Symposium on Eleanor M. Fox & Mor Bakhoum, Making Markets Work for Africa: Markets, Development, and Competition Law in Sub-Saharan Africa (Oxford University Press, 2019)

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We are proud to present this book symposium on Professor Eleanor Fox & Mor Bakhoum's wonderful new book titled *Making Markets Work for Africa: Markets, Developments, and Competition Law in Sub-Saharan Africa*. This 2019 book from Oxford University Press is the most comprehensive look at the role that competition law can play in promoting economic development as well as fairness and equity in the diverse economies of Sub-Saharan Africa.

Competition law (or antitrust law as it is referred to in the United States) is the regulation of market competition by law. Competition law generally prohibits 1) agreements between direct competitors such as cartels and bid rigging, 2) agreements between manufacturers and firms up or down the production chain that harm competition or consumers, 3) the abuse of a dominant position by powerful firms, and 4) mergers and acquisitions which would harm competition or consumers. Over 130 countries have some recognizable form of competition law, including most of the countries in Africa. In addition to national competition laws, there are numerous regional competition laws in free trade areas and customs union such as European Union, COMESA, and ECOWAS. Competition law also is a part of the African Free Trade Agreement, which entered into force in 2018.

Fox and Bakhoum are uniquely situated to discuss how competition law and policy can help Africa's poorest economies and citizens. Professor Fox is a world-renowned scholar who has devoted her lengthy career to the needs of newer and less developed jurisdictions. Mor Bakhoum is a Senior Research Fellow at the Max Planck Institute for Innovation and Competition and a specialist in the competition laws of Africa.

Making Markets Work begins by setting the context and communalities for the many different jurisdictions in Africa that have some form of competition law and the role such laws can play in economic development. The authors work from the ground up to portray most Africans markets as highly concentrated with high barriers to entry, pervasive state ownership or favoritism, vested interests, and often outright corruption. They ask the question how can markets help economic development in a fair and equitable way. They propose concrete suggestions, both in terms of competition law, and related restraints which while not always unlawful nevertheless produce the same types of effects such as higher prices, barricaded entry, and favor vested interests.

The second part of the book analyzes the state of competition and competition policy in African states. This section is grouped by region, with separate discussion of the countries in West Africa, Eastern and Southern Africa, the unique challenges and opportunities in South Africa, and finally the developing web of regional arrangements covering transnational competition law between

African countries.

Part three provides a road map for an effective competition policy based on the degree of economic development of the jurisdiction. The authors suggest changes in the scope of competition law, the substantive provisions, procedure, exemptions, institutional design, competition advocacy, and a modest set of international obligations covering states and actors in the developed world.

They favor first and foremost a pro-outsider, pro-inclusive development antitrust policy. This is not your standard Chicago school “markets are magic” one-size fits all approach which too often defines the dialogue between the more and less developed jurisdictions of the world. Fox & Bakhoum explain: A pro-outsider, pro-inclusive development antitrust policy would value a free and open marketplace without privilege or favor. This set of values is especially critical for nations and market players without economic power and especially for those populations in societies ruled by a few privileged families or firms or by autocrats. Clogging the channels with privileged actions especially hurts the outsider and keeps the poor poor. It reinforces a two-tiered economy and can consistently increase the wealth and inequality gap. (180).

Afronomicslaw.org has assembled an all-star lineup of commentators who will offer their views on this ground-breaking book. Our first reviewer is Tembinkosi Bonakele, the Commissioner of the South African Competition Commission. Our second reviewer is Dr. Jonathan Klaaren, a Professor at the University of the Witwatersrand in Johannesburg, South Africa, serving at the Law School and with the Wits Institute for Social and Economic Research (WiSER). In 2016, he was appointed as an Acting Judge on the High Court of South Africa (South Gauteng). The third review is co-authored by Tim Büthe, Professor and Chair for International Relations at the Hochschule für Politik/School of Governance at the Technical University of Munich (TUM) and at the TUM School of Management, as well as Senior Fellow at the Kenan Institute for Ethics at Duke University and Vellah Kedogo Kigwiru, an Advocate of the High Court of Kenya, and a doctoral candidate at the Technical University of Munich’s TUM School of Governance. The fourth review is authored by Vani Chetty, a leading competition law practitioner in South Africa. Our fifth contributor to this

symposium is Jasper Lubeto, a Kenyan commercial law practitioner and an upcoming scholar especially on competition law and policy in Africa. Enyinnaya Uwadi, a Master of Laws Student in International Commercial Law with Competition Law and Regulation at the University of Reading is our sixth contributor. Our final contributor is Dr. Chijoke Oforji, a Lecturer in Law at Liverpool John Moores University. His prior experience includes a brief spell at the U.K.'s Financial Markets Law Committee.

In the first review, Tembinkosi Bonakele welcomes the book as an excellent resource for regulators, competition law practitioners, policy makers and students in Africa and other developing countries. He praises the book for not belonging to any particular competition law ideological stranglehold, which allows them to explore beyond its often-unnecessary limits. Tembinkosi welcomes the focus in the book on the types of challenges that developing countries face in their competition policy such as making markets work for development.

Dr. Jonathan Klaaren's review begins extensively reviewing prior literature on competition law in Africa, Dr. Klaaren's review proceeds to show that *Making Markets Work for Africa* is the 'first sustained and nearly-comprehensive full-length treatment of competition law and policy in contemporary Africa.' Dr. Klaaren notes that the book uses concrete examples of transactions that exemplify how a singular focus on lowering barriers to trade without worrying about freedom from private firm restraints keep markets from working for the people. He argues that the book is very opportune because of the ongoing negotiations on competition rules in the context of the African Continental Free Trade Agreement, but also praises the book's focus on the burgeoning sub-regional competition law regimes that are already building the capacity of market regulators and thickening the rules of the competition game.

In their review, Tim Büthe and Vellah Kedogo Kigwiru, situate the book in the context of market-based economic development in Africa over the last 15-20 years. They then highlight the original insights and contributions of the book. For example, they emphasize the importance that Fox and Bakhoum place on development and economic inclusiveness. They note that having foregrounded the structure and key characteristics of the African countries they review, Fox

and Bakhoum are then able to tell us why standard competition laws of developed countries are not necessary a good fit for African countries. Büthe and Kigwiru wonder why the authors did not explicitly identify their rationale for selecting the 17 country studies they use to set the background against which to understand competition regimes in sub-Saharan Africa. They note had Fox and Bakhoum engaged in more systematic comparisons within and across the various chapters, the readers would have been able to draw conclusions about what is distinctive about competition law and policy in Africa as well as to 'distinguish between systematic and idiosyncratic findings.' With regard to jurisdictional conflicts of sub-regional competition regimes, Büthe and Kigwiru note that Making Markets Work for Africa focus on the latent conflict in the West African region (WAEMU/ECOWAS) but fail to discuss the progress made in the Eastern and Southern African regions (COMESA, EAC and SADC). Büthe and Kigwiru end by proposing a research agenda that could include: detailed comparative on the early years of African national and regional competition regimes; the development of and interactions between Africa's regional competition regimes and more sustained scholarly attention not just to competition law enforcement, but to competition advocacy as well.

In her review of the book, Vani Chetty notes the *Making Markets Work for Africa* , is 'a welcome addition to the sparse jurisprudence in this area.' She praises for simplifying and making accessible competition law that will be relevant not just to sub-Saharan Africa, but to 'most developing jurisdictions.' Ms. Chetty notes that the book does not assume that developed country standards are the most enlightened 'that they should be imported and transplanted into African soil.' She praises the focus on South Africa's post-apartheid competition law regime which she notes relegates efficiency 'from being the sole target of competition enforcement to being one of several factors which include public interest considerations that come to the forefront spectacularly in merger review.' Pointing to the challenges of competition law in South Africa, which the book lauds as a good example, Ms. Chetty notes that there is a possibility of over-prioritizing non-competition factors at the expense of efficiency.

The next contributor to this symposium is Jasper Lubeto a Kenyan commercial law practitioner and scholar discussing how *Making Markets Work for Africa* sharply focuses the reader the role of competition law and policy and concludes

that other than failing to discuss Nigeria, Africa's largest economy, the book does an excellent job 'in mainstreaming competition law and policy at a sub-Saharan Africa level.'

In his contribution to the symposium Enyinnaya Uwadi discusses Nigeria's competition law regime that came into force after *Making Markets Work for Africa* went to press before that law came into force. His review focuses the lessons Nigeria can learn from South Africa where it borrowed its new statute in light of the arguments made by Fox and Bokhoum's book, *Making Markets Work for Africa*. Last but not least, the last reviewer is Dr. Chijoke Oforji who discusses the nature and function of Nigeria's new Antitrust agency using some of the insights in Fox and Bokhoum's book, *Making Markets Work for Africa*.

We congratulate Prof. Fox and Dr. Bakhoum for this important book and we thank the reviewers for their very insightful reviews. We hope you enjoy these reviews that will be posted in the course of this week. We also invite responses reflecting on these reviews and in particular and more generally about the role competition law can help improve the economies and lives throughout Africa and in other developing countries that share characteristics with African countries.

Contributors

Tembinkosi Bonakele (Commissioner of the South African Competition Commission): Book Review of Fox and Bakhoum, Markets, Development, and Competition Law in Sub-Sub-Saharan Africa

Jonathan Klareen: Book Review of Fox and Bakhoum: Making Markets Work for Africa (OUP, 2019)

Tim Büthe and Vellah Kedogo Kigwiru: Reflections on Fox and Bakhoum's Making Markets Work for Africa (OUP, 2019)

Vani Chetty: Review of Making Markets Work for Africa (Fox & Bakhoum, OUP 2019)

Jasper Lubeto: Competition law and policy as a tool for development: a review of Making Markets Work for Africa: Markets, Development, and Competition Law

in sub-Saharan Africa by Eleanor Fox and Mor Bakhoum

Anthony Idigbe: Overview of Development of Competition Law in Nigeria

Enyinnaya Uwadi: The Nigerian Federal Competition and Competition Protection Act 2019: Lessons from South Africa

Chijioke Chika Chijioke-Oforji: Reflections on Making Markets Work for Africa and the Structure, Function and Challenges of Nigeria's new Anti-Trust Regulator

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