

Competition Policy and Resource Utilization

Competition Policy and Resource Utilization:

*An Agenda for Resource-
Dependent Developing
Countries*

By

David Oluwadare Adetoro

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ABSTRACT

The starting point for this book is the established position that in free economies, by protecting the operation of demand and supply, competition law and policy (i) maximizes consumer welfare and consumer satisfaction better than by (a) government controls and regulation or (b) unregulated competition, and (ii) contributes to economic growth and development. Competition is assumed to apply as a necessity, equally to developed as well as developing economies, with Nigeria taken as a proxy for resource-dependent developing economies. The contents of the book are underpinned by the question: what is the extent to which competition law and policy could be employed to promote the efficient allocation of development resources in resource-dependent developing economies? The submitted views are partly based on an analysis of the objectives of competition law and policy, for determining whether resource-dependent countries have peculiar problems and, if the answer is in the affirmative, whether the general standards in competition policy are sufficient to address them. This analytical approach is the same as the one underlying the draft Federal Competition Bill (FCB) in Nigeria, as an example of an appropriate competition instrument in a resource-dependent country.

The book examines some of the standards in the United States of America (USA) and European Union (EU) competition policies, such as those concerning agreements, abuse of dominant position and mergers, to determine whether the same rules could apply in all economic regimes, and which competition model could be best adopted by resource-dependent developing countries, with Nigeria as an example. Competition standards and both primary and secondary competition problems that could distort the process of competition, as well as constraints which may emerge in the competition process in developing countries, are explored. Some of these, as problems, include the issue of 'resource curse', rent-seeking, corruption, abusive business practices and a few others. Their examination in this book is aligned with the scrutiny of the characteristics of developing countries in contrast to developed countries; again, the economic circumstances of Nigeria, as a proxy for resource-dependent developing countries, are considered for determining whether competition

law and policy could be used as a tool for addressing competition problems that may exist in resource-dependent developing countries.

The conclusions of the book underline the types of economic problems for which competition law and policy, with the economic development of resource-dependent developing countries in mind, could be used to address—especially in restrictive trade practices—the abuse of dominant positions and mergers that could substantially lessen competition. Furthermore, the (albeit limited) role of regulation is argued, that is, in the face of any expected limitations of competition in certain sectors of an economy undergoing liberalization in the wake of current international merger waves. Not least, the importance of establishing a competition agency to administer and enforce it is underlined, that is, independently from the influence of the government.

It is argued that for the draft FCB in Nigeria to become an appropriate competition instrument, the power and mandate of the Federal Competition Commission must be reviewed and endowed with sufficient powers for the task, as well as for promoting the wide objectives anchored in the draft Bill. It is also pointed out that competition cannot on its own directly resolve, in Nigeria, the peculiar socio-economic problems such as rent-seeking and corruption, but it is argued that with an active engagement of competition advocacy, along with the adequate implementation of competition law and policy, the problems could be greatly reduced. This book highlights, among other recommendations, the need for further research on competition problems relating to resource-dependent countries.

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LIST OF ABBREVIATIONS

AJIL	American Journal of International Law
BPE	Bureau of Public Enterprises
BIICL	British Institute of International and Comparative Law
CFI	Court of First Instance
CMLR	Commercial Law Review
CBN	Central Bank of Nigeria
DOJ	Department of Justice (US)
DFI	Direct Foreign Investment
EA	Enterprises Act
EC	European Commission
ECLR	European Common Law Review
ECMR	European Community Merger Regulation
ECSC	European Coal and Steel Community
EU	European Union
ECJ	European Court of Justice
GDP	Gross Domestic Products
FCC	Federal Competition Commission
FEC	Federal Executive Council
FDI	Foreign Direct Investment
FTC	Federal Trade Commission
IMF	International Monetary Fund
MITI	Ministry of International Trade and Industry
NAFTA	North America Free Trade Agreement
OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal
OPEC	Organization of Petroleum Exporting Countries
RBP	Restrictive Business Practice
R&D	Research and Development
SLC	Substantial Lessening of Competition
WB	World Bank
WTO	World Trade Organization
UK	United Kingdom
USA	United States of America
UNCTAD	United Nations Conference on Trade and Development

CHAPTER ONE

BACKGROUND TO THE BOOK

1.1 Introduction

The historical nature of antitrust and competition laws and policies are often influenced by social and historical factors and might respond to quite different objectives.¹ The objectives of each competition law regime are conditioned by different economic circumstances and political environments, which might change with the passage of time, changing circumstances in the global economy or shifts in academic thought.² Thus, as a preliminary matter, it is important to set down at the outset the exact nature of the proposition or problem which is being presented, together with an outline of the broad parameters of this book and the methodology adopted in the pursuit of this aim. The identification of these elements is the focus of this introductory chapter.

1.2 Statement of Objectives

The main theme of this book is anchored in the following question: to what extent could competition law and policy be employed to promote the efficient allocation of resources and thereby development in resource-dependent developing economies? This problem is to be considered within the context of the objectives of competition law and policy and the characteristics of resource-dependent developing economies. Thus, this book aims to answer the question through the following sub-questions:

¹ M. Motta, *Competition Policy: Theory Practice* (New York: Cambridge University Press, 2004), 17. Motta's observation is a re-echo of Bork's assertion in his book, that for a rational and an effective enforcement of any antitrust law, its objectives must be clearly stated. See R.H. Bork, *The Antitrust Paradox* (Free Press: New York, 1993), 50.

² In many cases, like the US and the EU, these objectives are not usually well defined in their competition laws and could only be inferred from the broad legislative provisions, although the objectives in the Japanese and Canadian laws on competition are clearly set out.

- A. Can the same competition law standards be employed effectively in resource-based developing countries?
- B. What are the peculiar problems in resource-based economies?
- C. Could resource-based economies adopt any model of competition law?
- D. To what extent is the proposed Federal Competition Bill in Nigeria (FCB) a credible legislative instrument to promote economic development as set out in section 2 of the Bill?³
- E. Are there other tools or measures that could be included in the proposed FCB to make it more effective?

It is generally agreed that inefficient allocation of resources underlines most economic problems often referred to as market failures and other economic problems. The author observes that many resource-based developing countries tend to suffer more economic problems despite their high level of resource endowments. He then argues that this could be due to the absence of appropriate competition law and policy, although on the surface it is possible to attribute it to other less fundamental factors not directly linked with competition. These other factors typically include fractional politics, corruption and lack of transparency in the conduct of government business. Therefore, definite answers to the research sub-questions could go a long way to resolving the issue of efficiency of competition law and resource abundance in these economies.

³ Since 2002, Nigeria's proposed Federal Competition Bill has been before its legislature for review and eventual adoption. I am not sure whether or not the same Bill or a reviewed version will be enacted eventually. However, the provisions of section 2 of the proposed Bill are as follows:

- 2. The objects of this Act are to promote
 - (a) the balanced development of the Nigerian economy;
 - (b) the welfare and interests of consumers, and provide them with price and product choices;
 - (c) maintain and encourage competition and enhance economic efficiency in production, trade and commerce;
 - (d) expansion of opportunities for domestic enterprises to participate in world markets;
 - (e) enhance the ability of small and medium enterprises to compete effectively; and
 - (f) prohibit restrictive business practices which prevents, restricts or distorts competition or constitutes the abuse of a dominant position of market power in Nigeria.

A comprehensive study of the whole system of competition laws in terms of rules, institutions and enforcement is not feasible within the ambit of this book. As a result, the focus of this book must be narrowed down in terms of both the historical antecedents of the subject, its basic standards and its impacts on a resource-based economy.

In very broad terms, competition policy can be described as all governmental measures that can have an impact on competition within an economy by directly affecting the behavior of the economic agents and the structure of an industry. While competition policy is about economics and law, competition law is about legislative intervention in the market aimed at anticompetitive economic behaviors and, eventually, 'market failure'.⁴

Competition policy is often aimed at achieving an efficient allocation of resources and the promotion of industrial, social, and consumer welfare. It is also a measure often directed to control the concentration and abuse of economic power detrimental to competition and societal welfare.⁵ Competition policy is comprehensive; it is about economics, law and policy. The comprehensive attributes of competition policy indicate that it could be selective and relative to the circumstance of the economy concerned. Thus, an examination of the provisions of the proposed Federal Competition Bill in Nigeria will be done in relation to the relevant research question of this book. This point will be further examined in the latter part of this book.

However, the foregoing description of competition law and policy could be narrowed down into two divisions. The first division gives a view of a set of governmental measures meant to enhance competition or competitive outcomes in the markets, which include industrial policies (such as internal market integration in the EU and promotion of infant

⁴ B.J. Rodger and A. MacCulloch, *Competition Law and Policy in the European Community and United Kingdom* (London: Cavendish Publishing, 2001), 1.

⁵ For detailed arguments on competition and the regulation of the concentration of economic power, the following references provide useful analyses: G. Amato, *Antitrust and the Bounds of Power* (Oxford: Hart Publishing, 1997). See also: O. Odudu, *The Boundaries of EC Competition Law* (Oxford: Oxford University Press, 2006) and R. Hewitt Pate, 'Competition and politics' (Speech made by the Assistant Attorney General Antitrust Division U.S. Department of Justice Presented at the 12th International Conference on Competition Bonn, Germany, June 6, 2005).

industries),⁶ liberalization and privatization, conducive market access and greater market discipline in economic decisions. The second division is the adoption or enactment of effective competition or antitrust laws aimed at anticompetitive economic behaviors, which could either lead to a distortion in a market or restrict competition. These include abusive trade agreements, control of market dominance with the potential for abuse, and mergers and acquisitions capable of impacting on a market structure to the detriment of consumer welfare.

1.3 Scope of the Book

Competition policy has important implications for development in developing countries and especially in resource-dependent developing countries.⁷ These include defining the goals of competition law relative to the economic circumstance of the country, the theory of competition to be adopted, defining the power of a competition agency and the limitations of competition in relation to other regulatory frameworks. The economies of most developing countries were largely subject to government regulation before the present introduction of competition principles.⁸ In terms of the subject matter, the scope of this book will be confined to the United States antitrust⁹ and the European Union (EU) competition models, especially since both models share major similarities and are the most expansive models.¹⁰ It examines competition law standards with a view to determining what degree historical experience impacts on competition in developing countries. This book argues that the experiences of these regimes could help to nurture the development of competition laws in developing countries. They offer an opportunity to consider the merit of

⁶ The Treaty of Lisbon amended the EC Treaty and renamed it the Treaty on the Functioning of the European Union (TFEU). It came into force within the European Union (EU) on the 1st December 2009. It replaced all references to 'European Community' and 'Community law' with EU' and 'EU law respectively and changed the numbering of the Treaty articles Article 81 is now Article 101 and Article 82 is now Article 102. Note that pre-Lisbon case law uses the previous terminology and Treaty numbering.

⁷ A. Singh, 'Competition and competition policy in emerging markets: international and development dimensions' (2002) UNCTAD G-24 Discussion Paper Series, 1.

⁸ See generally: P. Cook et al., *Leading Issues in Competition Policy, Regulation and Development* (ed.) (Gloucester: Edward Publishing Limited, 2004).

⁹ Competition law is commonly referred to as 'antitrust law' in the US but this book shall adopt the former in reference to the two.

¹⁰ Both the US and the EU constitute the largest trading partners of Nigeria.

the consensus in developed economies that competition, in the long run, offers better results than state regulation considering the current liberalization programs in developing economies.¹¹

In simple terms, resource-based economies are economies where natural resources account for more than 10 percent of gross domestic product (GDP) and 40 percent of exports.¹² However, in a resource-dependent economy, either a single valuable natural resource or a few valuable natural resources account for over 15 percent of its GDP and over 40 percent of its exports.¹³ Not all resource-based economies are resource-dependent either. The United States of America (US), Canada, Australia and Norway are examples of resource-based economies that are not resource-dependent. However, this book focuses on resource-dependent developing economies, such as Botswana, Angola, Papua New Guinea and Nigeria.

It is generally believed that the level of economic development in many of the resource-dependent economies is not commensurate to their rich level of resource endowments. Most of these economies are often plagued by different economic problems, which could be classified into primary and secondary problems. The basis upon which this classification is founded resides chiefly on the common consensus that all economies face distinct problems peculiar to their circumstances, but they could also be affected by any of the general problems inherent in all economic relationships. The first classification in relation to resource-dependent developing economies includes rent-seeking, vulnerability to external shocks, high incidence of corruption, and resource curse¹⁴ (or the Dutch disease) while the second

¹¹ R. Whish, *Competition Law*, 5th ed., (London: Butterworths, 2003), 16.

¹² R. Ahrend, 'How to sustain growth in a resource based economy? The main concepts and their application to the Russian's case' (2004) United Nations Economic Commission for Europe Occasional Paper 7, 3.

¹³ K. Chaudhuri, 'Long-run prices of primary commodities and oil prices' *Applied Economics*, 2001, 33. Published at <http://www.tandf.co.uk/journals>. Last visited 30th March 2013.

¹⁴ The presence of a natural resource or wealth may somehow have debilitating effects or result in a sectoral misallocation of resources, as well as causing overall macroeconomic imbalances in the economy of a nation. This incidence has often been referred to as either a resource curse or a Dutch disease, a term popularized in the late 1970s to refer to the decline of the manufacturing sector in the Netherlands following its discovery of natural gas in the 1960s.

classification generally concerns internal and external distortions.¹⁵ The most prominent external threats or distortions that such economies are wary of concern the issues of restrictive agreements, merger activities, monopoly and abuse of a dominant position, weak institutional capability, a low level of infrastructural development and effects of globalization.¹⁶

Nigeria is the proxy economy for this book. The Nigerian economy is double-edged. It comprises a modern sector mainly dependent on revenues derived from its primary energy resources (oil and hydrocarbon resources) and traditional agricultural and trading sectors.¹⁷ At the moment, the energy sector provides well over 75 percent of the federal revenue and 95 percent of its foreign exchange earnings.¹⁸ It exhibits most of the primary and secondary problems associated with resource-dependent developing economies, which include a low level of economic development, rent-seeking, a high level of corruption, resource curse, collusion between enterprises, and concentration and mergers. This book argues that some of these problems could be due to a lack of an effective competition law and policy. It aims to consider whether competition law and policy could solve or mitigate these problems.

Primary resources constitute at least 25 percent of global commerce,¹⁹ but export of a limited number of commodities account for the bulk of the

¹⁵ M. Bruno and J. Sachs, 'Energy resource allocation: A dynamic model of the Dutch Disease' Working Paper No.852 (Cambridge, Mass.: National Bureau of Economic Research, 1982), 3.

¹⁶ "Globalization' is the term for the increased worldwide interdependence of most economies. Integrated financial markets, the sourcing of the production of components throughout the world, the growing importance of transnational firms, and the linking of many service activities through new information and technologies are some of its manifestations."- R.G. Lipsey & K.A. Chrystal, *Economics*, 10th edn., (Oxford: Oxford University Press, 2004), 677. See also, J. E. Stiglitz, *Globalization and its Discontents*, (London and New York: W.W. Norton Ltd, 2003).

¹⁷ See: the development data of the World Bank, 'Nigeria at a glance'. Published at http://devdata.worldbank.org/AAG/nga_aag.pdf. Last visited on 30th March 2013.

¹⁸ See: The website of the Bureau of Private Enterprises in Nigeria, one of the organizations responsible for advising and implementation of the Nigerian government's policies on privatization and liberalization. <http://www.bpeng.org>. Last visited on 30th March 2013.

¹⁹ P. Cashin et al., 'Does the commodity price shock last too long for stabilization schemes to work?' IMF Journal of Finance Development, 1999, Vol 36 No 33. Published at, <http://www.imf.org/external/pubs/ft/fandd/1999/cashin.htm>. Last visited 30th March 2013.

export earnings of most of the less developed countries (LDCs),²⁰ especially, resource-dependent developing economies or resource-based economies (RBEs)²¹ whose percentage of dependence on primary commodities earnings is greater than the global average figure. In fact, manufactured goods account for less than 15 percent of their total export trade:²² they account for 12 percent in Nigeria.²³

Development policies are often based on economics, with competition policy, politics and law being co-drivers of reform agendas, although some commentators, for example, Amato and Hewitt Pate, have argued that competition should be separated from politics as much as possible and instead politics should be absorbed into competition through competition advocacy.²⁴ Although there is no universal definition for competition advocacy, it could be described as a process of creating a culture in favor of competition as well as influencing government policies aimed at the process of competition. According to the Advocacy Working Group of the International Competition Network, competition advocacy could be defined as “those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities, by means of non-enforcement mechanisms mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition”.²⁵ The ambit of competition advocacy is very flexible and further examination of it will be carried out in Chapter Five of this book.

At present (2009), approximately one hundred economies maintain systems of competition based on law and many other countries are at

²⁰ Chaudhuri, note 12, 33.

²¹ The characteristics of RBEs shall be examined in detail in the later part of this book. Nigeria is a typical RBE.

²² Chaudhuri, note 12, 531.

²³ See: the website of the Manufacturer Association of Nigeria, <http://www.manufacturersnigeria.org/eco.htm>. Last visited on 30th March 2013.

²⁴ See: G. Amato, *Antitrust and the Bounds of Power*, (Oxford: Hart Publishing, 1997). See also O. Odudu, *The Boundaries of EC Competition Law*, (Oxford: Oxford University Press, 2006) and R. Hewitt Pate, ‘Competition and Politics’ (Speech made by the Assistant Attorney General Antitrust Division U.S. Department of Justice Presented at the 12th International Conference on Competition Bonn, Germany, June 6, 2005).

²⁵ See: www.internationalcompetitionnetwork.org. Last visited on 30th March 2013.

different stages of introducing one.²⁶ They operate as part of the structure promoting economic development and growth. It is generally argued and broadly accepted that such competition laws can contribute to improving market efficiency by promoting and safeguarding competition between firms, thus, enabling efficient utilization of resources for the public good.²⁷

A further trend is to employ competition law as an instrument of industrial policy with defined objectives. This approach is not universally favored. Some commentators argue that this approach distorts the free operation of the market and is as such inimical to the true purpose of competition and competition law underscores this.²⁸ Competition regulated by law is expected to enable an economy to achieve objectives at levels of competitiveness, that is, not wasteful to economic performance.

In most developed countries, competition laws have been accepted and tested as a tool serving economic development; hence, there is a growing pressure on developing economies to adopt competition laws. Such pressure comes not only from states, such as the US and regional groupings like the European Union (EU), but also from international agencies, including the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO).²⁹ Furthermore, whether the same regime or rules of competition can be assumed to be equally applicable or not to developed economies as to developing economies remains an important consideration.

Consequently, this book consists of two parts; the first is divided into three chapters, from Chapter One to Chapter Three, while the second is divided into three chapters, from Chapter Four to Chapter Six.

²⁶ See: the website of Global Competition Forum, <http://www.globalcompetitionforum.org>. Last visited on 30th March 2013.

²⁷ R. Lane, *EC Competition Law* (Essex: Pearson Education Limited, 2000), 1.

²⁸ See generally: W. Saulter, *Competition Law and Industrial Policy in the EU* (London: Clarendon Press, 1997). One chapter of the book deals extensively with the compatibility of industrial and competition policy, with particular attention to the telecommunications sector in the EC. See also: M.S. Gal, *Competition for Small Market Economies*, (Harvard: Harvard University Press, 2003).

²⁹ See: R. Parakkal, 'The WTO, competition policy and developing countries: A model of global governance'. Paper presented at the annual meeting of the ISA's 49th Convention, Bridging Multiple Divides, March 26, 2008, San Francisco, CA, USA.

Chapter One aims at providing background information on Nigeria and the relevance of a competition policy within the context of its growth and development in relation to its level of resource endowments. The chapter also defines the research question, its parameters and scope, and its methodology. In addition, the chapter presents a brief summary of the conclusions and recommendations made in the book.

Chapter Two aims at examining the problems peculiar to resource-dependent economies and how these could be solved. It considers the characteristics of developing economies with a view to determining their economic problems and how competition law could be promoted, thereby influencing economic development. This prompts the question of the political sources of institutional change and whether appropriate law and economic reforms could be meaningfully implemented without political support and the establishment of an appropriate regulatory structure. The position of this author is that appropriate law and economic reforms are necessary but not sufficient; the determining factor in economic performance is the state's capacity to implement its law and reform policies.³⁰ It observes that while resource-dependent developing countries share the same or most of the problems typical of developing countries, they also have to confront a range of additional issues and problems that require tailor-made economic policies and reforms.

It further argues that these problems are the consequences of Nigeria's dependence on primary resources. The most critical among these problems include price volatility, the Dutch disease, rent-seeking, access to energy and corruption. The combination of these tends exacerbate other economic problems, particularly restrictive agreements, merger activities, monopoly and abuse of a dominant position, weak institutional capability and a low level of infrastructural development. The chapter further states that these problems constitute the nucleus of the research problem of this book, that is, how competition law and policy could be employed to enhance the efficient allocation of resources and thereby development in resource-dependent developing economies. The author, however, observes that some of these problems, such as corruption and rent-seeking, are not peculiar to resource-dependent economies and, therefore, not primarily attributable to the lack of a competition policy, but that competition law and policy via a market discipline could mitigate their effects. It concludes that an examination and possible resolution of this problem is to be considered within the context of the characteristics and problems of

³⁰ P. Cook et al., note 10, 30.

developing economies and, in particular, the problems of resource-dependent developing countries. Therefore, this chapter develops a firm foundation for the analysis in the other remaining chapters and the conclusion of this book.

Chapter Three examines different theories of competition, economic tools and their relevance to the substance of the book. This involves an analysis of the aims of competition policy. The chapter argues that competition policy could be used to promote objectives other than the attainment of market efficiency. In the process, the historical background of the US antitrust laws, the Sherman Act 1890, is explored in the context of the arguments for and against the multiple objectives of competition policy. The chapter also examines the nexus between competition and development and how this could further the maximization of resource utilization in resource-dependent countries.

However, this chapter concludes that a multiple-objective competition law and policy is most probably likely to enhance economic development in resource-dependent countries. This conclusion is supported by the historical development of the EU Competition Policy. Aside from the limitations of economic tools often used in competition, available evidence has shown that gaps exist between competition theories and realities.³¹ The chapter concludes that the success of any model of competition law and policy enacted in any economy will be determined by its objective and how well it relates to the economic circumstances of the country in question. The chapter concludes further that in some cases, using Nigeria as an example, it will have to work out a balance between competition and regulation, especially since market discipline and regulatory frameworks are yet to be fully established in most developing countries.³²

Chapter Four explores the highlights of the provisions of the draft Federal Competition Bill in Nigeria critical to the promotion of efficient allocation of resources and thereby the country's development as a typical resource-dependent developing economy. It gives a brief general background of the Nigerian economy as the archetype of the characteristics of resource-dependent developing countries examined in the preceding chapter. Its

³¹ L. Cernat and P. Holmes, 'Competition, competitiveness and development: lessons from developing countries' UNCTAD/DITC/CLP/2004/1, 11.

³² D.O. Adetoro, 'Can the imposition of a regulator in any liberalized energy market be justified by market behaviours?' (2006) 24(3) *Journal of Energy & Natural Resources Law*, 401.

focus on Nigeria is meant to explore how competition policy could be effectively implemented within Nigeria's current state of legal, economic, and institutional development. It considers whether the draft Bill is an effective legislative instrument capable of addressing the primary competition problems and other (peculiar secondary economic) problems in resource-dependent countries like Nigeria.³³

As a result, Chapter Four examines three standards of competition law: control of agreements, monopoly or abusive conduct, and mergers. These will be considered with particular attention paid to the impact that such a law might have on resource-dependent economies that carry with them the particular problems mentioned earlier on. This chapter argues that the wave of restructuring and consolidation that recently took place within the banking industry in Nigeria is a precursor of things to come in the Nigerian market.³⁴ Since there are yet to be any relevant merger activities in the Nigerian economy that could be used as a guide for the other sectors in the present book, the banking sector is taken as an alternative benchmark. This, therefore, provides a basis for analyzing in more depth the merger provisions of the draft FCB as it relates to the promotion of economic development. This chapter argues that restructuring and mergers are bound to increase in Nigeria and it is in the country's overall interest to enact competition law. The chapter concludes that the highlighted provisions of the draft FCB are expected to contribute meaningfully to the economic development of Nigeria, but the FCB's effectiveness as a legal framework for these developmental objectives will be partly determined by the composition and capability of its competition authority, especially its implementation abilities.

Chapter Five further explores the importance of competition policy and a competition law for the actualization of its objectives within the socio-political and legal environment in Nigeria. Thus, it argues that certain administrative structures would have to be put in place for its effective implementation. The chapter argues that the fertile conditions needed to grow the seeds of competition are a competition culture that places great premiums on both competition enforcement and competition advocacy.

³³ These problems were generally examined in Chapter Two but this chapter considers them within the context of Nigeria, the surrogate for resource-dependent developing countries.

³⁴ At present, there is a Federal Competition Bill before Nigeria's Federal Parliament.

Consequently, Chapter Six concludes that adopting a competition law and policy is in the overall interest of Nigeria and many other resource-based economies, although this will not offer a panacea for all of their economic problems. Rather, it will go a long way in contributing to their economic development, as the new competition culture, often characterized by increased market discipline, will promote the expected development through appropriate regulatory structures. However, the author also concludes that while enacting a competition law is necessary, this will not be sufficient to ensure any sustainable development. Rather, the author recommends that a competition policy must include and execute the following two goals:

- Provision of good institutional infrastructure that supports transparency in economic conduct, efficient judiciary, clear administrative and regulatory procedure plus a mix of different competition prescriptions aimed at mergers, and other restrictive business practices.
- Strategic diversification of the economy.

It further concludes that adoption of a competition law in Nigeria would provide a necessary guide and predictable outcomes for both policymakers and investors involved in the Nigerian economy. In addition, while it is hoped that Nigeria will adopt a competition law and policy, it is suggested that its proposed competition Bill should be subjected to public scrutiny or debates. This would give the public, in particular, who make up a good proportion of the stakeholders, an opportunity to contribute to the provisions of the Bill as experienced in the US before the passage of the Sherman Act of 1890.

This book further shows a relative neglect of the research problem despite the continued promotion of a competition culture by different development agencies. There is very little in terms of literature on the subject matter of competition policy and resource utilization within the context of resource-dependent developing economies. Most of the available literature focuses on developed economies, and the competition concerns that are termed 'secondary problems' are discussed in Chapter Two. Thus, the book is important for theory, policy and practice as the dearth of literature on this research problem calls for further research that could prove useful for policymakers. Indeed, the lack of literature on competition law and policy that deals with resource-based economies is one such limitation that this book encountered.

1.4 Research Problem and Hypothesis

The focus of this research is competition law and policy, resource utilization, and development in resource-dependent countries. It investigates how competition law and policy could be employed to further the efficient allocation of resources and thereby development in resource-dependent developing economies. There are several problems associated with resource allocation, which include rent-seeking and abusive trade practices, etc. The research problem is to be considered within the context of the objectives of competition law and policy, and the characteristics of resource-dependent developing economies.

Economic reforms informed the evolution of competition law and policy in developing countries and since competition is about economics and law, economic principles and conclusions are used to build a legal framework for considering competition policy. Therefore, this book approaches and examines a number of policy-related propositions and legal provisions drawn from theoretical literature and competition policy. These are related to resource-dependent developing countries. This is further informed by the broad view of the draft Federal Competition Bill in Nigeria. The book further observes that the objectives of the draft Bill are a mixture of industrial policy, trade-related issues, and the core competition standards like anticompetitive agreements, abuse and dominance, and merger control. This is evident from the outset of the draft Bill, particularly in its preamble and in section 2, which sets out the objectives of the Bill.³⁵

The research problem addressed in this book is an amalgam of the different issues underlined by competition policy and resource-allocation phenomena in resource-based countries. They include growth, development, social responsibility and industrial policy. While trade liberalization is in the ascendancy globally, and while more natural resources are being discovered in most developing countries, familiarity with these countries can but confirm that these countries are seen to be poor; their population is poor and most of the people are impoverished. Although corruption is often cited as a principal cause for the poor state of these economies, this book argues that there are more fundamental reasons for the current state of low development. This situation might be interpreted by, among other things, the absence of or disregard for pure market discipline and accountability in the widest sense. As a consequence, this book argues that the issue of allocation of resources

³⁵ See note 3.

significantly contributes to the poor state of the economies of the countries under investigation.

Consequently, this book suggests, additionally, that the adoption of a competition law and policy is an essential requirement for the smooth operation of market forces if an efficient and sustainable economy is to be achieved. It undertakes the job of further exploring the issue of competition and the economic problems that arise in a resource-based developing country.

Furthermore, it explores the possibility of using competition policy through competition laws to address these problems and thereby enhance growth and development in the affected economy. Thus, this book argues that the success of the proposed FCB will be partly determined by the creation of an effective competition agency that will implement the provision of the Bill. However, an important task that will need to be handled with tact is how to educate the stakeholders, especially the consumers, on the merits and consequences of the Bill when it comes into force. This could not be achieved by the enforcement provisions of the Bill; rather, competition advocacy would have to be adopted as a complementary tool alongside enforcement.

A brief examination of some of the literature examined in this study is considered hereunder. This includes literature on objectives of competition laws and their nexus with development and resource curse.

1.4.1 Objectives of Competition Law and Policy

There have been different debates about the goals of competition law. On the one hand, the dominant view is that the only legitimate goal of competition law is the efficiency doctrine popularized by Richard Bork, whose argument forms part of the major arguments analyzed in Chapter Three that deals with theories of competition and resource utilization. Proponents of this view suggest that the main objective of competition law should be to achieve an efficient allocation of resources via the forces of competitive markets.³⁶ They argue that allocation and effective coordination of means of production in each industry will produce the

³⁶ J.F. Brodley, 'The Economic goals of antitrust: efficiency, consumer welfare and technical progress' (1987) 62 NYUL Rev 1020, 1025.