

The Role of Competition Law and Policy in Developing Countries

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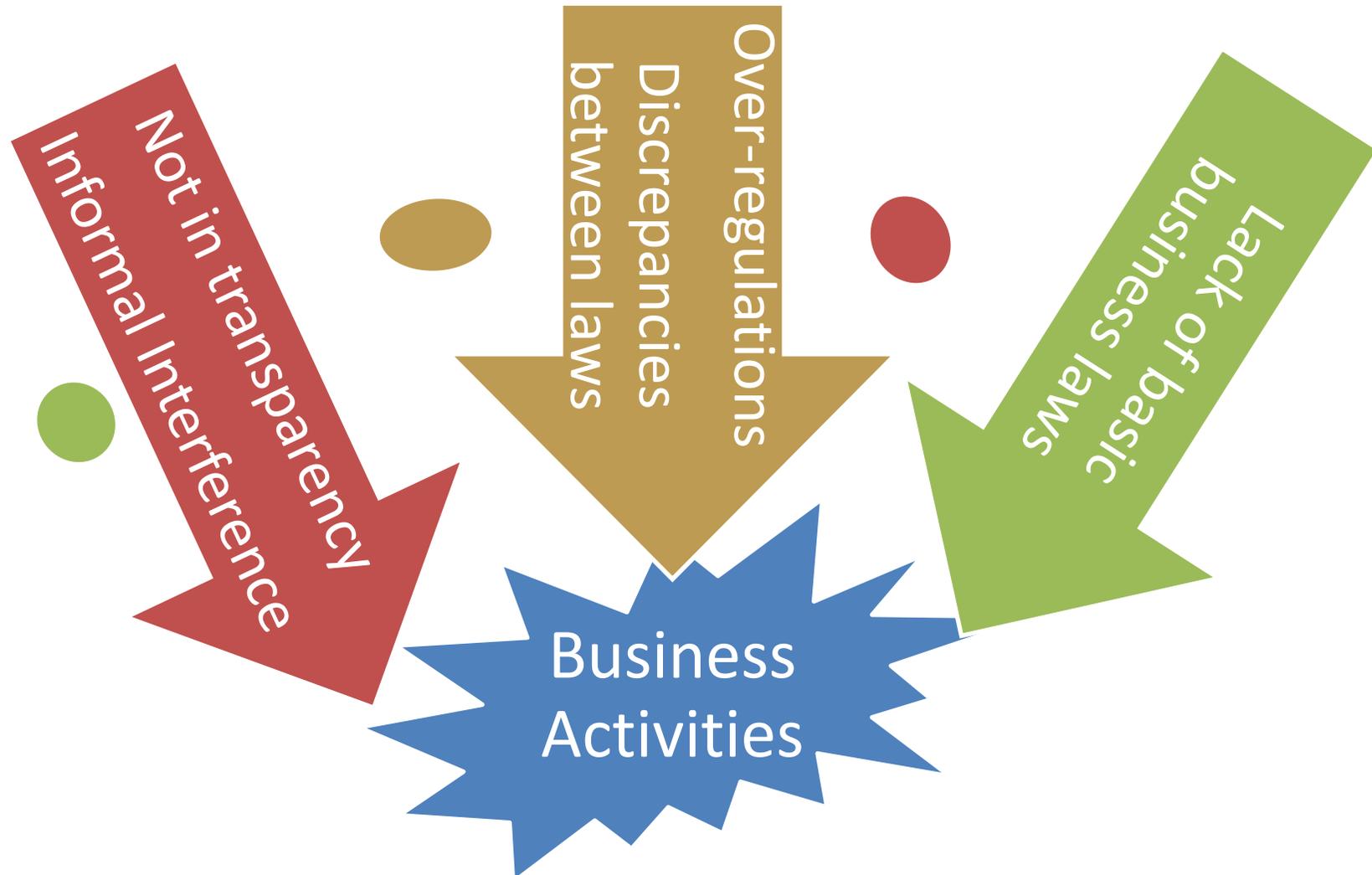
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Typical Problems in DCs



Questions

- Copying substantive laws and employing strict enforcement mechanism in Developing Countries (DCs) will necessarily produce outcomes identical to their developed countries ?

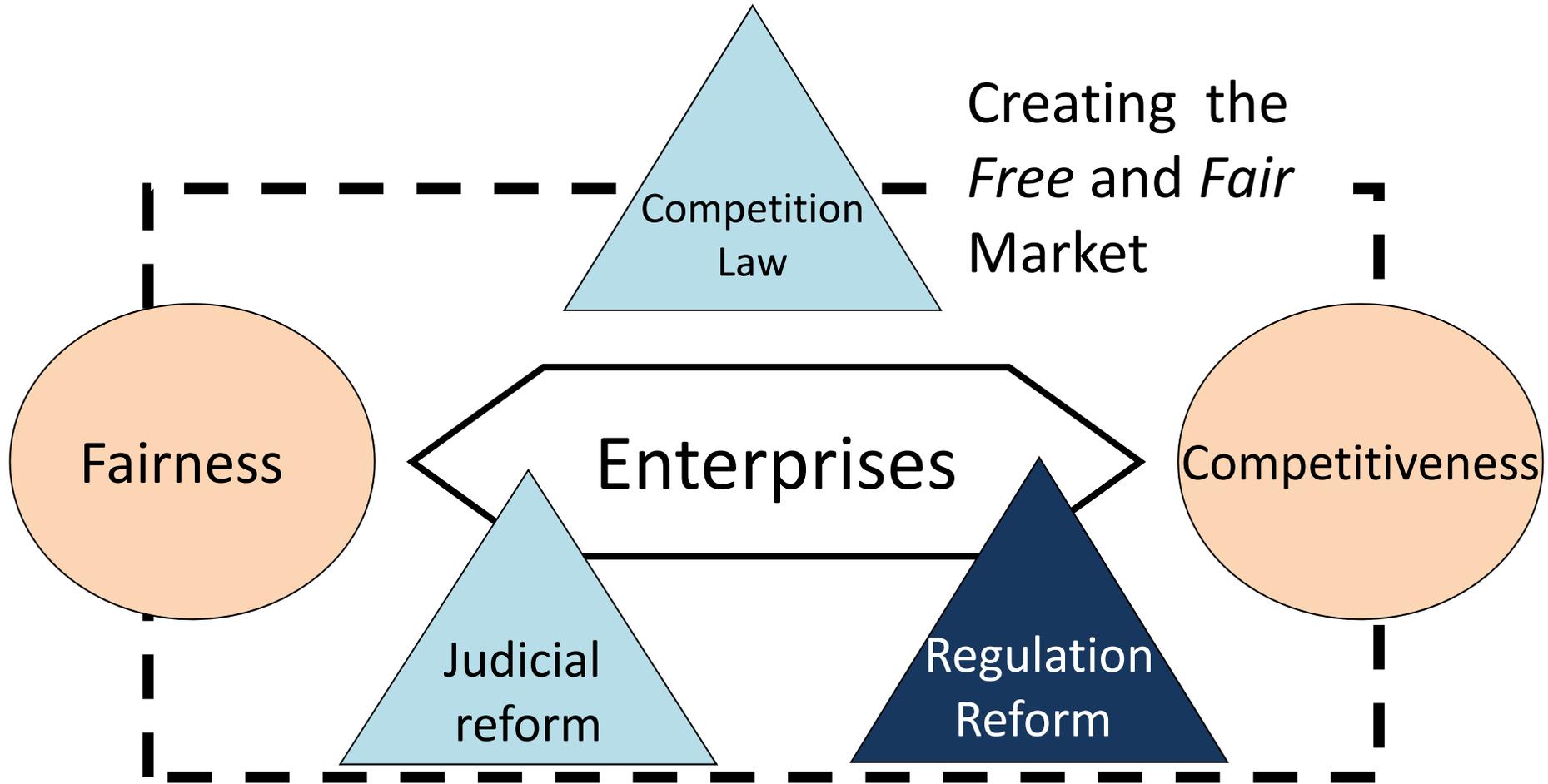
Answer

- The answer seems to be unfortunately often negative.
- Since the early 1990s leading scholars had been searching for possible explanations to clarify this phenomenon.
- It seems like a general consensus was reached that competition policies and laws in developed jurisdictions are based on the assumption of a free market and appropriate supporting institutions which are so imperative that if absent the law of supply and demand cannot fully function.

Cont.

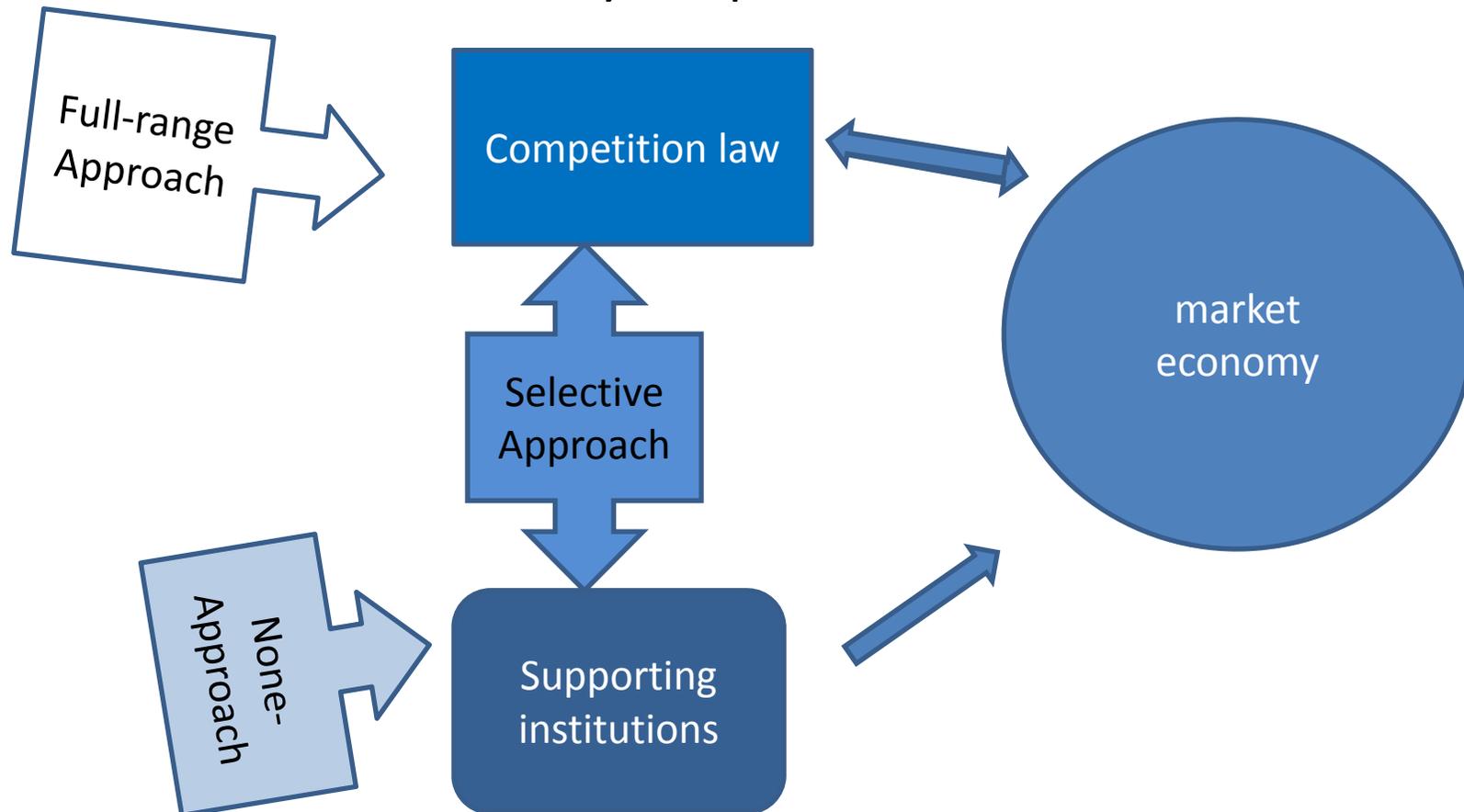
- Varying from this perceived-ideal concept, developing countries cannot comply because the prerequisites and necessary conditions are either absent or extremely limited.
- The problems are for example insufficient supporting institutions in most DCs that have adopted or are in process of enacting competition law regimes.

The trinity



Competition Law Regime In DCs

To preserve competition and promote development, would it be desirable for DCs to exclusively adopt industrialized models?



All-or-nothing Approach ?

Rationale for rejecting either None Approach or Full-range Approach (All-or-nothing Approach):

- ✘ DCs are often forced to adopt a competition law regime reluctantly in order to benefit from economic integrations and receive financial assistances. (Indonesia & Vietnam)
- ✘ There are risks of adopting a full-range competition law without the necessary intellectual, political and social consensus, and supporting institutions:
 - ◆ Excessive enforcement would retard the economies.
 - ◆ Misapplication due to the government's misinterpretation of law
 - ◆ The failure to enforce the law may be at the expense of losing the competition authorities' credibility as well as the public faith in market reforms.

Selective Approach (Intermediate Approach):

☉ Suggesting an imposition of limited competition law regime in DCs

☉ Kovacic's hypothesis: due to lack of favorable conditions for fully enforcing competition law, DCs should adopt a broader set of competition policy instruments, i.e. advocacy, education, research, and law enforcement, to enhance the appreciation of the importance of competition and business rivalry to market reforms among government officials and interest groups in the first place.

☼ *Alternative 1*: imposing limited substantive framework, i.e. hard core cartels, and gradually adds a fuller collection of prohibitions.

☼ *Alternative 2*: focusing on simpler enforcement tasks at first and then expanding more conceptually complex tasks in accordance with the institution's capability growth

Optimal degree of competition

strong states and dynamic efficiency.

- ⊕ Focusing on dynamic efficiency and thus avoiding excessive competition (maximum competition)
- ⊕ State plays a central role in promoting dynamic efficiency through industrial policies that combine cooperation and competition between firms
- ⊕ competition policies should be perceived as subordinate to industrial policies and designed to accommodate long-term development strategy i.e. lax enforcement and the exemption of state sponsored cartels, including recession cartels, export cartels and technology cartels.

Suggesting Formula for DCs:

At the initial stages of industrialization, industrial development should be placed as a top priority. Competition policy is considered of secondary importance complementary to industrial policy. It is only rigorously enforced when industrialization has been accomplished and they are more concerned about the need to promote economic efficiency in their domestic economies.

What is Optimal degree ?

- Optimal degree of competition” in which some scholars recommended that competition law should give exemption to state-sponsored cartels.
- However, even if so, within my proposal the scope of exemption should not include hard-core cartels due to their inherently harmful nature to competition and consumer welfare.

What is the industrial Policies ?

- To be honest this is a very difficult question and I may not be able to give a convincing answer.
- Then I did not give a clear cut definition of industrial policy.
- Nevertheless, according to the wide spread understanding in Japan, **industrial policies are either the government policies or policies of specialized ministries (METI in Japan) to promote the national economic development or the development of the related industries.**

What is the Selective Approach ?

- I name this approach as selective/intermediate approach because the advocates of this approach call for an imposition of limited competition law regimes in DCs which means the host country should carefully select an appropriate aspect of competition law that meet their specific needs and demands to adopt at the early stages of importing competition law.
- Meanwhile, the None/Minimalists' Approach argued that DCs should not adopt their competition law at all and the Full-range/Maximalists' Approach recommends DCs adopt sophisticated models of competition to the fullest.

Possible Proposal

Proposal: At the early stages of industrialization:

■ Reducing policy-generated barriers to entry and exit as well as promoting business rivalry is a pragmatic need of DCs. This should be done through competition advocacy.

■ Economic growth should be placed at top priority, and hence competition policy should be designed to complement industrial policies. A multiple-valued approach of competition law is recommended in this regard.

■ DCs should gradually develop law enforcement which means focusing on cartel regulation. To effectively regulate cartels, DCs should:

➤ mainly target hardcore cartels, especially bid-riggings

➤ cooperate with relevant public agencies to overcome shortcomings of the competition law regimes and supporting institutions

➤ level up political commitments to fully enforce competition laws

Controversy ?

- I am aware that there may be controversy in my arguments. At first, I said DCs need strong state to regulate competition.
- I also mentioned about the tradeoff between competition and development.
- How do propose to resolve the conflicts between competition policies and industrial policies?

Tentative Answer

- In my proposal I recommend the proactive role of state in promoting competition.
- In my proposal, I suggest that, in the context of DCs, economic growth should be placed at top priority, at this point industrial policies prevail and competition policy should be designed to complement industrial policies.
- The task of competition policy is to reduce policy-generated barriers to entry and exit as well as to promote business rivalry. This should be done mainly through competition advocacy. As long as DCs can identify the order of priority, the potential conflicts between competition policies and industrial policies are insignificant.

Future agenda ?

- *How to improve the competition conditions of DCs given the fact that State owned enterprises are dominating domestic markets?*

Tentative reply

- advocacy will be the main way to improve the competition conditions in DCs.
- This also depends on other factors such as the privatization.
- In addition, political commitment to a pro-market policy is also important.
- That's why I recommend further research on finding solutions to level up the political commitment to fully enforce competition law.

*Thank you very much
for your attention.*