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OECD Global Forum on Competition

CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION

Contribution from the United States

-- Session II --

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**CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING
GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION**

**THE ROLE OF RESEARCH IN THE DESIGN AND IMPLEMENTATION
OF COMPETITION POLICY**

Executive Summary

1. Experience in a number of jurisdictions has shown that research can play an important role in improving the design of competition policy systems and the implementation of competition policy programs. In the period leading to the adoption of a competition policy system, research concerning the jurisdiction's initial conditions can assist in diagnosing barriers to competition and selecting a set of substantive legal commands and institutions that are most likely to promote the attainment of competition policy objectives. Once a competition policy system is established, a research program can inform the competition agency's judgment about how to apply its resources and, particularly in carrying out advocacy functions, can marshal analytical and empirical support that documents the costs of private practices and government policies that restrict competition and suggests how a jurisdiction can improve economic performance by adopting pro-competition policies. For countries that only recently have established competition systems, and for nations that are considering the enactment of competition laws, technical assistance programs should support research that improves the design and operation of competition regimes and enhances the indigenous intellectual infrastructure – particularly graduate university programs in economics and law – upon which most competition systems draw heavily for their success.

1. Introduction

2. In its Background Note of 27 October 2003,¹ the OECD Secretariat invited delegates to address challenges and obstacles that competition policy² authorities face in promoting competition. In particular, the Background Note asked delegates to discuss how a competition policy system might overcome efforts by interests, both public and private, that benefit from restrictions upon competition and seek to retard the development of a “competition culture.”³

3. This paper considers one element of the mix of approaches that a country can take to reduce barriers to competition and to establish a competition culture. It focuses upon the role that research can play in designing and implementing competition policy and, more generally, in encouraging the development of a competition culture. The paper suggests that research – especially empirical analysis – concerning the economy of a country and the institutional arrangements that influence economic activity is a valuable tool for diagnosing obstacles to competition, making visible the costs associated with public policies and private behaviour that suppress competition, and illuminating ways to remove barriers to competition.

4. The discussion of how research can contribute to building a competition culture is organized as follows. Part 2 summarizes private and public barriers to competition. Part 3 describes sources of resistance that a country faces in pursuing policies to remove barriers to competition. Part 4 reviews how research can document the obstacles to competition and can demonstrate the benefits to a nation of adopting pro-competition policies. Part 5 lays out the institutional means by which a country can undertake research relating to competition policy. Part 6 considers how technical assistance programs can assist emerging market economies to build the requisite research capability.

2. Barriers to Competition

5. Barriers to competition take a number of forms in most countries.⁴ This section provides a summary of significant barriers to competition as a way to provide a frame of reference for considering, in later sections of the paper, how research can facilitate the development of pro-competition policies that increase economic growth. The discussion includes selected citations to and illustrations of modern research that has assisted in documenting the existence of specific barriers to competition and understanding their cost.

2.1 *Conduct of Private Parties*

6. Private entities, acting alone or in concert, can take a number of measures to suppress competition. These measures fall generally into one of two categories: *collusionary* behaviour by which rival firms agree to pursue a common course in setting output, prices, quality, or other terms of trade, and *exclusionary* behaviour, by which a firm, acting alone or in concert with others, seeks to deny a rival access to the market entirely or to some input necessary to compete effectively.⁵ A horizontal price-fixing cartel is the best-known example of conduct with anticompetitive collusionary effects, whereas an abuse of dominance – say, for example, the adoption by a dominant firm of exclusive dealing contracts that deny a rival access to downstream distribution channels without offsetting efficiency justifications – is one illustration of conduct with anticompetitive exclusionary effects.

7. With some variation, the competition laws of most jurisdictions condemn both forms of anticompetitive conduct.⁶ The principle concern of this paper is the pursuit of research activities that give priority to addressing the most serious restraints upon competition. As suggested below, collusion by direct rivals and government-imposed barriers to entry and expansion ordinarily will supply an appropriate starting point.

2.1.1 *Contributions of Research to Understanding Private Anticompetitive Conduct: The Case of Supplier or Purchaser Cartels*

8. Research has played a major role in increasing the understanding in a wide range of economic settings of how cartels operate and how they adversely affect economic performance.⁷ Modern research has provided informative insights about how cartels, old and new, have solved problems of organization, coordination, and internal discipline and about the actual economic effects of cartels.⁸ Another line of research has examined, at the national level, how specific forms of producer coordination take place within individual commercial sectors.⁹

2.1.2 *Links between Policies to Challenge Private and Public Restraints*

9. Relatively few competition policy systems limit themselves to the treatment of purely private behaviour. Most systems contain provisions that give the national competition agency, either through law enforcement or through various forms of advocacy, authority to oppose actions by public instrumentalities that reduce competition.¹⁰ The dual approach of addressing public and private restrictions on competition is widely recognized today as essential to effective policy making.¹¹ Effective enforcement against private anticompetitive conduct creates incentives for private economic actors to persuade the state to take measures that the law forbids private parties to undertake. A competition system that focuses solely on private misconduct runs a serious risk of channelling impulses to suppress rivalry toward eliciting public intervention and, in doing so, solves only half of the problem of competitive restraints.¹²

2.2 *Conduct of Public Bodies*

10. Government authorities adopt a number of policies that establish barriers to competition. Competitive distortions introduced by public intervention take the following forms.

2.2.1 *Policies that Directly Restrain Competition*

11. The most commonly discussed measures by which public intervention limits competition consist of *direct* restraints upon the competitive process – measures that restrict entry, set prices, establish unnecessarily restrictive quality specifications, or provide subsidies or other advantages that permit state-owned enterprises to surpass private competitors.

2.2.2 *Policies that Indirectly Restrain Competition*

12. The literature on competition policy accords less attention to a wide array of other policies by which government intervention adversely affects the competitive process. Governments restrict competition by various *indirect* means that might not immediately appear to be related to competition policy. An incomplete list of policies that indirectly can restrict competition would include the following examples derived from case studies in transition economies.¹³

- *Employment Law.* Employment laws that ban enterprises from laying off employees can impede entry or expansion. Existing firms or potential entrepreneurs may be reluctant to add workers, even to accommodate increasing demand for their products, if the decision to hire creates, in effect, permanent positions that cannot be reduced if demand for the product were to fall in the future.
- *Incorporation and Business Registration Law.* A company law can impede entry by imposing burdensome registration requirements or permitting licensing authorities to deny registration because they dislike the applicant's business plan or fear that the applicant will add "redundant" capacity to the sector it seeks to enter.
- *Securities Laws.* Securities laws can discourage the capital formation that firms need to enter or expand by forbidding them to issue stock or by requiring government approval for measures that would adjust the firm's capitalization.
- *Secured Transactions Law.* The absence of an efficient system for secured lending can impede the ability of firms to enter or grow by pledging assets or revenues as a means for obtaining credit.
- *Property Law.* Poorly-specified or enforced protections for tangible or intangible property can deter enterprises from making certain categories of investments that permit them to compete more effectively by, for example, developing new products or realizing cost reductions by increasing plant size. Weak mechanisms for registering or transferring property rights also can slow the process by which firms acquire assets needed to expand operations.
- *Commercial Law.* Ineffective mechanisms for executing commercial transactions and enforcing contracts can reduce the speed and scope of trade by causing firms to rely on costly surrogates for judicial enforcement of contracts. Contract law in some countries also obstructs beneficial exchanges by requiring government approval for certain routine categories of transactions, such as an agreement to license a patent.

- *Consumer Protection.* Broad prohibitions upon advertising and related forms of marketing practices can deny entrepreneurs useful means to publicize their products and expand their client base.
- *Bankruptcy Law.* The lack of effective measures for dealing with bankrupt or insolvent enterprises can discourage entry by increasing the risks associated with exiting the market.
- *Social Insurance Programs.* Social policies that make state-owned firms responsible for providing housing, education, food, and other social services can spur the creation of massive publicly-owned conglomerate enterprises that the state, in order to ensure the provision of key services, feels compelled to protect from entry.
- *Housing Policy.* Housing policies that severely control rents or limit the construction of private housing stock can impede the fluid movement of workers from one area to another and cause government officials to forestall competition that would change the status quo of employment in any single region of the country.
- *Procurement Law.* Procurement laws can restrict rivalry by unnecessarily limiting the universe of potential bidders for specific projects or by employing techniques that inadvertently facilitate collusion by private suppliers.
- Careful pre-reform study of the operation of these and other public policies is an indispensable necessary element of the larger process of understanding the institutional arrangements that determine the level of competition and economic growth in any country.¹⁴ Research that identifies the path to improving these institutional arrangements has strong potential to contribute to economic growth, especially in poor countries in which the requisite arrangements often are badly lacking.¹⁵

2.2.3 *Regulatory Complexity as a Barrier to Entry*

13. The operation of various forms of government intervention can impose other costs on the competitive process. Each time a jurisdiction establishes a regulatory “gate” through which actual or potential entrepreneurs must pass, it creates an opportunity for corruption. As the system of public regulation becomes more complex, the number of regulatory gates and gatekeeper’s rises, thus increasing possibilities for corruption.¹⁶ The risk of actual corruption varies according to the effectiveness of the safeguards that individual jurisdictions establish to ensure integrity in public administration. Even in countries with strong public integrity safeguards, more complex regulatory regimes are likely to be more vulnerable to corruption than less complex regimes because the more complex regimes generate more opportunities for corruption.

14. Even if there were no corruption, regulatory complexity itself can be a barrier to entry. The resources committed to understanding a regulatory system and navigating its requirements are a tax that larger firms – especially incumbents with significant experience in the industry – can bear with lesser strain than smaller firms or new entrants. As the number and complexity of regulatory requirements that an entrepreneur must satisfy grows, the costs associated with entry also grow.¹⁷

15. To this point, we have been discussing respects in which government policies can retard competition directly or indirectly. We should note that there are important instances in which the government can improve competition by making public investments that ordinarily might not be associated with competition policy. In some countries, the poor quality of vital infrastructure assets makes it difficult for firms to transport goods into, out of, or across the country. A public program to improve roads, for

example, can permit producers in one part of the country to sell goods into a region that otherwise would be dominated by one or a few local suppliers.

2.2.4 Value of In-Country Research: Example of Tax Policy

16. Many competitive distortions arising from government policies are observable only through careful study of local conditions. One noteworthy area in which researchers have identified roadblocks to competition involves tax policy.¹⁸ Taxation regimes can discourage competition in several ways. In some countries, tax policies discourage inter-regional transfers of goods by allowing political subunits to assess taxes upon goods in transit from one part of the country to another. Allowing local or regional governments to impose such taxes can discourage the movement of goods throughout the country and insulate local producers from competition from more distant suppliers.

17. A more general problem stems from the promulgation of highly complex codes and the delegation of broad authority to individual inspectors to enforce code provisions. In some countries, the details of the codes are not made widely available to affected business operators. Enforcement of these measures sometimes is delegated to public officials who use broad enforcement discretion to "discover" violations and gather bribes under the guise of "settling" tax claims. Taxpayers rarely have recourse to any form of appeals mechanism, much less a system of review that affords a swift, impartial analysis of tax claims.

18. Arbitrary, corruptly enforced tax codes can deter entry and expansion by business operators. The likelihood that commercial success will attract scrutiny (and, perhaps, extortion) by tax authorities discourages some prospective entrepreneurs from entering markets and may lead incumbent operators to forego new investments that could increase revenues. Some firms will spend substantial sums on attorneys and other advisors to decipher opaque and fast-changing tax codes and to oppose frivolous audits or assessments. Others simply will attempt to evade the tax system by hiding or under-reporting income. The combination of corrupt enforcement and massive evasion obstructs accomplishment of the government's legitimate revenue collection objectives. Weaknesses in the system of tax collection, in turn, can cause governments to rely more heavily than they would otherwise on state-owned enterprises to meet revenue requirements, with attendant pressures to shield state-owned firms from entry by private firms.

3. Sources of Resistance to Competition Policy and Countervailing Forces

19. The introduction of competition into a commercial sector, or an entire economy, that has been governed by extensive controls on entry, pricing, and output can create considerable upheaval in the nation's political economy. The process of designing and implementing competition reforms requires the perspective and insights of a political scientist to anticipate sources of opposition to and support for such reforms. Political adroitness in mapping the landscape of existing interests, in blunting opposition, and mobilizing support is no less important to the success of competition policy reforms than technical proficiency in drafting substantive commands or designing a competition authority.

3.1 Potential Sources of Resistance

20. Opposition to pro-competition law reform, either through the implementation of a competition law or through collateral measures that improve the competitive process, can come from essentially four groups.

3.1.1 Private Recipients of Monopoly Rents

21. Private economic actors who derive monopoly rents from the absence of competition can be expected to oppose the adoption or implementation of pro-competition policies, or to seek legislative or

regulatory dispensations from rules promoting competition. In seeking to oppose pro-competition policies, the beneficiaries of the status quo enjoy an advantage identified by public choice scholars. The benefits of suppressing rivalry are realized by a comparatively small number of actors who fully understand the importance of restricting competition; by contrast, the costs of restricting competition tend to be spread broadly across a large number of individuals (consumers), each of whom suffers a comparatively modest penalty compared to the relatively substantial gain realized by incumbent producers.¹⁹ The phenomenon of highly focused benefits and broadly distributed costs gives producers a greater incentive to organize political resources needed to preserve the status quo.

3.1.2 Public Bodies That Benefit from Restrictions upon Competition

22. A variety of public instrumentalities may have a strong interest in defeating policy reforms that would increase competition. These include state-owned enterprises that enjoy protection against entry or expansion by private firms; government ministries that derive economic or political power by reason of their oversight of specific state-owned enterprises; and legislators whose base of political support includes state-owned firms and the ministries that oversee them. Public officials who benefit from restrictions upon competition may have incentives to organize to defeat pro-competition reforms that are no less strong than the incentives that motivate private recipients of monopoly rents to protect the status quo.²⁰

3.1.3 Constituencies Concerned About the Loss of National Autonomy

23. Resistance to pro-competition policy reforms may come from domestic constituencies that perceive such reforms to be a step toward surrendering national control over vital elements of economic policy to foreign interests. Models developed in comparatively wealthy nations have deeply influenced the adoption of competition policy reforms in transition economies as one part of the move toward greater reliance on a market economy.²¹ In some transition economies, concerns have been raised that well-established market economies promote competition policy mainly to improve the position of their own companies and not to spur growth in transition environments.

3.1.4 Opposition Rooted in Social Cleavages

24. Opposition to competition policy reforms sometimes stems from concerns about how competition will affect the distribution of wealth across various social groups. In some countries, disfavoured ethnic minorities account for a substantial amount of commerce in specific sectors, but their opportunities to expand operations are limited by a variety of regulatory controls. In such settings, the relaxation of central controls on entry or expansion by business enterprises may be opposed because such measures are perceived by the majority social groups as enabling disfavoured minorities to increase their prominence in the economy. In another scenario, reliance on market-based processes might be seen as an abandonment of social policies that are designed to give historically disadvantaged groups greater access to the economy.

3.1.5 The Common Case: A Complex Nexus of Influences

25. In the typical case, resistance to reform does not stem from a single source but will result from a convergence of impulses. Understanding the full array of factors that press toward preserving the status quo is the necessary first step to anticipating and addressing opposition to reform. The case of natural monopoly reform illustrates the point.

26. Many formerly communist and socialist countries employ a broad conception of "natural monopoly" to withdraw assets from the private sector and sustain expansive levels of state ownership. Experience with Ukraine's efforts in the 1990s to draft a new law for the regulation of natural monopolies illustrates the point.²² As Ukraine expanded its privatization program in the mid-1990s, natural monopoly

entities were exempt from privatization. This exemption placed a premium on the ability of the natural monopoly law drafting group to devise (and gain acceptance for) a working definition of "natural monopoly" that properly limits the activities subject to natural monopoly oversight. This problem had two dimensions. The first was to identify industry sectors that today have natural monopoly traits and to provide a mechanism for adjustment that takes account of changes in technology and competitive circumstances. The second was to address the conglomerate, integrated structure of firms that engage in natural monopoly activities.

27. During the era of central planning, the absence of strong markets for intermediate inputs and the government's desire to use firms as engines of social policy caused state-owned enterprises to pursue self-sufficiency. Thus, the state pipeline company owned not only natural gas pipelines, compressor stations, and scheduling facilities, but also owned the housing in which its workers live, the retail stores in which they shopped, the construction company that serviced the pipeline and other purchasers of building services, and the farms that produced the food consumed by the pipeline company's employees.

28. Ministries responsible for specific economic sectors in Ukraine had a strong interest in seeing that the concept of "natural monopoly" was defined and interpreted broadly, to increase the number of sectors exempt from privatization and to prevent the privatization of business entities that are affiliated by the natural monopoly firm but do not perform functions that could be called natural monopoly activities. A narrow definition of natural monopoly, and the de-conglomeratization of firms holding natural monopoly assets, promised to reduce significantly the ministries' base of economic and political power.

3.2 *Countervailing Interests: Potential Sources of Support for Competition Reforms*

29. In most countries, it is possible to identify potential sources of support for reforms that will increase reliance on market mechanisms to govern the economy. When engaged in the process of pursuing competition policy reforms, such groups can provide an important counterweight to the opposition interests identified above.

3.2.1 *Incumbent Firms that Suffer from Monopoly Overcharges*

30. It may be possible to identify industry groups whose opportunities for growth suffer from the absence of competition. One group of candidates consists of firms whose costs increase because they purchase inputs at supracompetitive prices set by a cartel or a dominant firm. Suppose that a domestic producer of decorative flowers exports its output in competition with growers located in other countries. The domestic producer can suffer a serious competitive disadvantage, and will lose sales, if it must purchase transportation services from a single-firm monopolist or a cartel.²³

31. Another group of enterprises that might support pro-competition reforms consists of service providers who do not buy inputs from a cartel or a monopolist but whose operations nonetheless depend on the prices charged and quality of service provided by the cartel or monopolist. Consider the example of hotel owners whose facilities serve foreign tourists. The hotels may lose customers if the government dedicates all domestic air transport service to a single state-owned enterprise that charges monopoly prices for domestic service to tourism destinations. A lack of price competition for the domestic leg of the tourist's journey may result in a cost for the entire tour package that leads the tourist to consider other destinations. It could be the case that economic and social policies designed to sustain employment or revenues for one sector (the domestic airline industry) deny the country the opportunity to realize still greater growth in employment and GDP by stifling growth in another sector (hotel and related tourism services).

3.2.2 *Government Authorities with a Stake in Promoting Economic Growth*

32. Some ministries of government might perceive how policies that suppress competition can diminish opportunities for economic growth. We can turn again to the examples mentioned above. The agriculture or foreign commerce ministries might be willing to oppose the transport ministry if greater competition in the transport sector would reduce the cost of exporting agricultural goods and increase export sales. The ministry responsible for tourism might oppose the transport ministry if adding a second domestic air carrier would depress domestic airline fares and attract more tourists to destinations within the country.

3.2.3 *Socially Disadvantaged Groups*

33. Complex regulatory regimes that increase the cost and difficulty of forming a new business enterprise fall particularly heavily on impoverished individuals or groups.²⁴ Competition policies that reduce artificial entry barriers can facilitate small business development and give previously excluded individuals new economic opportunities. Eliminating artificial regulatory barriers also can induce informal operators to participate in the formal sector. This gives the operators the protections available to formal sector participants (e.g., recourse to legal process, such as to enforce contracts) and gives the state the benefit of tax payments that informal operators do not provide.

3.2.4 *Consumer Organizations*

34. In a number of countries, consumer organizations are a valuable source of political support for pro-competition reforms. By publicizing the costs of policies that suppress business rivalry and informing the public about the benefits of competition, consumer organizations provide a vehicle for overcoming the collective action problems associated with accomplishing economic reforms.

4. **Role of Research in Diagnosing Obstacles, Identifying Solutions, and Understanding the Reform Process**

35. The principal theme of this paper is that research is an important ingredient of the combination of measures a country must take in order to design and successfully introduce competition policy reforms. This section discusses how the capacity to conduct research in several disciplines – most notably empirical work in microeconomics, but also studies in law, political science, and sociology – can make important contributions toward the establishment of a competition culture and toward overcoming resistance to pro-competition measures.

4.1 *Analyzing Initial Conditions*

36. The first, indispensable research task relating to competition reforms is to perform a careful study of the country's pre-reform conditions.²⁵ This task involves examining the economic, legal, political, and social context in which reforms might be pursued.²⁶ Enormous challenges and subtleties can accompany the application of generally applicable precepts of institutional design to any individual national context.²⁷ An accurate pre-reform diagnosis of initial conditions serves several important objectives.

4.1.1 *Understanding Types and Causes of Competition-Relevant Phenomena*

37. A basic aim of pre-reform research is to determine which types of private behaviour and public policies retard growth by diminishing competition and to understand the origins of the practices in question. The drafting of specific reforms should follow efforts to study the major sources of market failure and to identify distinctive institutional conditions that affect the choice of strategies for correcting such failures.²⁸ Preparation for drafting should include case studies of specific industries and interviews

with academics, consumers, government officials, legal practitioners, and business managers. The case studies serve to identify problems on which antitrust and consumer protection reforms should focus, to assess the institutional capabilities of the host country, and evaluate needed adjustments in institutions.

38. Ideally, pre-reform research should involve a collaboration between indigenous specialists and external technical advisors.²⁹ A cooperative effort to perform case studies and interviews gives indigenous experts the benefit of experience and theoretical insights from external advisors, and ensures that external advisors are alert to distinctive circumstances of the host country. The participation by external advisors in pre-reform analysis, law drafting, and implementation will be most constructive when technical advisory bodies have a continuing, long-term, in-country presence.

39. One of the most important functions of pre-reform research is to illuminate conditions that affect the design of competition-oriented measures. Even in an environment of comprehensive regulation or centralized planning, business managers and individual entrepreneurs develop customs and institutions that promote efficient resource allocation and can provide valuable foundations for carrying out economic activity in the post-reform era. These market-relevant customs emerge in several ways. In one setting, customs and institutions take root in the "informal" sector of a heavily regulated economy. In the "informal" sector, economic actors operate at the fringe of legality or in defiance of existing legal commands.³⁰ Participants in the informal sector often devise market-oriented customs and institutions that can illuminate paths for transforming the heavily regulated "formal sector."

40. Pre-reform commercial customs and institutions can have important implications for the design of legal reforms. First, commercial actors (especially private entrepreneurs in the formal and informal sectors) can provide a base of political support for economic liberalization, including measures to promote competition. Second, individuals who have gained some experience with market processes can be a source of new entry and expansion in the post-reform economy. Third, private actors in the formal and informal sectors rarely enjoyed effective recourse to a well-established, judicially-enforced system of rules governing commercial behaviour. Such firms often devised private customs or institutions to define property rights and govern their transactions. With economic liberalization, these informal customs can supply a useful basis for establishing formal principles of law.

4.1.2 Identifying Relevant Interest Groups

41. A predicate for undertaking competition policy reforms is to identify constituencies that are likely to oppose or support such measures. Careful pre-reform research helps prepare accurate predictions of which public and private actors will resist pro-competition measures and helps spotlight public and private actors who might support reforms.

4.1.3 Learning from the Existing Institutional Framework

42. The third objective of pre-reform study is to identify existing institutions that the country might employ or adapt to execute pro-competition reforms.³¹ For example, an existing social network might supply a means for communicating information about the operation of a new competition policy system and might assist in educating various groups about the system's rationale and requirements.³² Existing indigenous organizations might assist in alerting government officials about deviations from competition law commands.

4.1.4 Synthesis: Law Drafting and Institutional Design

43. The fourth aim, closely related to the first three, is to inform the actual drafting of a competition law or the design of related competition policy reforms. Serious efforts to study initial conditions can help

avoid problems that sometimes arise when transition economy laws are modelled too closely upon off-the-rack variants of statutes or institutions developed in older market economies.³³

4.2 *Demonstrating the Costs of Policies that Restrict Competition*

44. Research can play a valuable role in the reform process by identifying and measuring the costs of private behaviour and public policies that suppress competition. Confronting defenders of the status quo with such costs cannot be expected, by itself, to induce them to relent. Documentation of costs nonetheless makes it more difficult for opponents of reform to make the case for inertia. Good empirical work can perform a valuable educational function by making clear what a country pays by limiting competition.

45. Sound research might be considered to be the equivalent in economics of a legal precedent. “Economic precedents” provide justifications that can be used repeatedly, by the host country and by other jurisdictions, to establish the value of policy reforms. These “precedents” can have considerable impact across jurisdictions. For example, in the late 1980s and early 1990s, the U.S. Federal Communications Commission and the public service commissions of many state governments modelled price cap reform measures on methods recommended by researchers in the United Kingdom and tested by U.K regulatory authorities.³⁴ The academic theoretical research and studies of actual reform experience in the United Kingdom provided government officials in the United States with some assurance that price caps entailed fewer administrative costs and provided superior incentives to improve productivity than traditional rate of return regulation. In this and other settings, cross-sectoral and inter-jurisdictional comparisons have become increasingly important tools for the analysis of regulatory policies and institutions.

4.3 *Identifying the Possible Process and Content of Reforms*

46. Research can serve at least two functions in the design and implementation of reforms. First, research can help explain the combination of circumstances within an individual jurisdiction that are likely to prove most supportive of reform efforts. In some instances, the costs of regimes that suppress competition are so massive that, when convincingly documented, they begin to collapse of their own weight.³⁵ In other cases, technological change undermines existing regulatory structures and provides an opportunity to promote pro-competition policies as better suited to deal with the technologically-driven reconfiguration of the industry.³⁶ Researchers also have highlighted the crucial role played by the political adroitness of public officials entrusted with administering the transition from one governance structure to another.³⁷ By close study of various developments in the country’s economy and political environment, research helps to identify conditions suitable for reform, to spot the optimal timing for pursuing specific reforms, and to indicate ways to develop a coalition to support reforms.

47. Second, research can inform judgments about how to cure problems rooted in a lack of competition. For a competition agency, research can help illuminate possible law enforcement projects or opportunities for advocacy before other government bodies. Research also might uncover other policy adjustments – such as the reform of taxation systems – that influence the competitive process and might warrant adoption.

4.4 *Illustration: Modern U.S. Deregulation Experience*

48. One particularly difficult challenge in studying economic regulation in any jurisdiction is to understand how reforms come to pass. The modern literature on public choice economics has provided a useful perspective on why certain regulatory regimes come into being and persist over time. As noted above in Section 3.1, economic regulation that restricts competition often generates benefits to a well-defined set of public or private actors. These beneficiaries have strong incentives to organize themselves and press government policy makers to maintain regulatory controls that, for example, prevent new entry.

In many instances, the costs of regulation fall upon a large, diffuse body of actors, each of whom would realize comparatively small gains from regulatory reform and who collectively would incur substantial costs in forming a coalition to pursue reform. The combination of highly focused benefits and widely dispersed costs creates a substantial obstacle to reform.

49. Despite the power of regulatory restrictions on competition to endure, public policy in the United States since the mid-1970s has featured important episodes of pro-consumer regulatory reform. Regulatory structures that shielded incumbent service providers from competition have toppled or undergone dramatic retrenchment in the commercial airline, electric power, trucking, railroad, and telecommunications sectors. What once might have seemed to be immutable controls on entry and pricing gave way to liberalized regimes that rely heavily on competition as the means for governing economic activity.

50. Researchers played an important part in understanding the timing of these deregulatory measures and in fostering an intellectual environment supportive of reform. One contribution was to identify the costs of existing regulatory controls and to underscore the feasibility of reforms. Experience with airline deregulation provides an important example. By the mid-1970s, several empirical studies had shown that intrastate airline routes in California and Texas had much lower fares than interstate routes of comparable distance and showed that intrastate carriers operated profitably and safely.³⁸ Such studies provided crucial intellectual support later in the decade for efforts to abandon limits on entry and pricing for domestic carriers.³⁹

51. This experience underscores the value of research in unmasking faulty theoretical assertions and empirical assumptions that support the regulatory status quo.⁴⁰ Formulating an alternative intellectual vision can help stimulate institutional change by fostering a debate about existing policies and supplying advocates of change in the political arena with tools to justify reform measures.

4.5 Evaluating the Effects of Past Competition Policy Interventions

52. As a nation implements a competition policy program, the competition agency should dedicate some of its research agenda to evaluating the effects of its interventions. Analyzing the effects of completed cases, advocacy initiatives, or other forms of activity helps the competition agency determine how to use its resources in the future and helps establish a norm of empirical inquiry as a means of analyzing the consequences of its interventions.⁴¹

5. Institutional Foundations

53. The importance of research in creating a competition culture has several institutional implications.

5.1 The Competition Authority

54. The availability of research is particularly significant to the operation of the competition authority. The competition authority can obtain research from one of three principal sources, depending upon its own institutional characteristics and the design of its government institutions. First, a competition agency can develop an internal research capability. Although the amount of resources that competition agencies invest in this function varies, maintaining at least some internal capability is likely to prove highly valuable.⁴² The second approach is to contract outside the agency for experts to perform research on its behalf. Many competition authorities rely, at least to some extent, on academics and other external consultants to conduct research for the agency. The third approach is to use research results generated by or on behalf of other institutions, including other competition agencies. One benefit of cooperation among competition authorities is to create a pool of “economic precedents” that can be shared and adapted across

jurisdictions. The essential point is that, without a strong research base that is developed internally or derived from external sources, it will be difficult for the competition agency to make sound judgments about how to deploy its resources for enforcement or advocacy.⁴³

55. Performing case studies can help a competition agency, particularly new authorities, achieve important methodological and substantive objectives. Performing studies can enrich the agency's understanding of market phenomena that it must analyze and address in applying its enforcement powers. Case studies also serve important methodological ends. A study can be seen as an opportunity for the agency's staff to develop skills that are instrumental in investigating possible violations of the law and building cases.

56. Collaboration between the agency and foreign advisors can be effective elements of the agency's training program. In performing case studies, the agency's professional staff can acquire familiarity with the analytical tools and information-gathering methodologies that will be needed to enforce the competition law.⁴⁴ Case studies, in turn, can provide valuable material for devising training programs that use hypothetical examples and role-playing exercises based on economic circumstances true to the experience of new competition authorities.⁴⁵

5.2 *An Indigenous Intellectual Infrastructure*

57. Successful competition policy systems rely heavily on collateral institutions to develop technical skills and perform studies that are the essential foundations of good research.⁴⁶ The intellectual infrastructure that supports the development of competition policy in many countries has several discrete elements.

58. First and perhaps most important is the system of higher education. Countries with well-established competition systems rely heavily on universities to train students in the fundamentals of the law and economics of competition policy.⁴⁷ Key components of higher education are law schools that teach sophisticated courses in antitrust and economics departments or business schools that teach undergraduate and graduate courses dealing with microeconomics and industrial organization. For example, in the United States, professors who teach such courses can choose from a multitude of instructional materials that incorporate the latest developments in analytical techniques and policy. The U.S. competition agencies recruit numerous entry-level attorneys and economists from these programs.

59. In a number of countries, universities also generate substantial amounts of research and commentary that address phenomena relevant to competition policy. Supplementing the work of universities are countless institutes and think tanks. Some think tanks are located in government ministries, others are affiliated with universities, and still others are private institutions that perform research for public or private bodies on a fee basis. Numerous scholarly journals publish papers on antitrust and industrial organization topics, and such journals are widely accessible to government officials and practitioners. The academic community is the equivalent of a large network of competition policy research and development laboratories that supply the antitrust system.

5.3 *The Transmission Grid: The Media, Professional Societies, Trade Associations, and Consumer Groups*

60. Media organizations, trade associations, professional societies, and consumer groups provide useful networks for distributing the results of research relating to competition policy.⁴⁸ Collectively, they constitute the transmission grid for ideas concerning competition reform. Competition agencies and other bodies with an interest in promoting competition reforms tend to be proficient in using all three types of networks to make the case for competition policy.

61. In many competition policy systems, the results of research performed by government competition bodies or by external researchers are distributed through a variety of information conduits, including an expanding array of media organizations. In some countries, specialized media organizations regularly report on developments in competition policy and other forms of business regulation. These organizations provide means for various external constituencies, such as other government agencies and the business community, to obtain the results of competition policy research. The activities of media organizations can inject an important element of transparency and accountability into the operation of competition policy agencies.

62. Professional societies, trade associations, and consumer groups provide important links between competition agencies and external communities. These groups can perform a valuable function in a competition policy system by disseminating the results of research concerning impediments to competition and possible solutions to competitive obstacles. Such groups also facilitate a continuing process of critical discourse about competition policy that makes the rationale and effects of government enforcement decisions more transparent.

5.4 *An Integrated Approach: The Example of Peru in the 1990s*

63. Under the leadership of Beatriz Boza, Peru's competition policy agency (INDECOPI) undertook an ambitious program in the 1990s to establish a strong internal research capability, to foster the development of a strong supporting intellectual infrastructure in Peru, and to encourage the acceptance of a norm of regular self-assessment.⁴⁹ One of the chief manifestations of this effort is what Boza called the "academic audit" – a program of review in which internal and external researchers prepared papers analyzing various features of the performance of INDECOPI. The results of the academic audit were published to permit public dissemination of the research and to stimulate public debate about INDECOPI's activities.⁵⁰

6. Conclusion: Implications for Institutional Design and Technical Assistance

64. The importance of research in promoting the development of a competition culture has major implications for the design of competition policy institutions in most jurisdictions and for the structuring of technical assistance programs in countries that recently have adopted competition laws or are considering doing so.

6.1 *General Observations*

65. Good research is important to older and newer systems, alike. In each case, research can play a valuable role in demonstrating the benefits of competition and documenting the costs of private and public measures that restrict competition. Successful competition systems invest resources in performing relevant research themselves or retaining experts to conduct inquiries. Effective systems also form what amount to loose partnerships with universities to obtain access to graduating students and to help inform the research agendas of academics with an interest in competition policy.

6.2 *Technical Assistance Considerations*

66. A weakness of foreign technical assistance programs for competition policy is their tendency to invest relatively few resources in efforts to diagnose the obstacles to competition in the host country before a competition law is drafted and passed. More generally, in an unfortunate number of instances, reform programs involving a variety of economic regulatory statutes have imported off-the-rack substantive commands and enforcement mechanisms from Western experience without adequately considering the institutional context in which such commands and mechanisms will operate. The following research-related activities are designed to overcome these limitations.⁵¹

- *Pre-Reform Study.* The design of new competition policy systems ought to proceed from a careful pre-reform analysis of the host country's initial conditions. Making such research a component of the technical assistance life-cycle helps ensure that the drafting of a new statute and creation of implementing institutions rests upon a sound understanding of local economic phenomena, the political landscape, and institutions whose operation will influence the application of competition policy.
- *Research as an Element of the Competition Agency's Mandate.* The new competition agency should have authority to perform research related to its functions or to contract with third parties to carry out such work. Depending on the legal customs and practices of each country, it may be useful to make this authority an express element of the agency's charter.
- *Investments in Building the Jurisdiction's Intellectual Infrastructure.* Technical assistance programs should contain a component for enhancing the host country's intellectual infrastructure, particularly its university programs in economics and law.⁵² Two key aims of this process are to train specialists who will work in the competition policy community and to build indigenous capability to perform research relevant to the development and implementation of competition policy.
- *Regional Cooperation.* Technical assistance programs should promote forms of regional cooperation that enable individual countries to collect and use research developed in other jurisdictions, to develop analytical skills, and to conduct joint products that might be beyond the reach of any single jurisdiction.

NOTES

1. Organization for Economic Co-operation and Development, OECD Global Forum on Competition, Secretariat Background Note, *Challenges/Obstacles Faced by Competition Authorities in Achieving Greater Economic Development Through the Promotion of Competition* (CCNM/GF/COMP(2003)6; 27 October 2003) (hereinafter *Background Note*).
2. This paper uses the term “competition policy” to encompass advocacy, law enforcement, research, publicity, and related tools by which a competition authority seeks to encourage reliance on competition as the means for organizing the economy. See William E. Kovacic, *Institutional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement*, 77 *Chicago-Kent Law Review* 265, 281-86 (2001) (hereinafter *Institutional Foundations*) (discussing various tools by which public competition authorities seek to promote reliance on competition).
3. The Background Note defines “competition culture” to mean “there is political support to use competition in markets as the default or ‘normal’ way to organise economic activities outside the family, government bureaucracies and single economic entities (or single enterprises) and that this support is translated into competition actually being the default or ‘normal’ organising principle.” *Background Note*, at Paragraph 14 (emphasis in original). The importance of building and sustaining a competition culture, and a discussion of strategies for achieving these ends, are presented in Ignacio De Leon, *Latin American Competition Law and Policy: A Policy in Search of Identity* (2001).
4. See Mark R.A. Palim, *The Worldwide Growth of Competition Law: An Empirical Analysis*, 43 *Antitrust Bulletin* 105 (1998); Luis Tineo, *Competition Policy & Law in Latin America: From Distributive Regulations to Market Efficiency* 8-9 (Monterey Institute, Center for Trade & Commercial Diplomacy, Working Paper No. 4, February 1997) (hereinafter *Competition Policy*).
5. This classification scheme is elaborated in Andrew I. Gavil et al., *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* (2002).
6. See, e.g., Roger Alan Boner, *Competition Policy and Institutions in Reforming Economies, in Regulatory Policies and Reform: A Comparative Perspective* 38, 42-48 (Claudio R. Frischtak, ed., The World Bank, 1996) (describing main elements of transition economy competition laws); Roger W. Mastalir, *Regulation of Competition in the "New" Free Markets of Eastern Europe: A Comparative Study of Antitrust Laws in Poland, Hungary, Czech and Slovak Republics, and their Models*, 19 *North Carolina Journal of International Law & Commercial Regulation* 61 (1993). Russell Pittman, *Some Critical Provisions in the Antimonopoly Laws of Central and Eastern Europe*, 26 *International Lawyer* 485, 487-502 (1992) (describing substantive prohibitions in Central and Eastern European antitrust laws); Tineo, *Competition Policy*, at 15-23 (describing substantive provisions of Latin American antitrust laws).
7. Recent noteworthy examples include John M. Connor, *Global Price Fixing: Our Customers Are the Enemy* (2001); Simon J. Evenett et al., *International Cartel Enforcement Lessons from the 1990s*, *World Economy* (Sept. 2001). See also William J. Kolasky, Deputy Assistant Attorney General for Antitrust, U.S. Department of Justice, *Coordinated Effects in Merger Review: From Dead Frenchmen to Beautiful Minds and Mavericks* (Apr. 24, 2002) (Presentation Before the ABA Section of Antitrust Law Spring Meeting, Washington, D.C.) (reviewing economic literature on common characteristics of price-fixing cartels and discussing implications for merger enforcement), available at <http://www.usdoj.gov/art/public/speeches/11050.htm>.
8. Important recent contributions include Margaret Levenstein & Valerie Y. Suslow, *What Determines Cartel Success?*, in *How Cartels Endure and How They Fail: Studies of Industrial Collusion* (Peter Grossman ed.) (forthcoming); David Genesove & Wallace P. Mullin, *Rules, Communication and Collusion: Narrative Evidence from the Sugar Institute Case*, 91 *American Economic Review* 379 (2001); Robert Marshall et al., “Cartel Price Announcements: The Vitamins Industry” (May 2003).

9. See William E. Kovacic, *Competition Policy, Economic Development, and the Transition to Free Markets in the Third World: The Case of Zimbabwe*, 61 *Antitrust Law Journal* 253, 260 (1992) (discussing role of trade associations in cartelizing construction industry).
10. The importance of advocacy as a component of competition policy is examined in International Competition Network, Advocacy Working Group, *Advocacy and Competition Policy* (Sept. 2002).
11. See World Bank & Organization for Economic Cooperation and Development, *A Framework for the Design and Implementation of Competition Law and Policy* 93-100 (1999) (advocating establishment of competition advocacy function as element of competition law systems).
12. See Timothy J. Muris, Chairman, U.S. Federal Trade Commission, *State Intervention/State Action: A U.S. Perspective* (Oct. 24, 2003) (presentation before the Fordham Annual Conference on International Antitrust Law and Policy, New York) (discussing need for competition policy to develop comprehensive program to challenge private and public restraints on competition), available at <http://www.ftc.gov/speeches/muris/fordham031024.pdf>.
13. For excellent surveys of these and other policies, see Asian Development Bank, *Secured Transactions Law Reform in Asia: Unleashing the Potential of Collateral*, II Law and Policy Reform at the Asian Development Bank (2000 Edition) (presented results of study in five Asian countries of importance of secured transactions law reform in promoting new business development and growth); World Bank, *World Development Report 2002: Building Institutions for Markets* 133-49 (2002) (reviewing wide array of government policies that affect competitive process); Report on Recommendations on Building and Improving Economic Legal Framework (Mar. 1998) (Report of United Nations Development Program VIE/94/003, *Strengthening the Legal Capacity of Vietnam*) (hereinafter *Economic Legal Framework*) (reviewing legal impediments to economic growth in Vietnam); Regulatory Policies and Reform: A Comparative Perspective (Claudio R. Frischtak ed., Dec. 1995) (discussing various means of government intervention that affect competitive process, including competition law, trade law, consumer protection, bankruptcy, labor law, real property law, and regulatory controls affecting infrastructure sectors such as energy, telecommunications, and transportation).
14. See Mancur Olson, *The Hidden Path to a Successful Economy*, in *The Emergence of Market Economies in Eastern Europe* 35, 49 (Christopher Clague & Gordon C. Rausser eds., 1992) (“To realise all the gains from trade, . . . there has to be a legal system and political order that enforces contracts, protects property rights, carries out mortgage agreements, provides for limited liability corporations, and facilitates a lasting and widely used capital market that makes the investments and loans more liquid than they would otherwise be.”); Steven Knack & Philip Keefer, *Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures*, 7 *Economics and Policy* 207 (1995) (documenting connection between quality of institutions and economic growth in emerging markets); Joseph E. Stiglitz, *Knowledge for Development: Economic Science, Economic Policy, and Economic Advice*, in *Annual World Bank Conference on Development Economics 1998*, at 9, 10 (Boris Pleskovic & Joseph E. Stiglitz eds., 1999) (observing that economic reform proposals for transition economies sometimes are flawed owing to “the lack of emphasis on institutional infrastructure, including not only competition policy, but also legal structures that enforce contracts, implement bankruptcy, and ensure sound financial institutions”).
15. World Bank, *Assessing Aid: What Works, What Doesn’t, and Why* 3 (1998) (“Improvements in economic institutions and policies in the developing world are the key to a quantum leap in poverty reduction.”).
16. See Susan Rose-Ackerman, *Corruption and Government* 117 (1999) (discussing how the creation of complex regulatory regimes can facilitate corruption).
17. See William E. Kovacic, *Regulatory Controls as Barriers to Entry in Government Procurement*, 25 *Policy Sciences* 29 (1992) (discussing how complexity of rules governing public procurement can discourage entry to compete for government contracts).

18. See Gary Goodpaster & David Ray, "Competition Policy and Decentralization" (Partnership for Economic Growth: May 2000) (discussing impact of tax policy upon competition in Indonesia) (hereinafter *Decentralization*)..
19. For an articulation of the concept and its application to institutional reform in transition economies, see Mancur Olson, *The Hidden Path To a Successful Economy*, in *The Emergence of Market Economies in Eastern Europe* 55 (Christopher Clague & Gordon C. Rausser eds., 1992). The possible lessons of public choice theory for economic law reform are summarised in Thomas S. Ulen, *Law's Contribution to Economic Growth*, in *The Law and Economics of Development* 59 (Edgardo Buscaglia et al. eds., 1997).
20. See Capelik & Slay, *Antimonopoly Policy*, at 84 (discussing resistance by state-owned enterprises and state ministries to market reforms in Russia); Kovacic, *Competition and Consumer Protection Reforms*, at 1203-05; William E. Kovacic, *The Competition Policy Entrepreneur and Law Reform in Formerly Communist and Socialist Countries*, 11 *American University International Law Review* 437, 439-41 (1996).
21. The influence of models developed in Western market economies on the design of competition laws in transition economies is recounted in John Fingleton *et al.*, *Competition Policy and the Transformation of Central Europe* 54-57 (1996); Vladimir Capelik & Ben Slay, *Antimonopoly Policy and Monopoly Regulation in Russia*, in *De-monopolization and Competition Policy in Post-Communist Economies* 57, 62 (Ben Slay, ed. 1996) (hereinafter *Antimonopoly Policy*); Ben Slay, *Industrial De-monopolization and Competition Policy in Poland*, in *De-monopolization and Competition Policy in Post-Communist Economies* 123, 134 (Ben Slay, ed. 1996) (hereinafter *Industrial De-monopolization*); Carolyn Brzezinski, *Competition and Antitrust Law in Central Europe: Poland, the Czech Republic, Slovakia, and Hungary*, 15 *Michigan Journal of International Law* 1129, 1149-56 (1994); Derrick McKoy, *Antitrust Law in Jamaica: The Fair Competition Act of 1993*, 5 *Journal of Transnational Law & Policy* 183, 185 (1995); Tineo, *Competition Policy*, at 4-5.
22. The example presented here is presented in Roger Alan Boner & William E. Kovacic, *Antitrust Policy in Ukraine*, 31 *George Washington Journal of International Law and Economics* 1, 34-37 (1997).
23. See William Grant et. al., "Moroccan Flower Subsector Study and Recommendations for Project Actions" (Dec. 1993) (U.S. Agency for International Development: Morocco Agribusiness Promotion Project).
24. This is a central theme of Hernando de Soto's formative study of the informal sector in Peru. Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World* (1989).
25. See Kovacic, *Institutional Foundations*, at 273-74 (presenting rationales for conducting pre-reform research).
26. For a recent example of an empirical study that examined pre-reform conditions relevant to competition policy development in Benin, Madagascar, and Senegal, see Cynthia L. Clement et al., "Competition Policies for Growth: Legal and Regulatory Framework for SSA Countries" (May 2001). See also Peter Murrell, *Missed Policy Opportunities During Mongolian Privatization: Should Aid Target Policy Research Institutions?*, in *Institutions and Economic Development* 235, 237 (Christopher Clague ed., 1997) (hereinafter *Missed Policy Opportunities*) ("Each new institution interacts with a larger preexisting structure. Therefore, the effectiveness of each new institutional brick crucially depends on its fit with the existing institutional foundation. As a consequence, if it is to be effective, the generation of information on the effects of existing policies and the formulation of new policies needs to reflect the deep characteristics of a society. To know how a policy will work, one must understand the concurrent processes occurring in the economy.").
27. See Douglass C. North, *Why Some Countries Are Rich and Some Are Poor*, 77 *Chicago-Kent Law Review* 319, 330 (2001):

We know what makes for rich countries. We know the characteristics of productivity. We even know the kinds of institutions that must be put in place. The rule of law, property rights that provide incentives for people to be productive, and investment in human capital: all of these are necessary. We know all of this; but we do not know how to put in place the formal rules of the game accompanied by the informal rules and enforcement characteristics that are necessary for success.

28. See William E. Kovacic, *Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe*, 44 DePaul Law Review 1197, 1202-14 (1995) (discussing importance of studying existing transition economy conditions as basis for drafting new laws); Spencer Weber Waller & Rafael Munte, *Competition Law for Developing Countries: A Proposal for an Antitrust Regime in Peru*, 21 Case Western Reserve Journal of International Law 159, 165 (1989) ("a sophisticated political and economic analysis of the activities carried out by the enterprises in a national economy is an important aid in designing competition legislation for that country"). The Ray & Goodpaster paper, *Decentralization* cited above is one outcome of a substantial research program that various donors sponsored in Indonesia to analyse local institutions relevant to the development of Indonesia's competition policy system.
29. Examples of pre-reform studies that focus on in-country data collection and related field work include Karen Turner Dunn et al., *The Meat Processing Sector in Mongolia*, in *De-monopolization and Competition Policy in Post-Communist Economies* 107 (Ben Slay ed., 1996) (describing, inter alia, collusive arrangements by meat processors to set prices to be bid for livestock); Zimbabwe Monopolies Commission Study, *Study of Monopolies and Competition Policy in Zimbabwe* 47-48 (Sept. 1992) (discussing findings concerning collusive tendering in construction industry).
30. See Hernando de Soto, *The Other Path* 17-127 (1989) (documenting substantial role of "informal" sector in Peru's economy).
31. The importance of institutional arrangements to the operation of a legal regime and to the process of economic growth is examined in Michael J. Trebilcock, *What Makes Poor Countries Poor? The Role of Institutional Capital in Economic Development*, in *The Law and Economics of Development* 15 (Edgardo Buscaglia et al. eds., 1997).
32. Compare Melinda Smale & Vernon Ruttan, *Social Capital and Technical Change: The Groupements Naam of Burkina Faso*, in *Institutions and Economic Development* 182, 183 (Christopher Clague ed., 1997) (discussing how a nation's existing indigenous cultural and social endowments can facilitate the process of economic growth).
33. See Michal Gal, *Competition Policy for Small Market Economies* (2003) (emphasizing importance of attentiveness to national economic characteristics in designing competition policy regime).
34. See Jay Hillman & Ronald Braeutigam, *Price Level Regulation for Diversified Public Utilities: An Assessment* 3 (1989).
35. See Michael A. Crew & Charles Rowley, *Feasibility of Deregulation: A Public Choice Analysis*, in *Deregulation and Diversification of Utilities* 5, 17 (Michael A. Crew ed., 1989) (hereinafter *Feasibility of Deregulation*) ("Rent-seeking and rent-protection may become so unprofitable and impose such large wealth losses that they disintegrate without outside influence.").
36. See Gary S. Becker, *Political Competition Among Interest Groups*, in *The Political Economy of Government Regulation* 13, 20-21 (J. Shogren ed., 1989) (describing how technological change can increase the deadweight costs of regulation and generate interest group pressure for change); Robert W. Crandall, *Regulating Communications: Creating Monopoly While 'Protecting' Us From It*, *Brookings Review*, Summer 1992, at 34, 39 ("Over time, regulatory rules that protect incumbent monopolists break down because of the competition that develops from new technologies and new services.").

37. See Thomas K. McCraw, *Prophets of Regulation* 222-29 (1984) (describing key role of Alfred Kahn in executing airline deregulation initiatives during Kahn's chairmanship of the U.S. Civil Aeronautics Board in the late 1970s).
38. See, e.g., George W. Douglas & James C. Miller III, *Economic Regulation of Domestic Air Transportation: Theory and Policy* (1974).
39. The impact on subsequent reforms of empirical work on the costs of limits on entry and pricing in the U.S. airline sector is examined in Kaplan, *The Changing Airline Industry*, in *Regulatory Reform: What Actually Happened* 40 (Leonard Weiss & Michael Klass eds., 1986).
40. See Crew & Rowley, *Feasibility of Deregulation*, at 17 ("The role of the political economist as entrepreneurial provider of hypotheses concerning institutional reform is not to be underestimated.").
41. The value of *ex post* analysis as a component of a research agenda is considered in William E. Kovacic, *Evaluating Antitrust Experiments: Using Ex Post Assessments of Government Enforcement Decisions to Inform Competition Policy*, 9 *George Mason Law Review* 843 (2001).
42. The pool of resources that a competition agency can draw upon to perform relevant research will vary from country to country, depending upon the charter of the competition authority and its location within the framework of the government. Most competition agencies hire economists, and a number of agencies have formed separate bureaus for economic analysis that can serve as platforms for conducting research. Other competition agencies have express provisions in their legislative charters that authorise or require the agencies to perform research-related tasks, and annual budgetary appropriations typically provide funds for the accomplishment of these duties. Still other competition bodies are subunits of larger government ministries – for example, a ministry of trade and industry – that have research powers or resources that the competition body can draw upon.
43. See Armando E. Rodriguez & Malcolm B. Coate, *Competition Policy in Transition Economies: The Role of Competition Advocacy*, 23 *Brooklyn Journal of International Law* 365 (1997) (discussing how the examination of a nation's economic institutions should guide a competition agency's decisions about the choice of advocacy initiatives).
44. See William E. Kovacic & Robert S. Thorpe, *Antitrust and the Evolution of a Market Economy in Mongolia*, in *De-monopolization and Competition Policy in Post-Communist Economies* 89, 94-96 (Ben Slay ed., 1996) (describing usefulness of case studies as means for foreign experts to transmit analytical know-how and information-gathering techniques to transition economy economists and lawyers); Kovacic, *Competition Policy Entrepreneur*, at 471 (same).
45. The value of using hypothetical exercises based on economic problems found in transition economies to train competition agency officials is discussed in U.S. Federal Trade Commission & U.S. Department of Justice, *The United States Experience in Competition Law Technical Assistance: A Ten Year Perspective* (Feb. 2002) (note submitted for the OECD Global Competition Forum).
46. See Bernard Black et al., *Russian Privatization and Corporate Governance: What Went Wrong?*, 52 *Stanford Law Review* 1731, 1801-02 (2000) (describing possible benefits of foreign aid investments in strengthening Russian business schools and law schools in advancing market-oriented reforms); William E. Kovacic, *Getting Started: Creating New Competition Policy Institutions in Transition Economies*, 23 *Brooklyn Journal of International Law* 403, 440-41 (1997) (discussing importance of indigenous academic institutions to operation of competition policy system).
47. See, e.g., William E. Kovacic & Ben Slay, *Perilous Beginnings: The Establishment of Antimonopoly and Consumer Protection Programs in the Republic of Georgia*, 43 *Antitrust Bulletin* 15, 35 (1998) (describing how academic institutions might contribute to development of new competition and consumer protection programs in Georgia); Spencer Weber Waller & Lan Cao, *Law Reform in Vietnam: the Uneven*

- Legacy of Doi Moi*, 29 New York University Journal of International Law and Policy 555, 566-72 (1997) (discussing the significance of law school education to the process of economic law reform in Vietnam).
48. On the role of professional bodies in disseminating information relevant to competition policy, see William E. Kovacic, *Creating Competition Policy: Betty Bock and the Development of Antitrust Institutions*, 66 Antitrust Law Journal 231 (1997).
 49. INDECOPI's creation and early operations are examined in Peru's Experience in Market Regulatory Reform 1993-1998 (Beatriz Boza ed., 1998). Boza's role in designing measures to enhance the intellectual foundation for policymaking in INDECOPOI is discussed in William E. Kovacic, *Lessons of Competition Policy Reform in Transition Economies for U.S. Antitrust Policy*, 74 St. John's Law Review 361, 370-72 (2000).
 50. See, e.g., The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards an Academic Audit of Indecopi (Beatriz Boza, ed., 2000).
 51. See also International Competition Network, Working Group on Capacity Building and Competition Policy Implementation, Capacity Building and Technical Assistance – Building Credible Competition Authorities in Developing and Transition Economies 45-69 (2003) (identifying useful elements of technical assistance programs).
 52. See Murrell, *Missed Opportunities*, at 236 (proposing that foreign aid programs “aim to create a capacity for information gathering, research, and analysis”); see also Comprehensive Legal and Judicial Development 273-338 (Rudolf V. Van Puymbroeck ed., 2001) (series of essays discussing, inter alia, the value of dedicating technical assistance resources to the improvement of legal education as element of law reform in transition economies).