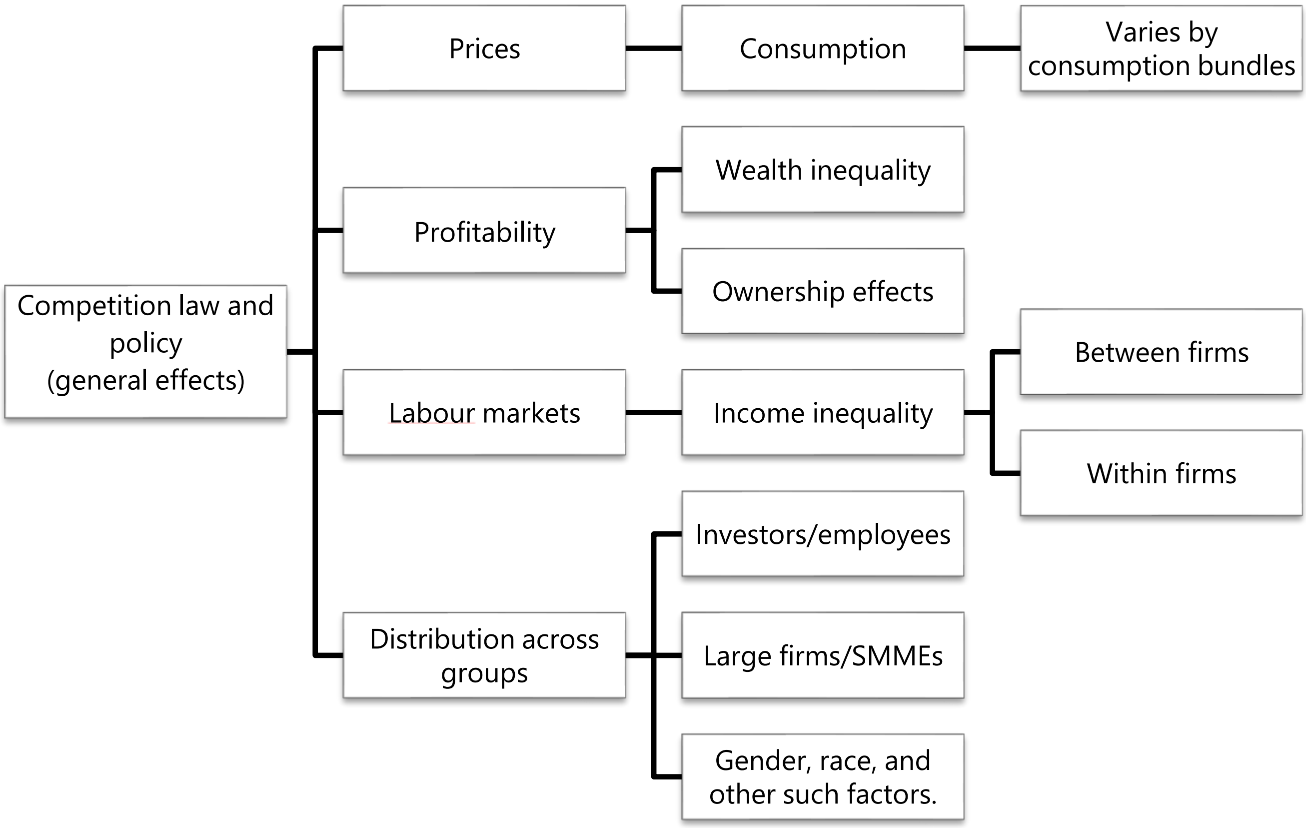
Barriers for new businesses trying to enter the market may have serious consequences for the upward mobility of entrepreneurs. Barriers include: legal and regulatory, such as licensing, and access to credit, skills and experience.

5. Country-specific factors

Figure 1 summarises the key channels through which competition impacts on inequality. However, each country has its own market-specific factors that determine the extent and shape in which the level of competition or concentration in a market impacts on inequality. These include:

- historical factors, such as the history of state intervention in markets;
- political economy factors that may impact on barriers to entry;
- distribution of wealth and income; and
- competition policy and law enforcement.

Figure 1: Schematic of the channels through which competition impacts on inequality



Source: Author

Academic studies on the relationship between competition and inequality

There are two ways in which competition law impacts on inequality. The first is 'internal' in which equality is considered in the substantive assessment of competition law. The second way is 'external'. This is the effect of competition law enforcement on promoting greater competitiveness – which in turn would reduce economic inequality (Ezrachi et al., 2021). There is a body of literature on the relationship between competition and inequality. It predominantly focuses on measurement of the second interface, the 'external'. Studies that provide support for the impact between competition or market power and inequality include empirical studies which use cross-country and cross-industry regressions. The legal and policy literature and the theoretical literature show relationships between levels of competition and market power on the one hand, and inequality on the other.

1. Quantitative studies

Firstly, quantitative studies largely support a link between levels of competition in a country and inequality. From the economic literature there are several papers that use quantitative data to show the link between competition and inequality. They use regressions to explore the variability of competition enforcement and inequality based on variation across countries. For example, (Ennis, Gonzaga and Pike, 2021)explore the link between market power, wealth and income. They use a sample of eight Organisation for Economic Co-operation and Development (OECD) countries to show that higher levels of market power contribute to inequality by raising the wealth of the richest 10% of the population and reducing the income of the poorest 20% of the population (Ennis, Gonzaga and Pike, 2021). Zac et al. (2021) use panel data over the period 1960–2010 to investigate the relationship between competition law and competition intensity and inequality. They find a link between competition law and competition intensity with a suggestive link to inequality though this is not conclusive. Han (2021) uses data for twenty countries over the period from 1975 to 2011 and finds a link between competition – measured by markups – and income inequality, and finds that extra profits accrue to the top income groups. They also find that this relationship is less pronounced in countries with better labour protection. Some studies use a similar econometric structure but look at a single country, focusing on variation across firms and industries. Sourcing data from a single country but using a similar econometric specification to Ennis et al., Gans et al. (2019) estimate the impact of market power on inequality for different income quantiles, although their results do not show significant effects from the removal of market power[2].

Other literature focuses more specifically on proxies for competition law as opposed to measures of competition, such as concentration or markups. Zac (2021) uses textual similarities in competition laws to show that countries with similarity to US antitrust text have higher inequality than those with textual similarities to alternatives, such as EU law which is typically more interventionist.

2. Case studies

[2] This is as a function of share of income and corporate equity, average excess mark-up, income share of labour, average saving rate, and marginal propensity to save.

Secondly, case studies included in legal and policy research support a link between competition and inequality. Inequality has also been considered more broadly in the policy literature with respect to its role in the broader goals of competition policy, or antitrust laws, and whether a different standard for assessing harm should be considered. For example, Khan and Vaheesan (2017) discuss the impact of concentration on inequality. They use case studies of several industries in the US. Baker et al. (2015) relate market power to inequality and discuss the extent to which competition law can play a role. They do this by outlining various proposals, including the abandonment of the consumer welfare standard in favour of aggregate welfare[3], changing prioritisation and remedy design to incorporate a pro-poor focus, and explicitly incorporating inequality as a consideration. However, incorporating inequality as an objective of competition law, as suggested by Baker, has occasioned some contestation. Lianos (2020) highlights the difficulty in addressing equality through competition law in its current form by relying on social contract theory. Judge Douglas Ginsburg, a professor of law and an US appeal court judge argues that trade-offs between competition factors, and other considerations – such as the effect of a merger on employment, income inequality, or a loss in local control of a company – is necessarily arbitrary. He argues that this, in turn, is (i) systematically costly and (ii) invites political manipulation. Judge Ginsburg argues that the consumer welfare standard, in contrast, is transparent and objective. The need to consider trade-offs, such as the impact on inequality in competition assessments is, therefore, still subject to debate.

3. Theoretical literature

Thirdly, the theoretical literature models the relationship between competition and inequality mathematically, with some finding a link between competition and inequality. For example, Mechelli and Colciago (2020) model the impact of increased market power on inequality by building a model using oligopolistic instead of monopolistic competition. They establish a scenario in which a higher number of competitors translate into a lower price-cost margin. The price mark-up affects the distribution of income between labour and profits by leading to a fall in the labour share of income and a rise in the profit share of income. This increases income inequality and wealth inequality. Boar (2019) uses a theoretical framework to model optimal product market interventions in an unequal economy with concentration. However, they find that optimal regulation increases product market concentration as wages increase, despite inequality effects.

Overall, a range of studies and papers show a relationship between competition and inequality. These include discussions over the means through which competition law and policy can be actively used to reduce inequality. However, these studies are limited. They have primarily had a focus on developed and industrialised countries. As such, there is scope for more research focused on the nuances of competition and its relationship to inequality in developing countries.

[3] Historically, competition policy followed the confusingly named "consumer welfare" principle which ultimately focused on maximising the sum of welfare or the surplus by producers and consumers (in line with a total welfare principle) (see Bork). This principle does not "overtly distribute wealth from wealthy to poor, from employed to unemployed, from capital to labor, or along some other axis that we traditionally associate with redistributive policies." Hovenkamp, H. J. (2019) 'Is Antitrust's Consumer Welfare Principle Imperiled?', Journal of Corporation Law, 45(1), pp. 101–131. However, there have been some debates as to the extent to which redistributive policies should occur, with Hovenkamp, for example, pushing back against the focus by what he terms the Neo-Brandeis movement which has motivated for a greater focus on distribution.

Competition and concentration effects may differ in developing countries

As discussed previously, there are many ways in which competition impacts on key variables that in turn impact on inequality. These relationships hold in different markets. However, high levels of concentration and related anticompetitive behaviour, such as collusion and abuse of dominance, may have more egregious impacts on developing countries. This includes the impact on inequality. There are a range of reasons for this. This includes market-related factors, constraints in enforcement and political economy factors.

Market-related factors

Where markets are smaller or less developed, attaining scale economies – where larger volumes of production reduce costs for each item – is generally harder. This may mean there is a natural limit on the number of companies that can compete within the market. This is particularly the case where there are other issues that limit competition. These include factors such as less developed infrastructure and capital markets, and higher transport costs, which prevent expansion to adjacent markets. This can lead to lower options, higher barriers to entry for small, medium and micro enterprises (SMMEs), and higher prices. All of these impact on inequality through consumption, employment, and potential ownership benefits.

The impact of low levels of competition on inequality may be stronger where there are higher levels of poverty. Lower levels of economic development and poverty mean that higher levels of concentration and abuse of dominance that is exploitative may have a more significant impact on poor consumers already faced with limited finances. Exclusionary behaviour may also impact on businesses owned by the poorer segments of society. One clear example of the impact of low levels of competition on poorer consumers is the measurable negative effect cartels have had on prices. There are several examples where necessities required by the poor have been subject to exploitative pricing. A World Bank study showed that 21% of cartels detected in Latin America and the Caribbean impacted on basic consumption products, such as wheat, milk, poultry and medicines (World Bank, 2021). Cartels that limited competition bread prices have been uncovered in numerous jurisdictions, including in countries characterised by high levels of inequality such as Brazil and South Africa. This is discussed in the next part of this paper.

Because there are often various entry barriers in developing countries, concentration may be higher, and the impact of exclusionary conduct is less likely to be constrained (Adams, 2008). For example, capital markets may be underdeveloped. This means that even where an entrepreneur can identify a market for entry, their ability to generate funding to enter the market may be limited (Fox, 2016). This limits the extent to which entrepreneurs are able to enter concentrated markets, and contest it.

Where developing countries have high levels of unemployment it is possible for companies with monopsony power over labour to suppress the price of labour (or wages) relative to its optimal value. However, in developing countries this effect may be variable given scarcity in certain types of skilled employment which may maintain a premium. The net result may be an increased contribution to wage inequality.

Developing countries typically have large informal economies which may affect the ability to implement competition policy. International Labour Organization (ILO) statistics show that over 60% of global employment is in the informal sector; over 80% of the economic units in the world are informal. This is particularly so in Africa (92.4%) and the Arab States (90.8%). There are a lower proportion of informal economic units in developed countries (55.7%) in comparison to emerging and developing countries (82.5%). As such, the assessment of competition in the largely developed countries that historically developed a great deal of the competition policy jurisprudence and frameworks does not necessarily account for the specificities of an economy with a large informal sector. On the one hand, informal companies can be beneficial to competition by providing a competitive constraint. However, concerns are sometimes raised due to the distortionary impact that informal businesses, who do not have the same levels of compliance with tax and labour laws as registered formal businesses, can have on competition. Nevertheless, informal businesses are often small and can also be impacted more significantly by firms with market power. For example, farmers who grow produce in the informal sector may be impacted by large, commercialised buyers' monopsony power. In Malawi, tobacco growers are typically small and geographically dispersed, while buyers are very concentrated. Three companies buy 70% of the produce. Allegations of collusion and monopsony power have meant the distribution of profits between tobacco buyers and tobacco farmers is unequal. The relationship between competition and inequality is therefore complicated when informal markets are considered. This also complicates measuring the effects (Chirwa, 2011).

Constraints in competition and regulatory enforcement

Developing countries often have particular constraints in enforcing competition policy and laws. Formal competition or regulatory authorities' constraints can include limited financial resources, not enough expertise in the authorities, and not enough expertise in the judiciary (Umut, 2016).

For example, in a study of Southern African competition authorities, Burke, Paremoer and Zengani (2019) noted that key constraints for the effectiveness of competition authorities they studied included the number of staff as well as relevant expertise and experience. They also noted that there were high vacancy rates and a lack of technical and economic expertise. For example, in 2016 the competition authorities of Botswana, Malawi and Tanzania had five, seven and eight economists respectively. In comparison, the Spanish competition authorities have 44 economists working directly on competition. The Italian competition authority has 43 and South Africa has 64. The extent to which these authorities can engage in the same level of analysis is limited as they are stretched thin.

Data availability is important for in-depth analysis. Countries where companies and government agencies collect large amounts of data are able to conduct different types of competition analysis. This enables them to better understand the market, participants, competitors and constraints. The type of data and analysis available to authorities in more developed jurisdictions may be harder to find. This limits the potential for in-depth analysis for developing countries' authorities. Even data that is collected, such as by statistical agencies, are at times difficult for competition authorities to access. Furthermore, general research on the industry is often more limited. This narrows the range of information sources authorities can use to triangulate information to help them understand the market.

Jurisdictional challenges may also impede implementation of competition policies and laws. A small country's ability to regulate multinationals may be limited regardless of competition concerns. This is because the threat of disinvestment may be strong, especially when a country is small or economically constrained. Fear of disinvestment may also arise when markets within the country are affected by a merger or practice, but the authorities do not have jurisdiction over the companies involved. An example would be the limited ability of a small authority to realistically block mergers that are implemented on an international basis. This can be the case despite a company having a presence in the country, particularly in instances in which there is a credible threat of exit.

Political economy considerations

Political economy factors can have an influence on the power of competition institutions to be effective. This can be based on the role of different stakeholders, including companies, legislative authorities, and political and civil groupings. The impact of the factors varies depending on country specifics. Developing countries' competition authorities may at times, for a range of reasons, struggle to enforce policies and laws because of political economic, or industrial policy imperatives.

In particular cases, a country's competition authorities may be reluctant to enforce policy with companies that may be perceived to benefit the country in other spheres. For example, large firms may be perceived to have a disproportionate role in investment, innovation or employment in smaller markets (Acemoglu et al. 2006). Ensuring competition and entry may be less of a priority for a government than ensuring that innovation or investment actually occurs. This can be the case especially with building infrastructure for the country, or where investment would assist in job creation. As such, governments may have support mechanisms in place for industrial policy purposes, or simply not provide the necessary political support for reducing barriers in certain strategic industries. Large firms may also play a disproportionate role in tax income. This could potentially have a redistributive purpose. It therefore may financially benefit the government to have large profitable monopolies in the country.

Developing countries, particularly those attempting industrial policy developments, may have a differing emphasis when it comes to weighing competition benefits against public interest benefits. Competition decisions may be perceived as being used for protectionist or political purposes. Examples include China's blocking of Coca-Cola's bid for the China Huiyan Juice group under competition law, and South Africa's conditions for the Walmart merger with Massmart. Both instances could be seen as protecting local industry as opposed to promoting competition in the face of globalisation (Ezrachi, 2016); (Soomro et al. 2021). However, these choices are not limited to developing countries. The US and Germany, under national security considerations, blocked certain telecommunications mergers that involved Chinese companies.

An additional related issue in developing countries is the impact of laws and rules focused on state-owned enterprises and government-owned monopolies. This may include rules that impede competition and distort the market. Many large companies in the market may have a history of state involvement and historic privileges that assist in shaping the market. These companies often end up in dominant positions and use their positions to block market reforms (Fox and Healey, 2014). However, groupings who consider that state-owned enterprises do not seek profit and therefore benefits accrue to the public may see this as less problematic. Furthermore, in some economies, state-owned enterprises with particular privileges may compete head-to-head with private sector businesses, thereby distorting competition. Sometimes, competition authorities may have limited scope to intervene, even where there are clear competition concerns, and even when it does affect competition in a market. For example, the Chinese competition authority was unable to intervene in a merger between South China Rail and North China Rail. The merged entity was able to own 80% of the market due to government structures. In another example, the Colombian competition authority[4] blocked a merger which would have led to a monopoly of a state-owned airline. The president bypassed it. This led to the resignation of the authority's head (Fox and Healey, 2014).

While these challenges can occur in a range of countries, and is not limited to developing countries, institutional weaknesses may increase scope for political economy challenges. As result, concentration and the exercise of market power may not be curtailed optimally. In countries concerned with inequality this may mean that competition policy does not necessarily result in pro-competitive outcomes such as price reductions.

The impact of competition policy in developing countries

As noted in the introduction, competition law and policy are usually focused on a few objectives.

1) Most competition law controls concentration and the creation of market power by regulating mergers between companies.

2) Most competition law prohibits co-ordinated behaviour between firms that create anticompetitive effects. This primarily includes collusion between firms that result in price increases, or limit innovation or variety.

3) Competition law limits abuse of dominance which leads to exploitative or exclusionary behaviour. There are, however, peculiarities in the way different jurisdictions interpret and apply competition law. For example, if you compare the European Community (EC) and the US, the EC has historically been far more interventionist in its approach to abuse of dominance. The US has typically taken a lighter touch with regard to abuse of dominance. Exploitative behaviour is a contravention in EC law but not US law. The US law has historically taken a different stance on areas such as predatory pricing; it has had a higher bar to find contraventions, namely recoupment (Vickers, 2007).

4) Competition authorities may be empowered to engage in market studies, and to provide broader assessments of distortions in the competition environment.

[4] Superintendence of Industry and Trade (SIC), under the aegis of Colombia's Ministry of Trade, Industry and Tourism.

These objectives are typically pursued in developing countries that implement competition law. However, given the specifics of countries – including the political and institutional environment – there have often been different means of implementation relative to authorities in the global North. In particular, there are further objectives considered in addition to competition, such as public interest. Also, conditions are sometimes used in mergers or settlement agreements that may further non-competition-focused objectives. In the next section we discuss some of the ways in which competition policy and law have impacted on inequality in global South.

The impact of traditional competition enforcement

The enforcement of competition policy in developing countries has led to certain wins for consumers. This has been especially apparent with the eradication of cartels in specific food products that poor people consume. Cartels such as in bread and milling in South Africa and cooking oil in Indonesia raised the prices of household staples which make up a higher proportion of spending bundles of the poor. Table 2 shows products used in the reference food basket that Statistics South Africa (Stats SA) uses to generate poverty lines. When assessing the basket, it is apparent that competition has affected a number of the products in it. There have been findings of collusion and anticompetitive conduct with some of the products. Others are markets that have high levels of concentration and limited providers.

Table 2: Competition investigations in products that make up the reference food basket used by Statistics South Africa

		Competition investigations and market structure
Grain products	Mealie meal/maize flour	Price fixing in maize milling
	Brown bread	Price fixing in wheat milling, bakeries
	White bread	Price fixing in wheat milling, bakeries
	Rice	
	Cake flour	Price fixing in wheat milling
Fish, meat, poultry and their products	Poultry (including heads and feet)	Anticompetitive conduct
	Beef and veal (including heads and feet)	
	Boerewors	
	Canned pilchards	High concentration (dominant firm)
	Polony	
Fruits and vegetables	Cabbage fresh	
	Potatoes	
	Tomatoes fresh	
	Onions	
Dairy products and eggs	Fresh full cream milk	Concentrated market. Cartel investigation(withdrawn)
	Large eggs	Anticompetitive conduct
	Long-life full cream milk	Concentrated market. Cartel investigation(withdrawn)
	Sour milk/maas	Concentrated market. Cartel investigation(withdrawn)
Oils and fats	Edible oils (e.g. cooking oils)	Concentrated market. Cartel investigation(no case taken forward)
Beverages	Aerated cold drinks	
	Fruit juices not from food service places	
	Instant coffee	
Miscellaneous	Burger	
	Powder soup	
	Brown sugar	
	White sugar	

Source: Statistics South Africa, Competition Tribunal rulings and Competition Commission press releases.

Cartels that affect basic products were evident in various parts of the value chain. Mncube (2014) estimated the overcharge, because of an upstream cartel, on the cost of flour to independent bakeries at between 9% and 31%. Cartels in the supply of medication by pharmacists have been found in Chile and Honduras[5] (Chilet, 2017). Cartels in other products of importance, such as agricultural inputs like fertiliser, have been pervasive in many countries in Southern and East Africa (Vilakazi and Roberts, 2018). The removal of cartels has the direct impact of reducing the burden on the poor, and enhancing economic activity – which has additional positive spillovers.

When dominant firms practise abusive actions, price increases have also impacted on many basic goods and services. In South Africa, abuse of dominance was found in telecommunications and grain storage. This negatively affected the cost of basic products and services. Market inquiries allow competition authorities to conduct more in-depth investigation into sectors with competitive concerns. Such inquiries, in some instances, have also had public interest benefits. For example, the Competition Authority of Kenya has been active in reducing the price of mobile money. It did this through reaching an agreement with the dominant telecommunications provider, Safaricom, to reduce the charges on USSD[6]. This is the channel through which people without smartphones predominantly access mobile money (Mumo, 2017). It is also a product used across the economy – and of particular benefit for the unbanked.

Merger policies that have been effectively implemented to prevent concentration and increasing dominance in some industries have also likely benefitted consumers. There have been some tangible benefits to consumers from the implementation of competition policy in certain countries. This has primarily occurred through standard use of competition policy and standard competition law tools.

Alternative mechanisms to incorporate a consideration of inequality

Competition policy is likely to impact on competition in the market by affecting a range of mechanisms, such as prices and employment. However, there is the potential for competition policy to be used in a more activist way to explicitly consider and incorporate inequality. This can be done through explicit prioritisation of particular products and sectors. For example, competition authorities could prioritise sectors and products that impact on the poor the most, and explicitly use a pro-poor lens to prioritisation of investigations and use of resources. This tool was historically utilised by the Competition Commission of South Africa (Makhaya, Mkwananzi and Roberts, 2012). Sectors can be prioritised based on various indicators, including:

- their weight in the consumption bundle of the lower income deciles;
- their contribution to employment; and
- the weight of the sector in terms of contribution to the GDP.

[5] https://www.idc.ac.il/he/schools/economics/documents/jmp%20-%20gradual_collusion.pdf
[6] Unstructured Supplementary Service Data

Another mechanism is to include inequality when considering public interest, depending on the legislative framework. Some countries, such as South Africa, have public interest provisions built into their legislation. This enables the weighing up and consideration of issues other than competition in mergers. These can either be explicitly noted in the legislation, or considered as part of the analysis. While inequality is not explicitly included as a consideration in competition assessment in any competition legislation, common considerations include those that indirectly impact on inequality and distribution, depending on specific circumstances. These are:

- impact on employment;
- localisation or industrial development;
- ownership;
- impact on SMMEs; and
- impact on the economy.

The South African Competition Act has, in its purpose, the promotion and maintenance of competition to promote various objectives. It explicitly includes allowing small and medium-sized enterprises to have an equitable opportunity to participate in the economy, and to promote a greater spread of ownerships, including the ownership stakes of previously disadvantaged South Africans. The Act also allows for exemptions from the provisions on co-ordination on the basis of specific factors. Factors include impacts on SMMEs and businesses owned by historically disadvantaged individuals, the consideration of employment, and the impact on sectors in the consideration of mergers.

Public interest objectives may also be considered in the case of a merger which may be in another regulator's domain. This could be in the case of a sectoral regulator or government department. Examples of public interest clauses that allow for intervention include: industrial development and international competition (France), benefits to the economy (Germany), benefits to the fundamental strategic interest of the economy (Portugal), exceptional public interests such as national security, media plurality or the stability of the financial system (UK), and public benefits (New Zealand).

Most public interest objectives are related to the economy as a whole, or stability of an industry. They are not typically related to distributional concerns. In some instances, a transaction that has an effect on an industry or a region may have subsequent effects on inequality. As such, inequality can be considered indirectly through public interest assessments. However, it is important to note that where public interest is considered, decisions and conditions imposed should be carefully constructed to ensure they do not have unexpected negative consequences. Conditions should not:

- create asymmetric regulatory burdens on some firms in a market;
- impact on the ability of owners of assets from marginalised communities to dispose of investments at market value; and
- open competition authorities to lobbying or political interference.

Settlements and conditions can be used to create conditions for enhanced equity. In some countries, competition processes – particularly mergers – are used to negotiate conditions that may impact on inequality. For example, in South Africa, one of the companies implicated in cartels for bread and wheat, Pioneer Foods, engaged in a settlement agreement that included undertakings related to price as well as a fund for development of new entrants in the marker. This led to an increase in the competitiveness in the sector. Settlements reached with major retail groups consequent upon a retail market inquiry led to the waiving of exclusivity on leases in shopping centres. This opened the door to entry by smaller competitors. However, these processes are typically effective where there are strong findings of competitive harm, such as a cartel. There have been various instances in which negotiations and settlements with the Minister of Trade, Industry and Competition (usually through a set of public interest conditions agreed upon between the parties) have been made outside of the formal competition process, particularly in the context of large mergers (though they are ultimately approved by the Competition Tribunal). Agreements have included conditions related to employment, supplier development programmes, and supply chain arrangements. All settlements had a public policy or industrial development slant. They have the potential to impact on breadth of ownership and employment and therefore impact on inequality within firms or within industries. There are some criticisms of the use of merger conditions to effect this type of policy. But the impact of these interventions has not yet been assessed.

Extensions to traditional competition law are another means to incorporate a consideration of inequality. Competition authorities in Kenya and South Africa have engaged in developing competition law to introduce amendments with a stronger focus on enhancing the competitive environment for smaller firms and thereby enhancing intrafirm equity. This includes developing regulations on buyer power to enhance smaller firms' ability to access value chains they are often excluded from, such as in supermarkets. Furthermore, the experience of competition law implementation in abuse of dominance cases has not always been favourable to SMMEs affected by anticompetitive conduct. In such instances amendments have also been made to allow for clearer enforcement where larger companies actively obstruct the inclusion of smaller businesses.

Challenges ahead

There are various ways in which current competition policy and law may need to be adapted to enhance the reduction of inequality between individuals and between firms. Some challenges include:

- determining how to limit conglomerate and buyer-power effects that have an exclusionary impact on markets;
- understanding digital platforms and technology, and how they may have an impact; and
- increased consolidation within industries as a result of the economic effects of the Covid-19 pandemic on firm profitability, and resultant closures or sales.

At present there is a range of ways in which market power can still be exclusionary to small businesses, or lead to a consolidation of corporate power without contravening traditional competition law. In smaller economies in particular, it is often easier for existing large, well-capacitated companies to enter adjacent and new markets than it is for completely new entrants. This situation tends to centralise market power within a few large firms. For example, in countries such as Mauritius and Tanzania, a few large companies operate in a range of industries. While this is to be expected, it can have harmful effects on competition in instances where upstream and downstream linkages and adjacencies are exploited.

Problems may arise where there are overlapping incentive schemes and terms and conditions that build buyer power. Large companies that exercise power in one market may seek to leverage it for another. This may occur, for example, if firms within a conglomerate structure are able to get lower input costs from their subsidiary companies than independent competitors are. Another way to leverage their power across markets is to provide rebates, or discounts, based on spend on products across various markets. This incentivises purchasers to deal with them rather than competitors that only operate in a single market. This can prevent the entry of non-conglomerate-affiliated companies.

Buyer power that exists through corporate relationships can also inhibit market entry. For example, concerns have been raised by community pharmacies and independent hospitals over medical schemes' and insurers' buyer patterns. The schemes and insurers often prefer to contract with large corporate pharmacies or hospital groups. This renders smaller and owner-operated establishments uncompetitive. Similar concerns have been raised in areas such as panel beating, in which contracting by insurers has limited independent panel beaters' access to insured customers. Independent gyms and fitness centres have also noted that loyalty programmes by medical schemes and insurers tied to large gym groups have raised barriers to entry in industries which would otherwise have had a range of entrants. While there may be efficiency justifications for some of this contractual behaviour, there are questions as to its ultimate impact on distribution of ownership and resources. It leads to concerns that this can create market power in the long run.

While digital markets can create improved access to services and markets, and thereby enhance opportunities for the excluded, how digital markets develop is going to be a key factor in determining the extent to which improved access to customers is possible. Digital markets are prone to network effects. They typically have increasing returns to scale, such as where more users make algorithms better. There is also a very low marginal cost of additional users. This means they often tip to a single firm's market dominance. Research suggests that some of the increases in concentration and markups seen in US markets are the result of the growth of tech companies (Autor et al., 2020).

While digitalisation has expanded opportunities for smaller firms to access customers and new markets, in particular through social media marketplaces and online retail platforms, large digital companies can act as gatekeepers and distort smaller companies' access to platforms. Large technology companies have also limited innovative entry by merging with and incorporating or closing competitor start-ups, known as 'killer mergers'. The competition issues in digital markets have been considered in a range of commissions and countries, such as the European Commission (EC)[7], the Australian Competition and Consumer Commission (ACCC)[8], the US Fair Trade Commission, China[9] and Japan. Consideration of how best to ensure that digital markets develop in a manner that is pro-competitive and inclusionary is essential; this includes potential regulation and careful monitoring of areas such as acquisitions, contractual requirements to list on and engage with platforms, and use of data. Digital platforms have also created a different structure with respect to labour by creating platforms for labour through independent contracting as opposed to employment. Where the platform, often through an app, becomes a key route to customers, it has also had an impact on the value chains and where value is extracted. For example, whereas restaurants may historically have had a delivery service with an in-house delivery vehicle, this has typically changed. Now, the same restaurant may list on a range of apps and have multiple contractors delivering on its behalf. While this expands the restaurant's market, it also means that a proportion of the profits are now paid to the app. The split of what is paid to the restaurant, the delivery provider and the app has distribution implications. As digital platforms grow in significance, and where they become 'must have' services, there is the potential for them to extract greater amounts of the profit from the restaurants, customers and the delivery provider. Furthermore, questions arise as to the extent that consumers benefit from the data – ultimately monetised – they provide to tech companies using platforms, and the extent to which such data garnered from people in a developing country is used to benefit the country itself.

The Covid-19 pandemic led to serious damage in many economies and markets. Going forward, there is likely to be greater pressure to allow consolidation of companies that face distress, or have exited despite increased concentration as a result. As such, competition authorities will need to manage a difficult balance between addressing competition concerns and taking a pragmatic approach to companies attempting to deal with strained economic circumstances. This may be complicated by an increased push to permit the development of 'local champions' as a response to some of the supply chain issues faced during the pandemic due to the closure of borders and disruption to transportation.

Conclusion

Competition and firms' behaviour in markets have several links to inequality through the impact of market structure on consumption, labour, and the distribution of profits across the economy. We need to understand the mechanisms through which competition impacts on inequality so that we can develop suitable policies and enforcement mechanisms to maximise its impact. This is particularly relevant in countries with small or emerging economies which may have differing contextual issues that impact on the extent to which competition can affect inequality. This includes, but is not limited to:

- greater poverty levels;
- labour markets characterised by high unemployment; and
- barriers to entry for SMMEs.

The implementation of standard competition policy should in itself have beneficial effects on equality. Strong and stable competition policy enforcement has a complementary role to play with other policy tools focused on inequality. This is because competition policy in itself focuses on eradicating market power and maintaining lower levels of concentration in markets. Potential mergers necessitate a careful consideration of the extent to which they would affect ownership and control. In abuse of dominance, or with cartels, strong enforcement is likely to benefit consumers and competitors through lowering prices and reducing barriers to entry and expansion. Competition in itself should contribute to more equal outcomes. This is particularly insofar as authorities prioritise markets that have an impact on the poor and marginalised.

Competition policy is at a juncture: authorities across the world are taking public interest impacts of competition more seriously. This is in terms of prioritisation, an appetite for intervention and, in some countries, amendments that expand the law in ways that allow for greater consideration of smaller firms and entrants. This stronger focus of the impact of competition on the public good, consumers and inequality is important. However, the success lies in careful and transparent implementation that is non-distortionary and not subject to political or business capture.

Future challenges include:

- building up competition theory and policy to focus more on areas that have been insufficiently tested, including conglomeration and its impact on entry by firms in small markets and exclusive contracting;
- digitalisation and how this impacts on concentration and market tipping, particularly in the context of global competition and localised authorities; and in the wake of Covid-19, balancing industrial policy and reconstruction imperatives with competitive harm in instances in which economies of scale and scope, failing firms and state aid will become increasingly important.

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