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The COMESA Competition Commission Agenda Setting Power in Member States

Competition Policy Legislative Process

by

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Motivation and Research Question

- Generally, international/regional institutions are granted various forms of authority: legislative, adjudicative, monitoring and enforcement, regulatory, agenda-setting power, research and advice, policy implementation, and redelegation.
- This paper by focusing on the COMESA Competition Commission explores how regional competition regimes (RCRs) in developing countries can use **agenda-setting power** to incentivize the Member States' support.
- Research Question: Which **agenda-setting strategies** has CCC used to influence national-level legislative outcomes?



Theoretical argument: Agenda Setting Theory



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- Agenda setting –an integral component in social, economic, and political decision-making– envisages a scenario where actors, including those outside the formal institutional framework, bring to the *attention* of policymakers the existence of a problem, seeking to influence them to *consider* an issue.
- The agenda-setting authority of an IO is its ability **'to formally set or control the legislative agenda of an international body or member states'** (Bradley and Kelly 2008, 14).



Typologies of Agenda Setting Power



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The four typologies of agenda-setting power (Deters and Falkner 2022).

- a. Formal: Granted to an institution by the **founding legislation** allowing it to initiate legislative proposals.

- b. Informal: Consists of the ability of an actor influence how an issue is perceived by **potential** decision-makers and stakeholders.

- c. Gatekeeping: Gatekeeping agenda setting occurs when an actor determines what is **kept off** the agenda. Such actors can either be allies or opponents.

- d. Leadership: The ability of an actor to **rally for a consensus** over an issue or proposal, **setting a focal point** in which negotiations converge.



Agenda Setting Strategies

- Actors seeking to ensure policymakers consider a specific issue have to adopt strategies to *gain attention* and *build credibility*.
- Gaining attention involves getting potential supporters to *pay attention* to the issue or agenda setter's preferences (**mobilizing support, institutional avenues, and issue framing**).
- Building credibility reflects the ability of the policymakers to consider an institution as the *most appropriate* to deal with a specific issue. That the IO has the legal **competence, possesses organizational expertise and capability, and has added value to existing institutions**.



Methodology

- Case study of the COMESA Competition Commission (CCC).
- CCC's agenda-setting power to influence the national-level competition legislative process emanates from, Article 7(2, c) of COMESA Competition Regulations (CCR) which requires CCC to:
 - Help Member States promote national competition laws and institutions, with the objective of the harmonization of those national laws with the regional Regulations to achieve uniformity of interpretation and application of competition law and policy within the Common Market'.***
- Process tracing, document analysis, and elite interviews I explore national-level legislative outcomes.



National level legislative outcomes.

- In explaining CCC's successful agenda-setting power, I trace CCC's involvement in the **pre-legislative process**, determining whether CCC **communicated** its preferences subsequently and whether the policymakers considered those preferences.
- In 2019, Kenya adopted competition regulations. Section 8 of the Competition Regulations provides that:

Where a merger meets the threshold prescribed under the COMESA C Competition Regulations and Rules, the parties **shall notify the COMESA Competition Commission** in the prescribed form and **inform the Authority** in writing regarding the notification.



National level legislative outcomes.

- In 2020, Eswatini repealed its Competition Act introducing explicit provisions seeking to address potential jurisdiction conflicts between CCC and Eswatini NCA, ultimately enhancing cooperation.
- The Bill stipulates in its Memorandum of Objects and Reasons that 'the object of this Bill is to increase the effectiveness, consistency, predictability and transparency in the enforcement and administration of competition law in Eswatini, give effect to the regional frameworks such as the **COMESA Competition Commission Regulations** and international best practices...'.
COMESA Competition Commission Regulations



Discussion and Analysis



- Expected findings:
 - a. Mobilizing the support of **domestic agenda setters** possessing formal and gatekeeping agenda setting power positively influenced the adoption of competition legislation.
 - b. **MoUs** have had a positive influence on national-level legislative outcomes.
 - c. CCC **building its credibility** over time through implementation of CCR has positively influenced NCAs to consider CCC as the most appropriate institution.
 - d. The **amendment of the COMESA Competition Rules** reducing the merger filing fees and introducing quantifiable merger thresholds is likely to have an influence on national-level legislative outcomes.