

The London School of Economics and Political Science

*Competition Provisions in EU Regional Trade Agreements:
Consequences for Domestic Reform in Developing Countries*

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Abstract

Political economy research has long argued that regional trade agreements (RTAs) can contribute to domestic reform in developing countries. With the increase in scope and depth of regional trade agreements and the increasingly common practice of including new policy areas like competition policy in RTAs, this argument has gained new traction. However, despite the increased scholarly interest, there is still little knowledge about whether and how provisions in RTAs affect domestic change.

This thesis contributes to this line of research by analysing how competition provisions in regional trade agreements between the European Union and Southern countries impact on the development of the Southern competition regimes. By combining different theories and research approaches on how regional trade agreements impact domestic reform, the analytical framework provides a detailed account on the type of change that takes place, the mechanisms through which change occurs, and the different types of actors that participate in this process. The research relies on two case studies: the EU-Morocco Association Agreement on the one hand, and the EU-Cariforum Economic Partnership Agreement on the other.

The thesis finds that competition provisions in regional trade agreements were relevant in both cases for the development of competition regimes. However, the findings also suggest that the influence of the competition provisions is contingent on two other factors: the surrounding environment in which the regional trade agreement is embedded, and the presence of domestic actors that are willing to promote reform. The fact that the competition provisions in the EU-Morocco trade agreement were embedded in the European Neighbourhood Policy and, importantly, that a follow-up regional trade agreement with the European Union was envisaged for the future, implied that the EU had a stronger leverage to demand change from the Moroccan government. Moreover, in both Morocco and Cariforum, the interest of governments in advancing competition policy reform was limited. Therefore, domestic actors other than the government played a key role in ensuring that the competition provisions had an impact on the development of the respective competition regimes.

In sum, the thesis makes an important theoretical and empirical contribution to the literature. First, it empirically adds to the literature that looks at the consequences of competition provisions in regional trade agreements by making in-depths analyses of two trade agreements. Second, it develops the literature on the impact of regional trade agreements on domestic reform by explaining how competition provisions can have an impact on domestic reform, even in situations when the government is not interested. Finally, it also contributes to the literature by showing the importance of serial trade agreements for domestic reform, an aspect that has previously been overlooked.

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List of Acronyms

ACP	African, Caribbean and Pacific
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum
CARIFTA	Caribbean Free Trade Association
CC	Competition Council (Conseil de la Concurrence)
CCC	Caricom Competition Commission
CCJ	Caribbean Court of Justice
CET	Common External Tariff
CNDC	Comisión Nacional de la Defensa de Competencia
COTED	Council for Trade and Economic Development
CRIP	Caribbean Regional Indicative Programme
CRNM	Caribbean Regional Negotiation Machinery
CSME	Caribbean Single Market and Economy
DCFTA	Deep and Comprehensive Free Trade Agreement
DCP	Directorate for Competition and Prices
DG	Directorate General
DGCCRF	Direction générale de la concurrence, de la consommation et de la répression des fraudes
EDF	European Development Fund
EFTA	European Free Trade Association
ENP	European Neighbourhood Policy
EPA	Economic Partnership Agreement
EU	European Union
FA	Financial Assistance
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTC	Fair Trading Commission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICN	International Competition Network
IFI	International Financial Institutions
IMF	International Monetary Fund
ITO	International Trade Organisation
LDC	Least Developed Country
NAFTA	North American Free Trade Area

NCA	National Competition Authority
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OECS	Organisation of Eastern Caribbean States
PTA	Preferential Trade Agreement
RBP	Restrictive Business Practice
RIA	Regulatory Impact Assessment
ROW	Rest of World
RTA	Regional Trade Agreement
RTC	Revised Treaty of Chaguaramas
SADC	Southern African Development Community
SME	Small and Medium Enterprises
TA	Technical Assistance
TAIEX	Technical Assistance and Information Exchange Instrument
TDC	Trade and Development Committee
TDCA	Trade, Development and Cooperation Agreement
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
US	United States of America
USSFTA	United States – Singapore Free Trade Agreement
WTO	World Trade Organisation

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Chapter 1 – Introduction

Over the past decades, the number of regional trade agreements (RTA) has increased significantly. While around 40 RTAs were in force worldwide in 1990, this number stood at roughly 300 in 2016. Furthermore, another 200-300 agreements not yet in force were notified to the World Trade Organisation (WTO) during this period (WTO Secretariat, 2017c)¹. Over time, trade agreements have moved away from merely regulating the cross-border trade of goods to include a broader and more complex set of issues. As a consequence of previous unilateral trade liberalisation and multilateral and bilateral trade agreements, tariffs for many products are already low and there is little room left for further liberalisation (Chauffour & Maur, 2011a). While being important, tariffs and quotas are therefore neither the only focus of trade agreements, nor necessarily the most relevant one.

On the contrary, almost all trade agreements now also include trade-related economic policy areas, and often also political and social topics, which are not directly concerned with border regulations. These new areas of cooperation – also referred to as “behind-the-border” provisions – range from more traditional topics such as investment and intellectual property rights to innovation policy, cultural cooperation or money laundering (Horn, Mavroidis, & Sapir, 2009).

Trade agreements which include many behind-the-border topics are also referred to as deep integration agreements (Hoekman, 1998; Lawrence, 1996). While shallow integration agreements deal exclusively with border policies like tariffs and quotas that only require changes in trade policy, deep integration agreements can have a much bigger consequences, as the provisions included in the agreement affect domestic policies of the signatory countries.

Depending on the provisions, significant changes in domestic policies can be required.

¹ Calculations on the overall number of RTAs vary significantly, depending on the methods and definitions used. See section 2.1.1 for more information.

One of the most significant contributors to the proliferation of deep RTAs has been the European Union (EU). As the largest trading bloc in the world, the EU has become member to a steadily increasing number of regional trade agreements with third countries. Indeed, by January 2016, the EU had 36 RTAs in place, whilst negotiations on further RTAs between the EU and several other countries and regions, both developed and developing, were underway. Out of these 36 agreements, 30 were with developing countries or regions.

This thesis is interested in understanding the consequences of these EU agreements for domestic reform in developing countries. It intends to shed light on the mechanisms by which provisions in regional trade agreements interact with domestic reform, and in what ways provision in RTAs influence reform. To be able to trace the mechanisms in depth, the thesis focuses on one particular policy area: competition policy. Competition policy it is one of the most common policy areas in all RTAs existing worldwide, as well as in EU trade agreements. Yet while the thesis enters into the details of competition legislation, the main focus is on understanding the processes and political economy considerations related to domestic change.

Competition policy is one of the most prevalent behind-the-border topics included in regional trade agreements (WTO, 2011). Since the 1990s, the share of trade agreements that include competition provisions has risen steadily (Bradford & Bütte, 2015; Dür, Baccini, Elsig, & Milewicz, 2012), with slightly more than 70% of all trade agreements including either a full competition chapter or a substantive article on competition policy. Additionally, a further 5% of RTAs contain a substantive competition passage (Bradford & Bütte, 2015). Notably, around 80%² of the EU's trade agreements with third countries include substantive competition provisions. In the case of EU RTAs with developing countries³ this number is

² Own calculations based on analysis of the original trade agreements.

³ Throughout this thesis, I refer to developed countries and developing countries using the categorisation of the WTO, where countries decide for themselves whether they want to be classified as developed or not. In WTO (2011) the following countries are classified as developed: Andorra, Australia, Canada, the EU and its members, Faroe Islands, Gibraltar, Iceland, Japan, New Zealand, Norway, Switzerland (with Liechtenstein) and the United States.

even slightly higher. Here, the share of EU trade agreements that include competition provision amounts to 83%⁴.

Yet while RTAs with Southern countries now regularly include competition provisions, there is still little evidence of what kind of impact these provisions actually have. This thesis therefore seeks to contribute to this line of research by exploring how competition provisions in EU RTAs with Southern countries affect competition policy in the latter. On a more general level, it contributes to the wider literature by specifically examining the ways in which behind-the-border provisions might trigger domestic reforms in developing countries and by suggesting mechanisms of influence to analyse these processes.

1.1 Research Question

This thesis seeks to contribute to the academic literature on the consequences of policy provisions in regional trade agreements for domestic reform, and it does so by using competition provisions as an example, since it is one of the most common new policy areas included in regional trade agreements. It will focus on the role of competition provisions not only for the development of the competition law, but also for the development and change of the whole competition regime, including its enforcement at the domestic level. Moreover, the thesis also attempts to understand the way in which competition provisions have impacted and influenced change, i.e. the mechanisms through which the impact takes place. Thus, the thesis answers the following research question:

“What is the role of competition provisions in EU-South trade agreements for change in the domestic competition regime in the Southern country?”

⁴ Author's own analysis of EU FTAs.

In order to disentangle the effects of competition provisions analytically, the research question is divided into three sub-questions that will guide the analysis. The first question seeks to assess whether some change in the domestic competition regime has been observed over time, both in the periods leading to and following the signing of the trade agreement.

Sub-question 1 (SQ1): How has the competition regime in the developing country changed in the periods leading to and after signing the trade agreement?

After establishing whether some change in the competition regime of the developing country has occurred, the second question then proceeds to examine whether this change has been produced by the competition provisions included in the trade agreement. It seeks to establish in which ways the competition provisions in the trade agreement influenced this change.

Sub-question 2 (SQ2): What are the mechanisms by which the regional trade agreement influences the change in the competition regime of the developing country?

Finally, the third question controls for other influencing factors that might be driving change in the domestic competition regime, since the competition provisions in the RTA with the European Union might not be the only factor influencing the development of the competition regime. Thus, sub-question 3 seeks to disentangle the effect of competition provisions on domestic reform from other influential factors.

Sub-question 3 (SQ3): Which factors, other than the competitions provisions included in the RTA, were relevant for change?

1.2 Analytical framework and research design

To analyse whether and how competition provisions of EU RTAs impact on the domestic competition regime of a developing country, the analytical framework is based on existing theories that connect regional trade agreements and domestic reform. Moreover, it employs

elements of Europeanisation and Diffusion to extend the existing theories and is thus able to explain the consequences of trade agreements in cases that have not been covered before. These theories are useful because they complement existing theories on the domestic impact of RTAs by highlighting the causal mechanism through which domestic change occurs, and because they pay attention to the different actors that are involved in promoting change.

Traditionally, the scholarly literature has assumed that countries enter into trade agreements because they expect that RTAs will deliver economic benefits such as increased trade volumes, increased investments and increased economic efficiency. However, as Fernández and Portes (1998) argue, trade agreements can also lead to non-traditional gains, i.e. gains that go beyond increased trade volumes. One non-traditional gain is the positive effect of a trade agreement on domestic reform. By signing the trade agreement, countries commit to the policies agreed upon in the trade agreement. Thus, if they include certain policy reforms in the trade agreement, it is difficult to renege on these commitments. This commitment or lock-in mechanism can be used by governments to overcome domestic obstacles to reform. The European Commission argues that this is one reason why developing countries enter into a trade agreement with the European Union: “[R]eformers in many countries are actually seeking to conclude bilateral or regional trade agreements to anchor their own domestic agenda and lock in domestic reforms” (European Commission, 2012, p. 18).

Deep integration provisions, such as competition provisions, are generally expected to help reforming countries, because they clearly specify the reforms that need to be undertaken (Chauffour & Maur, 2011a; Hoekman, 2011). As Birdsall and Lawrence (1999, p. 136 f.) explain: “When developing countries enter into modern trade agreements, they often make certain commitments to particular domestic policies – for example, to antitrust or other competition policy. Agreeing to such policies can be in the interest of developing countries (beyond the trade benefits directly obtained) because the commitment can reinforce the

internal reform process. Indeed, participating in an international agreement can make feasible internal reforms that are beneficial to the country as a whole that might otherwise be successfully resisted by interest groups”.

The idea that trade agreements are useful for the Southern government to lock-in domestic reform is the most prominent theory connecting trade agreements with domestic reform (e.g. Baccini & Urpelainen, 2014a; Dee & McNaughton, 2011; Ethier, 1998; Fernández & Portes, 1998; Zorob, 2007). Yet one caveat of this theory is the assumption that the governments of developing countries are willing to reform their domestic policies before they enter into a RTA. In other words, this theory assumes that the Southern governments are the ones actively locking in reform. Consequently, this reasoning implies that behind-the-border provisions in trade agreements would not have an effect on the domestic policies of the developing countries if the governments were not interested in reform.

In contrast to the theory above, some authors contend that it is not the Southern country which pushes for reform, but the Northern country. In this view, Northern countries use trade agreements to impose certain policy reforms on the Southern countries. Since the Southern economy often depends on access to the market of the Northern country, the latter can require domestic reforms from the Southern partner in exchange for increased or more secure market access (Heron & Siles-Brügge, 2012; Manger & Shadlen, 2011; Shadlen, 2005). According to some studies, on several occasions the EU has pressured some Southern countries to include competition policy provisions in trade agreements (Claar & Nölke, 2013; Yu, 2007) in order to align them with its own competition regime and thus improve the playing field for European companies.

However, while this argument might be useful to explain why competition provisions are included in trade agreements, it remains unclear how it can actually lead to reform in the domestic regimes. Indeed, although the Southern country might agree to include competition

provisions in the RTA in order to secure the benefits of the trade agreement, such as market access, the inclusion of provisions does not automatically lead to change. On the contrary, the provisions still need to be implemented on the domestic level, and developing countries might simply refrain from doing so. Thus, once the trade agreement is signed, the Northern country loses its main leveraging tool – market access – to influence change. Moreover, the likelihood that access is suspended on the basis that regulatory reforms are not being implemented fast enough is very unlikely. As Botta (2013) notes, it has not happened yet that market access has been revoked in the area of competition policy due to lack of regulatory change.

Drawing on studies of Europeanisation and Diffusion, this thesis develops an analytical framework that helps to explain the influence of competition provisions in trade agreements even in situations where the Southern government is less interested in domestic reform. As the thesis will show, it is necessary not only to look at the intergovernmental level of cooperation, but also to include other domestic actors in the Southern country in the analysis. For instance, in Europeanisation studies it has been shown that domestic actors can use EU requirements to promote peace processes, without the government being involved (Knill & Lehmkuhl, 2002). Likewise, competition provisions in trade agreements can also empower domestic actors interested in competition policy reform – for instance, competition authorities –, and thus promote reform. Moreover, the European Union can increase leverage over the impact of competition provisions by engaging in rounds of trade agreements, i.e. by developing cooperation over time.

To assess the effect of competition provisions in RTAs on domestic change, a case study approach is employed, as case studies are particularly useful for tracing and understanding mechanisms (Starke, 2013). Two cases will be analysed, and a combination of within-case and cross-case analysis will be applied. To understand the causes and motivations of domestic change in a country – and thus to answer the question of whether the competition provisions

have caused change – the process tracing method is employed (George & Bennett, 2005; Starke, 2013).

The data for the analysis are acquired from among other the competition legislation, reports and articles. Additionally, the analysis relies on elite interviews for data collection. Twenty-four interviews were conducted with officials and experts involved in the development of the competition regimes in the two case studies. These individuals worked among other for ministries, competition authorities and international organisations and as negotiators in the analysed trade agreements.

The universe of cases consisted of all trade agreements that the EU had signed with developing countries that contain competition provision and in which the partner country does not have an accession perspective. This is due to the fact that for accession countries, EU accession is the overarching reason for domestic policy change, and thus the effect of competition provisions in RTAs is clouded over (Holmes, Kayali, & Sydorak, 2006). As will be developed in Chapter 3, EU trade agreements with developing countries without accession perspective can be grouped into two categories: trade agreements with European Neighbourhood countries, and the “Rest of the World” (ROW). From each group, one case was selected: the Association Agreement between the European Union and Morocco, signed in 1996, and the Economic Partnership Agreement between the European Union and Cariforum, signed in 2008. Both trade agreements are broadly representative for their group, and are interesting case studies in themselves, which will be developed in Chapter 4.

1.3 Definitions

Both in the field of trade policy and competition policy, there are several terms and concepts that do not have a universally accepted and clear definition. This section presents the definitions that will be employed in the thesis.

1.3.1 Trade Agreements - Definition

No unified classification exists in the realm of trade agreements. For instance, what has been called “Preferential Trade Agreement” in World Bank publications (Chauffour & Maur, 2011b), has been classified as “Regional Trade Agreement” by the United Nations Conference on Trade and Development (Alvarez, Clarke, & Silva, 2005). In both cases, they refer to reciprocal free trade agreements between two or more countries. Sometimes both terms are used by the same institution. While usually, the WTO refers to regional trade agreements when talking about reciprocal agreements (WTO, 2016), in some WTO publications the terms ‘preferential trade agreement’ is used (e.g. WTO, 2011).

This can be confusing, and especially the term ‘preferential’ can lead to misunderstandings. Many studies use the term “Preferential Trade Agreement” to refer to a reciprocal agreement between countries of any level of development (for instance in Baccini, Dür, Elsig, & Milewicz, 2011; Horn et al., 2009; Mansfield & Reinhardt, 2003; WTO, 2011; Young, 2015). In this case, the term ‘preferential’ means preferential in comparison to WTO most-favoured Nation (MFN) access. However, the terms preferential access and trade preferences are also often used in relation to market access provided by developed countries to developing countries (Collier & Venables, 2007; Heron, 2014). In this case, ‘preferential’ refers to non-reciprocal access.

Against this background and for the purpose of clarification, the following definitions will be employed in the thesis:

- Free Trade Agreements (FTA): all reciprocal multilateral, bilateral and preferential trade agreements;
- Multilateral Trade Agreement: all trade agreements with a near global reach (incl. General Agreement on Tariffs and Trade (GATT) and WTO agreements);

- Regional Trade Agreement (RTA): any non-multilateral, reciprocal trade agreement;
- Trade preferences: non-reciprocal market access provided by developed countries to developing countries⁵.

Moreover, depending on the focus and the additional content of the agreements, the European Union tends to denote its regional trade agreements with third countries not only with the term FTA or RTA, but with a variety of names. Among these are Association Agreement, Economic Partnership Agreement (EPA), and Trade, Development and Cooperation Agreement (TDCA). When discussing one of these agreements, this thesis uses their specific name and the term regional trade agreement interchangeably.

1.3.2 Competition Law, Competition Policy, Competition Regime

The definition of competition law and competition policy is equally not unified. Although it is generally accepted that competition law is part of competition policy (Papadopoulos, 2010), it is less clear what each of these concepts comprises and what they exclude. According to the WTO Working Group on Trade and Competition, competition policy is defined as “...compris[ing] the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises” (as cited in Papadopoulos, 2010, p. 30). A similar definition is used by Hoekman and Holmes (1999, p. 4), for whom competition policy “comprises of a set of measures and instruments used by governments that determine the ‘conditions of competition’ that reign on the markets. In this definition, antitrust or competition law is a component of competition policy. Other components include actions to privatize state-owned enterprises, deregulate activities, cut firm-specific subsidy programs, and reduce the extent of policies that discriminate against foreign products or producers”.

⁵ The term ‘preferential trade agreement’ is avoided altogether unless it is used in a direct quote. In those cases, it always refers to non-multilateral reciprocal free trade agreements between two or a group of countries (what is denoted as ‘regional trade agreement’ in this thesis).

One problem with this definition is that it is very broad. As such, it could include other policies such as trade policy, since border regulations also determine the conditions of competition on the market. Defining competition policy in such a way risks making the term meaningless, because almost any economic policy could then be subsumed under competition policy. Krakowski (2005) therefore differentiates between competition policy in the broader and in the narrow sense. Competition policy in the broader sense includes “all policies designed to ensure the satisfactory functioning of a market economy – for example, external tariffs, public procurement regulations, deregulation and so on” (Krakowski, 2005, p. 2), whereas competition policy in the narrow sense only refers to the competition law and its application.

This thesis will use a narrow definition of competition policy, where competition policy refers to the competition law and its application. Using this definition however requires a definition of competition law. Indeed, although the divergence of definitions for competition law is less broad than the divergence on definitions of competition policy, it also exists and needs to be accounted for. According to Hoekman and Holmes (1999) competition law deals specifically with the behaviour of private entities. These authors contrast this concept with that of competition policy, which also deals with government actions. This narrow form of competition law is sometimes also referred to as antitrust law. However, there are several competition laws which apply equally to private and public enterprises. In addition, the law of the European Union includes state aid, e.g. public subsidies, in its competition law.

For the purpose of this thesis, the following terms will be employed: First, laws that only deal with anti-competitive behaviour of private companies are categorised as *antitrust law*. Second, the term *competition law* is used in the broader European sense, and comprises the legislation that refers to the anticompetitive behaviour of public and private enterprises, as well as to state aid. Third, *competition policy* is competition policy in the narrow sense and

thus covers competition law and its application⁶. Finally, the *competition regime* looks at the whole system set up to organise competition policy in a market, including the competition law but also the institutional set-up and its enforcement.

- Antitrust law: law that deals with anti-competitive practice of private undertakings;
- Competition law: law that deals with anti-competitive practice of private and public undertakings and state aid;
- Competition policy: competition law and its application;
- Competition regime: the whole system to organise competition policy, including institutional set-up and its enforcement.

1.3.3 Elements of a competition regime

A competition regime includes the various elements set up to regulate competition policy in a market. The most important elements are the competition law and competition institutions.

Competition Law

While competition laws are based on domestic legislative cultures and traditions and therefore differ, they share common features. Competition law typically deals with three types of practices: anti-competitive agreements, the abuse of dominance, and mergers (Dabbah, 2010; Kee & Hoekman, 2007). These practices can be executed by public and private enterprises, and while in some countries legislation is restricted to private companies, many also subject state-owned enterprises and public monopolies to competition law. Moreover, some countries control the public restriction of competition, i.e. when state actions limit competition in the market, e.g. through the provision of subsidies or legislative measures (Whish & Bailey, 2015; Dabbah, 2010).

⁶ This includes competition legislation, as rules and regulations to implement the law are part of its application.

Anti-competitive agreements are agreements between enterprises that “have as their object or effect the restriction of competition” (Whish & Bailey, 2015, p. 3). This includes horizontal agreements, such as cartels, where the involved enterprises are at the same level of the market. A typical example of anti-competitive horizontal agreement would be price fixing between all producers of a certain product. Vertical agreements on the other hand are agreements between enterprises on different levels of the market, and would for example include exclusive dealing contracts (Whish & Bailey, 2015). It is important to note that not every agreement between companies is anti-competitive and some can be beneficial for competition and consumers. These are not necessarily prohibited, but might have to comply with specific regulation (Dabbah, 2010, p. 33).

Rules on the prohibition of abuse of dominance deal with situations in which a company benefits from a big market share and uses this situation to engage in anti-competitive behaviour, e.g. by setting higher-than-normal prices or, alternatively, predatory prices (in which case it lowers prices below marginal cost to force competitors out of the market) (Slot & Johnston, 2006; Whish & Bailey, 2015). As with agreements, just having a dominant position in the market does not in itself lead to an anti-competitive situation. Establishing when abuse of dominance has happened is a challenging task, not least because defining the relevant market is not straightforward (Dabbah, 2010). Abuse of dominance is called monopolization in United States (US) terms, and is the area of competition policy where the European Union and the United States diverge most. The United States competition agencies rarely intervene in this area, whereas it is a more common field of action for the agencies of the European Union (Fox, 2014).

Mergers, i.e. the integration of previously separate enterprises, are, like agreements and dominance, not uncompetitive per se, but might lead to a situation in which competition in the market is restricted. Therefore, it is custom in many competition regimes that envisaged

mergers have to be notified so that, before approving them, the competition authorities can analyse whether such a merger might have an anti-competitive effect on the market. In such a case, the merger could be prohibited. Conversely, it could also be approved under certain conditions, e.g. provided that a part of the company is sold in order to ensure that the company does not become dominant (Whish & Bailey, 2015).

These rules usually apply to private enterprises, and in many cases also apply to public enterprises, depending on the law. Yet competition law is not necessarily restricted to anti-competitive behaviour of - public or private - enterprises. The European Union in particular includes anti-competitive behaviour of states in their competition policy regime, as will be further discussed in Chapter 3. EU law regulates subsidies given by states to enterprises (so called state aid). Competition authorities are, under some competition laws, allowed to scrutinise the state behaviour and give recommendations on how to align it with competition objectives (Papadopoulos, 2010; Whish & Bailey, 2015).

Anti-competitive agreements, abuse of dominance, anti-competitive effects of mergers and anti-competitive state behaviour are thus the practices that are dealt with in competition legislation. However, the specific regulation and interpretation of anti-competitive practices varies in different countries and depends on the individual legislation, but also on time and culture. As Whish and Bailey (2015, p. 20) note: “In particular competition policy does not exist in a vacuum: it is an expression of the current values and aims of society and is as susceptible to change as political thinking generally”.

Important for the specific interpretation of competition policy are its objectives. While consumer welfare is one of the most popular objectives in current competition policy application (Whish & Bailey, 2015), it is by far not the only one. Other objectives include efficient resource allocation, as well as the more philosophical stance of protecting economic freedom itself. Economic policy objectives form part of some competition laws, for instance

the preferential treatment of small and micro enterprises. Others even include social objectives, as is the case in South Africa, which contains goals of equity and justice and aims at promoting a broader spread of ownership “especially among historically disadvantaged persons” (Hartzenberg, 2006, p. 669). South African competition authorities have to make decisions with this social objective in mind (Hoekman & Holmes, 1999; UNCTAD, 2004; Whish & Bailey, 2015). Dabbah (2010, p. 39) adds that next to the fact that competition goals differ between countries, the competition law in one country can pursue different goals at the same time: “[...] under a particular competition law regime, different provisions may aim to achieve different goals which may in turn all fall along a spectrum of different policies”. There is therefore a need to be alive to the various objectives of the law when interpreting competition law provisions.

Implementing institutions

A competition law by itself is not useful: it also requires institutions to implement its rules. The most relevant institutions are the competition authority, which is tasked with following-up and regulating anti-competitive behaviour, and the judiciary. The roles of the competition authority and judiciary differ in the administrative and judicial system.

According to UNCTAD (2010, p. 66), “probably the most efficient type of administrative authority is one which is a quasi-autonomous or independent body of the Government, with strong judicial and administrative powers for conducting investigations, applying sanctions, etc., while at the same time providing for the possibility of recourse to a higher judicial body”.

In the administrative system, the competition authority thus conducts investigations and applies sanctions. Powers to investigate are needed to actually establish whether anti-competitive behaviour has taken place, and the power to sanction is necessary in order to penalise anti-competitive behaviour (UNCTAD, 2010). The judiciary is important so that

decisions of the authority can be appealed in the courts. Sometimes, countries have courts specialised on competition issues, since it is a highly technical domain (UNCTAD, 2010).

In judicial systems, the judiciary plays a more central role and is involved earlier in the process. While the competition authority investigates cases, decisions on sanctions are taken by the court, rather than by the competition authority. Like in the administrative system, appeals are also brought in front of the judiciary (Fox, 2012; Kovacic, 2008).

Whether administrative or judicial system, independence from external influences is important for both the authorities and the judiciary in order not to bias findings and judgements. If competition institutions are not independent, political considerations can affect the functioning of the market. Ma (2010) for instance finds that independence leads to more effective competition policy. The independence of competition authorities can be reflected in various ways, such as institutional independence (i.e. that the government cannot directly instruct the competition authority to do or not do something), personal independence (that officials in the authority or the judges taking decisions do not have to fear personal consequences when taking decisions), or budgetary independence (Budzinski, 2012). Voigt (2009) distinguishes between “de jure” and “de facto” independence, where the first refers to independence as reflected in laws, and the second independence as it is actually applied, which he defines as including budgetary and personal independence.

All these elements of a competition regime can be influenced by a regional trade agreement and the included competition provisions. The analytical framework (Chapter 4) will set out the relevant mechanisms, and the following chapters assess how the competition regimes in Morocco and in Cariforum were influenced by the competition provisions.

1.4 Findings and contribution

This study contributes to the literature on the impact of competition provisions in trade agreements on the development of the domestic competition regime of developing countries. Through the use of two case studies of RTAs between the EU and Southern partners, the thesis makes an in-depth analysis of how the competition regime in these two cases changed over time, and how the trade agreements and included competition provisions contributed to this change. This includes an analysis of changes in laws and institutions, but also in enforcement.

The thesis finds that competition provisions in the EU-Morocco Association Agreement and the EU-Cariforum Economic Partnership Agreement have contributed to the development of the competition regimes in Morocco and Cariforum. In both cases, there are important internal factors that drove the development of competition policy; in particular in Cariforum, the regional integration process following the Revised Treaty of Chaguaramas was important. However, the competition provisions have encouraged change in the institutional frameworks of the competition regimes and also contributed to changes in enforcement of the respective regimes.

However, the findings also indicate that reform is not determined by the competition provisions alone. Rather, it is the involvement of domestic stakeholders in the Southern countries as well as the embedding of the RTA in a wider policy framework that influences the impact of the competition regimes on change. In both Morocco and Cariforum, domestic stakeholders used the regional trade agreement to promote and advance domestic reform in the competition regime.

Interestingly, in both cases it was not the government or the leadership that locked-in their reform efforts, but other stakeholders, most importantly the competition authorities

themselves. This finding expands the current theory on the role of RTAs and helps to explain how regional trade agreements can encourage reforms even in situations where the Southern government is less keen on change.

Moreover, the study finds that the influence of the competition provisions increases when there are repeated rounds of trade negotiations between the EU and the partner country. This was the case in Morocco, where reforms agreed upon in the EU-Morocco Association Agreement were (partially) implemented not because of the EU-Morocco Association Agreement, but as a consequence of the Deep and Comprehensive Free Trade Agreement (DCFTA), the follow-up agreement that is currently being negotiated.

These findings are relevant for two reasons. First of all, the number of trade agreements which include competition policy provisions is increasing. This also leads to an increasing interest from academic research on the consequences of competition provisions in RTAs (Bradford & Büthe, 2015). The findings contribute to this research and inform other studies. Moreover, the findings advance the literature on the role of RTAs for domestic reform.

Secondly, the results are interesting for policymakers and involved stakeholders, both in the European Union and the Southern countries. If the aim is to improve the competition regime of a country, the thesis can be useful to see whether and how the trade agreement can help to reach this aim. These lessons, in turn, can be used to help shape future cooperation between countries.

1.5 Structure of the Thesis

The thesis is structured in eight chapters. Chapter 2 sets the scene, and introduces the historical development of regional trade agreements and recent trends in the design of RTAs.

It then presents competition provisions in RTAs, what they cover, why they are included in Regional Trade Agreements, and discusses existing evidence of their effects.

Chapter 3 analyses the external dimension of the competition policy of the European Union. It provides an overview over EU competition policy, before looking into the motivations of the European Union to cooperate internationally on competition issues. Then, the chapter looks into the different organisations and institutions in which the European Union engages internationally, and explains why competition provisions in trade agreements are the most important setting for the European Union to promote cooperation on competition policy with developing countries. Finally, it provides an overview over European Union trade agreements and the included competition provisions.

Chapter 4 lays out the analytical framework of the thesis, which will guide the analysis of the case studies. It starts with providing a literature review on the two main approaches that link regional trade agreements and domestic reform - trade agreements as helpful institutions and trade agreements as coercive instruments. The chapter then assesses the strengths and limitations of these theories, which will be addressed in the analytical framework by drawing on Europeanisation and Diffusion literature, which are also shortly presented. Then, the analytical framework is developed along the three research sub-questions. The outline of the research design, which includes the case selection and the methodology employed, concludes the chapter.

Chapter 5 analyses the case study of the EU-Morocco Association Agreement of 1996. The Chapter starts with a short introduction to Morocco and its political-economic setting, and then analyses the development of the Moroccan competition regime over time. The various mechanisms of influence of competition provisions in trade agreements are examined, as well as other potential influences. The chapter concludes that the competition provisions in the EU-Morocco Association agreement did have an important impact on the development of the

Moroccan competition regime. The impact was strongly mediated by the domestic actions of interested stakeholders, as well as the prospect of the future Deep and Comprehensive Free Trade Agreement that Morocco is currently negotiating with the EU.

The case study of Cariforum is presented in Chapter 6. After a short introduction to Cariforum it sketches the development of the Cariforum competition regime over the years. Since Cariforum is not a regional integration scheme, there are several competition regimes in place, which will be explained in further detail. Consequently, the mechanisms of competition provision influence are analysed and other external factors that might be driving change are accounted for. The case study shows that in Cariforum, much impetus for change came from domestic developments, in particular Caricom integration. The role of competition provisions was therefore supportive, rather than the main driver, and they were particularly useful for the regional institutions existing in Cariforum.

Chapter 7 provides a comparison between the two case studies. The comparison is developed along the three research sub-questions defined above. Since Morocco is part of the EU's European Neighbourhood Policy, the trade agreement is embedded in a whole policy framework, which leads to a situation where competition provisions have a stronger impact than in Cariforum. Yet there are also similarities, as in both cases the governments were not the driving forces for change in the competition regime, but other stakeholders interested in reform that used the competition provisions to advance reform.

Finally, chapter 8 wraps up the main findings and outlines the thesis' contribution to the literature. Moreover, it discusses the strengths and the limitations of the thesis, and proposes a list of future avenues for research to address some of the challenges that lay ahead. The chapter concludes by drawing some lessons from the findings, which can be usefully employed to guide future trade and competition policies.

2 Regional Trade Agreements and Competition Provisions

Regional trade agreements have proliferated over the past decades, and increasingly cover a large variety of topics in addition to traditional border provisions such as tariffs and quotas. This chapter looks into recent developments of regional trade agreements, the included competition provisions and shows examples of how competition provisions in regional trade agreements have impacted on domestic policy developments.

2.1 Developments in Regional Trade Agreements

While the 1970s and 1980s were dominated by multilateral trade negotiations, a significant change can be observed since the 1990s. The number of regional Trade Agreements has increased rapidly and RTAs tend to go far beyond WTO rules. This section will trace the history of regional trade agreements and analyse the reasons behind entering into trade agreements and the recent unprecedented increase in RTAs. Finally, it will have a look at the features of the modern RTAs.

2.1.1 The New Relevance of Regional Trade Agreements

Reciprocal, bilateral agreements on trade are not a recent phenomenon. In the 19th century, several European nations entered into various commercial treaties and paved the way for liberal trade rules. One famous example is the Cobden-Chevalier Treaty, signed by France and the United Kingdom in 1860, which incorporated tariff negotiations in a political agreement. The period of trade liberalisation accompanying these agreements slowly came to an end in the latter part of the 19th century, and despite a new wave of trade agreements in the 1930s, it did not pick up again until after the 2nd World War (Dür & Elsig, 2015; Winham, 2014).

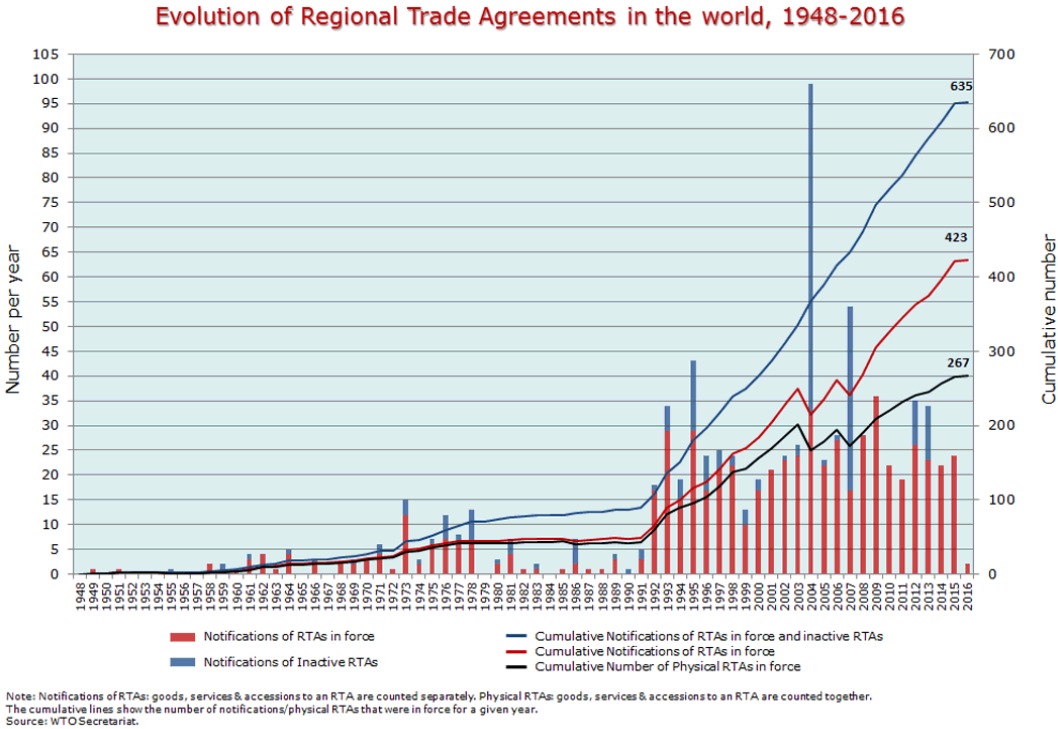
After the World War II, the major development in trade governance was the General Agreement on Tariffs and Trade (GATT). While the establishment of the International Trade Organisation (ITO) - which was supposed to stand alongside the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) - failed due to US Congress opposition, the ITO tariff agreement, the GATT, survived. Its implementation led to a period of multilateral trade liberalisation, side-lining regional trade agreements (Dür & Elsig, 2015; Winham, 2014). While GATT was originally only signed by 23 countries, its membership grew steadily. When it became one of the pillars of the newly established World Trade Organisation in 1994, the GATT had 128 members (Dür & Elsig, 2015; WTO Secretariat, 2017a). As of early 2017, WTO and therefore also GATT membership had grown further to 164 members (WTO Secretariat, 2017b).

While GATT and WTO rules rely on non-discrimination between members, it is still possible to form bilateral or plurilateral trade agreements, if they meet certain requirements. The main principle of the GATT and nowadays the WTO is the principle of most-favoured nation. Countries are obliged to grant any advantage provided to one WTO member to all other WTO members. However, under the Enabling Clause, the Article XXIV GATT as well as Article V GATS, countries have the possibility to establish regional trade agreements that offer better market access only to a certain group of countries. Agreements established under Article XXIV GATT and under Article V GATS have to ensure that they cover substantially all trade or substantially all sectors and do not create new barriers to trade. The Enabling clause is directed at developing country members of the WTO and provides more flexibility with regards to the circumstances under which countries can enter into preferential arrangements (Acharya, 2016; Dür & Elsig, 2015).

Until the 1990s, the possibility to agree reciprocal trade agreements was rarely used. As can be seen in figure 2.1, there was a short spell in 1960s and 1970s where a larger number of

RTAs was signed. Many of these were RTAs between countries in the same geographical regions, such as the European Union (Dür & Elsig, 2015; WTO, 2011).

Table 2.1: Evolution of Regional Trade Agreements in the World (1948-2016)⁷



Source: (WTO Secretariat, 2017c)

This trend changes significantly in the 1990s, when both the number of notified RTAs and the number of cumulative RTAs experienced a significant increase. The trend continues as countries continue to sign up to new regional trade agreements. At the moment, there are a little less than 300 RTAs in force worldwide. In 1990, this number stood at roughly 40 (see table above: number of physical RTAs).

It needs to be noted that depending on the sources used, the number of RTAs can vary significantly. This can also be seen in the table above. For instance, if agreements in goods and services are counted separately, even if they are in the same paper document, the number

⁷ The WTO counts notification for trade in goods and trade in services agreements as separate even if they are part of the same document; this explains the lower number of physical, i.e. actual agreements on paper.

increases to 423 RTA currently in force. The number shoots up to over 600 when also RTAs are counted that are not officially in force⁸. Dür and Elsig (2015) even talk about more than 700 RTAs, but they count for instance various EU enlargement agreements separately, rather than as one EU integration agreement.

Yet while the overall number of RTAs differs, the observation of a clear trend towards an increase in RTAs, in particular since the 1990s, remains constant (Acharya, 2016; Dür & Elsig, 2015; WTO, 2011). Moreover, the composition of these trade agreements is also changing. An increasing number of them are now inter-regional. Also, the share of agreements between developing and developed countries and between developing countries only is increasing (Acharya, 2016).

2.1.2 Reasons for entering into trade agreements

There are several reasons why countries enter into regional trade agreements. While some tend to be more economically in focus, there are also several political arguments for the signing of RTAs.

Traditional economics would suggest that countries benefit most from multilateral trade liberalisation and should therefore pursue this rather than RTAs. Authors argue that regional trade agreements generate more trade diversion than trade creation, and are therefore negative for global economic welfare (Bhagwati, Krishna, & Panagariya, 1999; Bhagwati & Panagariya, 1996).

Yet others claim that in a world where multilateral liberalisation only progresses slowly, regional trade agreements might provide benefits of liberalisation at least on a smaller scale.

While they do not provide access to the world, they do provide access to a bigger market. This

⁸ However, some of the agreements not in force are provisionally applied. For instance the Cariforum-EU Economic Partnership Agreement is an RTA that is not yet in force because it has not been ratified by all member states, but is being provisionally applied and therefore trade is already conducted under the rules of the RTA.

allows companies to exploit economies of scale and might attract more foreign direct investment (Dür & Elsig, 2015; WTO, 2011).

RTAs also provide the opportunity for deeper integration, which might not be possible at a multilateral scale. Baldwin (2011) observes that global trade has moved beyond mere movement of goods to include investment and services. Therefore, he argues, rules on regulation are much more important in modern trade agreements than lowering tariff barriers. However, agreeing on regulations on a multilateral basis is challenging, given different interests, histories and levels of development. Therefore, countries cooperate on bilateral and plurilateral basis in trade agreements as there are fewer actors involved and the rules can be targeted to the needs of the involved countries. In this view, RTAs can also be seen as a stepping stone for further multilateral liberalisation, because cooperation on regional level can lead to multilateral cooperation and global benefits (Lawrence, 1991).

A further reason for signing regional trade agreements is the fact that RTAs help governments to appear credible in the face of international investors or domestic interest groups, as countries lock in policies. Governments face the problem that business and investors might not trust proclaimed policies of governments. Yet if governments commit to these policies in international agreements, the chances that they adhere to these rules are higher, and thus their credibility increased. RTAs may serve better than the WTO as lock-in instruments (Fernández & Portes, 1998; Maggi & Rodríguez-Clare, 1998). Relatedly, some find that Northern countries use RTAs with Southern countries to export own rules and standards and thus increase their zone of influence (Lawrence, 1996; WTO, 2011). This would explain why RTAs include so many not directly trade-related issues.

Furthermore, there is an argument that countries integrate regionally to improve their negotiating position on the international level. According to Ravenhill (2014), this has been a strategy among developing countries, which has for instance been successfully pursued by

Caricom countries. Yet he argues that it was equally important as a reason for the formation of the EC in 1957, as the European states wanted to be in a stronger position when negotiating extensions of GATT with the US. For this argument to be valid, countries need to have the same interests in the global sphere, and is therefore probably more important for integration of countries at similar level of development.

Lastly, there are also important geopolitical and security concerns that can lead to the formation of RTAs. A classic example for this is the formation of the European Union, which was created with a view to "...tie down the Germans, balance the Russians, establish a third force against the Americans, overcome right-wing and Communist extremism at home, or suppress nationalism to realise a distinctive vision of European federalism" (Moravcsik, 1999, p. 6). Countries can also form RTAs to increase military capacity and security cooperation (Dür & Elsig, 2015). Peace and stability are also explanations for the EU's Association Agreements with Mediterranean partners (WTO, 2011).

There are thus several explanations why countries sign trade agreements. However, why did the numbers increase so significantly in the 1990s? Again, several reasons have been advanced by scholars.

A frequently cited explanation is the end of the Cold War in the 1990s (Acharya, 2016; Ravenhill, 2014). After the Soviet Union dissolved, the Eastern countries were able to enter trade agreements with Western countries and this development significantly increased the number of trade agreements that could theoretically be signed. Many countries in the East made use of this new possibility, and often signed trade agreements in particular to underline and strengthen its reform efforts.

Also, the fact that negotiations in the WTO proved difficult might have led to a move to regional trade agreements. When negotiations in Seattle broke down in 1999 it became clear

that it would not be easy to agree on further rounds of multilateral trade liberalisation. Therefore, countries turned to RTAs in the 2000s and tried to make up for lack of progress in the multilateral sphere by signing regional trade agreements (Ravenhill, 2014).

The establishment of the WTO might also have had an impact on the number of RTAs via another mechanism. For a long time, the EU had granted unilateral trade preferences to the African, Caribbean and Pacific (ACP) countries. However, these preferences were not in conformity with WTO rules. The EU needed to apply for a waiver to apply the preferences. Applying for a waiver is a burdensome procedure: three quarters of WTO members have to agree to the granting of a waiver and it is only valid for a few years, before it has to be renewed again. In addition, some WTO members challenged the EU Banana protocol, which gave preferential access for ACP bananas to the EU market, under the WTO dispute settlement regime, and eventually the EU lost the case. As a consequence, the EU argued that the current unilateral preference regime was not a stable relationship and could easily be threatened by a WTO ruling. Therefore, they argued that the unilateral preferences had to be turned into reciprocal regional trade agreements to make them WTO compatible (Ravenhill, 2004; Stevens, 2000; Young & Peterson, 2013). Thus, new WTO requirements and the possibility of enforcing them via the WTO dispute settlement unit also led to an increase in RTAs.

However, some challenge the assumption that WTO compatibility was the main driver that led the EU to ask for reciprocal trade agreements. This is especially the case since the Economic Partnership Agreements that resulted from the debate also included services and investment provisions that were not necessary to make the RTAs WTO compatible. Heron and Siles-Brügge (2012) argue that commercial interests of EU businesses and the parallel move of the United States and Japan towards regional trade agreements motivated much of these RTAs and their content.

This resembles the argument brought forward in particular by Baldwin (1993) as to why we can witness such an increase in RTAs in the 1990s. He argues that the North American Free Trade Area (NAFTA) meant that Canadian, Mexican and US companies enjoyed preferential trading arrangements, but companies from other countries lost out. Likewise, companies from many countries were excluded from the benefits of the European Union. Therefore, they lobbied their governments to either join the RTA or sign equal agreements so as to obtain the same benefits. Manger (2009) finds that competition on foreign direct investment lead to the RTAs of the EU and Japan with Mexico, as a consequence of NAFTA, and Dür (2010) argues that EU and US RTAs in the 1990s and 2000s can chiefly be explained by competition between the two regions.

In sum, several reasons led to the increase in RTAs in the 1990s and 2000s. While two important factors were the new WTO rules and dissatisfaction with the failed progress in the World Trade Organisation, a further important argument were competitive forces between the large exporters. With regional trade agreements, developed countries extended their zone of influence and negotiated regional trade agreements that were far deeper than the WTO commitments.

2.1.3 Changing features of Regional Trade Agreements

Next to the increase in the sheer numbers of RTAs, a further interesting trend is the change in the content of Regional Trade Agreements. While with the exception of regional integration schemes such as the European Union, earlier RTAs covered mostly trade in goods, RTAs now increasingly include a variety of topics, going beyond WTO rules and sometimes even beyond economic issues (Acharya, 2016; Dür & Elsig, 2015; WTO, 2011).

Horn et al. (2009) analyse 28 trade agreements that the United States of America (USA) and the European Union (EU) have signed with other WTO members (14 each). They find that

there are significantly more policy areas covered in RTAs than in the WTO agreements: while they classify 14 traditional policy areas as part of the WTO, they identify 38 additional policy areas that form part of RTAs, but not part of the multilateral agreements. No trade agreement includes all 52 policy areas, but each area is contained within at least one of the 28 agreements. The 38 additional policy areas range from strongly trade related issues such as competition policy to issues like cultural cooperation (see Figure 2.2). With regards to differences between trade agreements of the European Union and US trade agreements, Horn, Mavroidis, & Sapir (2009) find a noteworthy pattern: EU agreements usually include a larger number of new policy areas, but the provisions are not legally enforceable. US agreements tend to cover fewer topics, but contain a higher number of legally enforceable provisions.

Table 2.2 : Policy areas covered in Regional Trade Agreements

	“Traditional” policy areas	New Policy Areas	
Policy Areas	Industrial Products Agricultural Products TRIPS TRIMS GATS TBT SPS Antidumping Countervailing Measures Public Procurement Export Taxes State Trading Enterprises State Aid Customs Administration	Anti-Corruption Competition Policy Environmental Laws IPR Investment Labour Market Regulations Movement of Capital Consumer Protection Data Protection Agriculture Approximation of Legislation Audio Visual Civil Protection Innovation Policies Cultural Cooperation Economic Policy Dialogue Education and Training Energy Financial Assistance	Health Human Rights Illegal Immigration Illicit Drugs Industrial Cooperation Information Society Mining Money Laundering Nuclear Safety Political Dialog Public Administration Regional Cooperation Research and Technology SME Social Matters Statistics Taxation Terrorism Visa and Asylum
Total #	14	38	

Source: own compilation from Horn et al. (2009)

WTO (2011) extends the analysis of Horn, Mavroidis, & Sapir to 96 trade agreements and includes South-South agreements in the sample. Like Horn, Mavroidis, & Sapir, they find that all trade agreements have some additional commitments on traditional policy areas and also include new policy areas. But only few of the provisions are legally enforceable, and these are

“...predominantly in the fields of investment, competition policy, intellectual property rights, and the movement of capital” (p.133).

2.2. Competition provisions in Regional Trade Agreements

Competition provisions are a common feature of many trade agreements and competition is one of the most common new policy area covered in regional trade agreements (WTO, 2011). According to (Bradford & Büthe, 2015), more than 70% of all trade agreements including either a full competition chapter or a substantive article on competition policy, and another 5% of RTAs contain a substantive competition passage, and the tendency to include them is increasing.

2.2.1 Reasons for including competition provisions in trade agreements

There are two main reasons why competition provisions are included in regional trade agreements. According to Dawar and Holmes (2011, p. 350), competition provisions have two aims: “to ensure that the partner’s enforcement (or non-enforcement) of competition policy does not undermine the market access preferences granted in the agreements, and to guarantee that cross-border competition policy issues are dealt with adequately through regulatory cooperation”. In addition, there are also political-economy considerations.

Anti-competitive behaviour in one market can limit or make obsolete the purpose of the trade agreement, which is to provide market access to foreign companies. There are several ways how anti-competitive behaviour can represent a hindrance in making use of the benefits provided by a trade agreement. For instance, a cartel of companies might impose an exclusive dealing agreement on the major distributor, in which case a company from the partner country will not be able to work with these distributors. It will not be able to export the product even if tariffs are at zero. Equally, hindrances can be caused by countries e.g. when they give

exemptions from competition law or apply it strategically for instance to support national champions, and thus limit market access (Dabbah, 2010, p. 583 ff). Competition provisions are therefore included in RTAs to ensure that no anti-competitive behaviour limits the market access benefits of the regional trade agreement and market access is not obstructed by lack of competition in a country (Dawar & Holmes, 2011; Hoekman, 1998; Lawrence, 1996).

There is an academic debate whether competition and trade policy can be used as substitute, as both are directed at increasing competition in the market and contribute towards more efficient resource use. One could argue that a trade policy measure such as trade liberalisation already leads to a more competitive market; so there is no need for competition policy, or the other way around. However, as seen above, trade liberalisation does not necessary guarantee market access in certain uncompetitive situations, and trade policy and competition policy often act as complements, rather than substitutes (Bartók & Miroudot, 2008; Dabbah, 2010).

Next to market access considerations, competition provisions are also included in RTAs to protect the market from cross-border anti-competitive practices. For instance, a merger in country A might not negatively affect the competition in country A, but might limit competition in country B. Especially developing countries might be less equipped to deal with such instances (Hoekman & Holmes, 1999). In such a case, including for instance comity provisions in the trade agreement could ensure that the impact on country B is also taken into account. Competition provisions in trade agreements can be used to regulate this cooperation. With increasing globalisation, cross-border anti-competitive behaviour has become more prevalent and therefore cooperation more relevant (Aydin, 2012; Papadopoulos, 2010).

In this context, there have been discussions about the linkage between competition policy and trade defence policy. Some argue that competition policy provisions in RTAs can act as substitute to trade defence provisions, such as anti-dumping provisions. It is argued that the effective enforcement of competition policy addresses the underlying causes that make trade

defence measures necessary. However, while there are some, only very few regional trade agreements actually replace trade defence measures with competition policy provisions (Hoekman, 1998; Lapr evote, Frisch, & Can, 2015).

In addition to these considerations about market access and cross-border anti-competitive behaviour, there are also political-economy arguments as to why competition provisions are included in trade agreements. One important argument is that agreeing competition policy provisions in a trade agreement supports domestic reform. As will be looked into more detail in Chapter 4, a government that would like to reform its policy but faces domestic opposition could lock-in reform in a RTA to facilitate this. Equally, it could be the Northern country wanting to push for reform, for a variety of reasons. This will be further explored in Chapter 3.2.1, on the EU's reason to include competition provisions in RTAs.

2.2.2 Coverage of competition provisions in RTAs

Competition policy is currently not dealt with in a specific multilateral agreement, but some WTO agreements, e.g. on telecommunication, include competition provisions. While there was a push to have a specific agreement on competition in the WTO framework, this met with resistance from various sides and was therefore dismissed (see section 3.2.2). Yet at the same time competition provisions have been increasingly included in regional trade agreements, whether between developed countries, developing countries or developed countries (Teh, 2009).

As a consequence of this development, the focus of academic interest has shifted from looking at multilateral aspects of competition policy (e.g. Anderson & Holmes, 2002; Hoekman & Holmes, 1999; Hoekman & Mavroidis, 1997, 2003; Matsushita, 2004) to assessing the relevance of competition provisions in regional trade agreements. These provisions have been subject to several analyses in recent years. Cernat (2005) has been the

first author to offer an overview of competition-related provisions in trade agreements, focusing on differences between RTAs where only developed countries are members and RTAs that are signed by developing as well as developed parties. He finds that RTAs that are part of the latter category are much more likely to include national requirements on competition policy as well as cooperation provisions. Similarly, Solano and Sennekamp (2006) have developed an extensive taxonomy of 86 trade agreements, which provides an overview over the specific details of the competition provisions included in each of these agreements. One of their main findings is that EU competition provisions are more focused on substantive provisions, i.e. provisions that regulate anti-competitive behaviour, whereas US RTAs tend to include enforcement cooperation provisions, i.e. provisions that regulate how to cooperate on the enforcement of cross-border cases. The nature of the provisions that are included in the agreement also depends very much on the general depth of the trade agreement. Indeed, in regional integration schemes such as the European Union or Caribbean Community (CARICOM) central decision-making bodies exist that regulate and ensure competition. However, North-South trade agreements tend to have decentralised decision-making bodies or cooperation structures. North-South trade agreements also tend to include provisions on technical assistance, so-called development cooperation provisions (Dawar & Holmes, 2011; WTO, 2011).

One of the most detailed studies is Teh (2009). He maps the various competition provisions included in 74 RTAs, which he selects with a view to represent the variety of RTAs, diverse in geography and development levels. To map the competition provisions, he uses a wider definition of competition issues, based on Anderson & Evenett (2006), who argue that not only competition chapters, but also competition-related provisions in other chapters, e.g. in services chapters, can influence competition and should therefore be classified as competition provisions. He therefore comes up with a long list of competition provisions (see Table 2.3

below). He argues that this wider view of competition provisions is useful for three main reasons: first, competition provisions in other chapters might have more impact on competition than a competition chapter itself; second, some competition provisions, e.g. on state aid, are outside of the competition chapters; and third, horizontal chapters might have a bearing on the competition chapter.

Table 2.3: Competition provisions in RTAs (broad criteria)

<p>Elements</p> <p>1 General objectives of RTA</p> <ul style="list-style-type: none"> • Promote and advance conditions of fair competition between parties • Establish co-operation in the field of competition <p>2 Horizontal principles</p> <ul style="list-style-type: none"> • Transparency • Non-discrimination • Procedural fairness <p>3 Sectoral competition provisions</p> <p>a. Investment</p> <ul style="list-style-type: none"> • Performance requirements • Information requirements <p>b. Services</p> <ul style="list-style-type: none"> • National treatment • Monopolies and exclusive service providers <p>i) Financial services</p> <p>ii) Telecommunications</p> <ul style="list-style-type: none"> • Major suppliers/competitive safeguards • Universal service • Value-added services <p>iii) Maritime transport</p> <p>c. Government procurement</p> <ul style="list-style-type: none"> • Tendering principles (including non-disclosure of confidential information) • Information on intended procurements (including technical specifications) • Limited tendering • Treatment of tenders and awarding of contracts <p>d. Intellectual property</p> <ul style="list-style-type: none"> • Permit use of patents, copyrights etc. to remedy anti-competitive practice • Prevent abuse of IP rights <p>4 Competition policy</p> <p>a. Objectives</p> <ul style="list-style-type: none"> • Fulfil objectives of agreement by promoting fair competition and curbing anti-competitive
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<p>practices</p> <ul style="list-style-type: none"> • Consumer welfare or economic efficiency • Increase co-operation on issues of competition <p>b. Treaties regulating competition</p> <ul style="list-style-type: none"> • Other bilateral/plurilateral agreement • Existing multilateral agreement (e.g. GATT) <p>c. National competition requirements</p> <ul style="list-style-type: none"> • Competition law/measures • Competition authority <p>d. Regulated anti-competitive behaviour</p> <ul style="list-style-type: none"> • Concerted practices, unfair business practices • Abuse of market dominance • Undertakings with special or exclusive rights/state enterprises • Monopoly • State aid • Mergers and acquisitions <p>e. Forms of co-operation</p> <ul style="list-style-type: none"> • Coordination/exchange of information • Notification • Consultation • Regional competition authority <p>f. Technical assistance (technical co-operation)</p> <p>g. Dispute settlement</p> <ul style="list-style-type: none"> • Complete exclusion of competition provisions • Partial exclusion of competition provisions <p>h. Institutional arrangement</p> <p>i. Principles</p> <ul style="list-style-type: none"> • Transparency • Non-discrimination • Procedural fairness
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Source: Teh (2009)

This approach might be useful if one wants to understand the impact of competition provisions in regional trade agreements on *competition* in a market per se. However, the focus of this thesis is on the consequences for domestic reform of the competition *regime*, which is a narrower sense. It therefore is more suitable to limit the assessment to provisions which have a direct bearing on the competition regime (as defined above), rather than on overall competition. However, other provisions, especially overall objectives, should be kept in mind.

The thesis is therefore particularly interested in his findings on section four, competition policy. On objectives of the competition policy chapter, Teh (2009) finds that about 40 percent of the RTAs aim at curtailing anti-competitive practices that would work against the fulfilment of the benefits of the trade agreement, and the primary focus is on private agents, rather than states. Again around 40% of the analysed agreements ask countries to apply laws or measures to regulate anti-competitive agreements, whereas only few require parties to establish a competition authority. Teh (2009) argues that this might be due to the fact that more and more countries already have competition authorities established.

Regarding regulated anti-competitive behaviour, Teh finds that the main regulated areas are concerted practices, dominance, undertakings with special and exclusive rights and state enterprises. State aid and monopolies also appear in several RTAs, whereas rules on mergers are less common. If concerted practices are addressed, RTAs usually “proscribe any agreements, decisions and concerted practices between enterprises which have as their object or result the prevention, restriction or distortion of competition” (Teh, 2009, p. 474), and some go into more detail. Slightly less common are rules on the abuse of a dominant position, but there is wider variety of how this topic is covered in RTAs. Rules on undertakings with special and exclusive rights or state enterprises are mostly, but not exclusively, included in EU and EFTA RTAs. These provisions usually specify that competition rules also apply to these enterprises in so far as they do not obstruct the performance of the task the enterprises are set out to fulfil. For state monopolies, in the case it is included, the provisions usually recognise the right of states to designate or maintain monopolies, as long as non-discrimination is ensured and that the monopoly acts with commercial considerations in mind when purchasing or selling goods and services. Provisions on state aid are again mostly found in EU and EFTA RTAs, and aim to ensure that state aid does not distort competition, and also

to increase transparency on state aid. Lastly, mergers are covered in only 9 of the analysed 74 agreements.

On the cooperation provisions in the RTAs Teh notes that some of the RTA partners also have specific cooperation agreements, and therefore cooperation is not necessarily covered in the RTAs. Common are rules on exchange of information, consultation and notification, but specificity of rules on notification varies. Mutual assistance in enforcement or positive comity⁹ is rare, especially with regards to North-South RTAs, one exception being the EU-South Africa RTA. A number of RTAs create working groups to coordinate cooperation, and some regional integration schemes such as the EU and Caricom provide for regional competition authorities. Provisions on technical cooperation are few, despite almost half of the analysed RTAs being agreements between developed and developing countries. Lastly, while about one third of the RTAs include dispute settlement procedures, competition chapters are fully or partially carved out of those. Teh argues that this may mean that competition chapters are best endeavour only, but also points out that the dispute settlement is still valid for sectoral chapters with competition-related provisions such as in services and investment.

This analysis shows that competition provisions vary widely and can cover a range of issues. And even if they cover one topic, the precise meaning of the provisions can be very different. Competition provisions can range from very centralised models with a regional competition authority and a regional competition law to decentralised models, where neither authority nor law exist on a regional level and harmonization mainly consists of cooperation and law principles that both parties agree to integrate into their national law (Dawar & Holmes, 2011).

⁹ Comity: „Principle applied in the field of international Co-operation on competition policy. By negative comity, every country that is party to a co-operation agreement guarantees to take account of the important interests of the other parties of the agreement when applying its own competition law. By positive comity, a country may ask the other parties of the agreement to take appropriate measures, under their competition law, against anti-competitive behaviour taking place on their territory and affecting important interests of the requesting country“ (European Commission, 2002, p. 9).

Dür et al. (2012) find significant differences in the design of competition provisions: while 75% of the analysed trade agreements specify that member countries should not distort competition, only 2% of the agreements require a joint competition authority. Hence, there is a distinct difference in the depths of the various competition provisions included in trade agreements (Sokol, 2008; Solano & Sennekamp, 2006; WTO, 2011).

EU trade agreements tend to contain stronger competition provisions. They usually include substantive provisions on anti-competitive behaviour that aim for a level of harmonisation of competition rules (Holmes, Papadopoulos, Kayali, & Sydorak, 2005; Solano & Sennekamp, 2006). They also implicitly or explicitly require the partner country to have a competition law and a competition authority. Many of the EU's agreements include technical cooperation provisions, but enforcement cooperation provisions are less common (Solano & Sennekamp, 2006).

2.2.3 The impact of competition provision

Competition provisions are thus included in trade agreements for many different reasons, and the content of the competition chapters varies from RTA to RTA. Do these provisions influence the domestic competition regime? The following section provides an overview over the literature on this topic, and gives examples of the influence of competition provisions.

Despite the increasing relevance of competition provisions in RTAs, little is actually known about the impact that competition provisions have on the domestic competition regimes of developing countries (Dawar & Evenett, 2008). Several studies have developed taxonomies of competition provisions that have been included in trade agreements (Bradford & Büthe, 2015; Cernat, 2005; Silva, 2004; Solano & Sennekamp, 2006; Teh, 2009; WTO, 2011). These studies provide a detailed overview over the design of these competition provisions, e.g. the topics included and the depths of cooperation envisaged. In addition, others have sought to

understand why competition provisions are included in trade agreements to begin with (Bradford & Büthe, 2015; Holmes, Papadopoulos, et al., 2005; Sokol, 2008). While Sokol (2008) argues that competition provisions are included in Latin American agreements mostly for symbolic reasons, Bradford and Büthe (2015) claim that competition provisions are inserted to improve cooperation on competition issues.

Notwithstanding the contribution of these studies, none of them assesses the actual impact of the provisions on the development of the domestic competition regime in developing countries. Indeed, all of these large overview studies are concerned with the development or the design of the competition provisions, but not with their effect on competition regimes at the national level. As Bradford and Büthe (2015, p. 270) note: “We should also want to know more about the consequences of these provisions, including whether they are enforced in practice, and what their effects are on actual competition law and enforcement, as well as on the behaviour of private economic actors”.

Some evidence on the effect of competition provisions in trade agreements comes from more focused studies. For instance, Alvarez et al. (2005) and Marsden and Whelan (2005) find that competition provisions can increase the contact between competition authority officials and thus potentially facilitate cooperation between the Northern and Southern countries; however Rosenberg (2007) argues that the RTA provisions in North-South agreements rarely lead to cooperation on actual anti-competitive cross-border cases, because the Southern agencies do not have the necessary capacity to initiate investigations. In addition, in an analysis on the domestic implementation of competition provisions, Horna and Kayali (2007) identify a set of domestic factors that are thought to influence the implementation of competition provisions: the socio-economic background of a country, the legal framework and the institutional development.

Other studies have analysed the external impact of the European Union's policies on the development of competition regime in accession and neighbouring countries. According to some scholars, EU influence on the competition regimes of accession countries was strong, since the adoption of the EU *acquis* was a requirement to be eligible for EU accession (Gwiazda, 2007; Holmes et al., 2006). Importantly, two studies have analysed the impact of EU competition law on the development of Egyptian competition law and find that the EU has influenced the development of the competition regime, along with domestic influences (Greiss, 2011; Shahein, 2010). In this context, both studies also analysed the competition provisions in the trade agreement. However, none of these studies look at the mechanisms of how exactly competition provisions impact on domestic reform.

North-South trade agreements are likely to disproportionately affect the competition regime of Southern countries. While both parties to the trade agreement need to comply with the provisions, the adjustment that is necessary is often higher for developing countries than for developed ones. This is because the latter tend to have introduced competition policy several decades ago and have put up institutional structures to regulate competition. This is certainly the case for the European Union, which has progressively introduced competition policy from the 1970s onwards and now has one of the most developed competition regimes in the world (Dabbah, 2007). Indeed, a number of developing countries do not even have competition laws when they sign a trade agreement, whilst others might have the laws, but need to develop the rules and regulations as well as the institutional framework to adequately apply the rules.

While increased competition might be economically beneficial in the long run, the adaptation process is costly and requires financial and technical capacities (Alvarez et al., 2005; Dawar & Holmes, 2011). Thus, the need for developing countries to adapt to developed countries' higher competition standards can lead to a situation where the developing country has to make major reform efforts to comply with certain provisions, whereas the developed country's

reform efforts are minor or modest. Moreover, ‘soft’ cooperation through technical assistance provided by the Northern country is likely to have an impact on the development of the domestic competition regime of a third country.

2.2.4 Examples of importance of competition provisions for domestic change

The European Union is the prime example of a trade agreement with a centralised, deep competition regime. DG Competition is the central competition authority, and the European Union competition law deals with all cross-border competition issues, which is enforced by the European Court of Justice. The Member State competition authorities retain a role in implementing the EU rules, but under the common EU framework. The consequences of this competition regime have been quite extensive, and it has clearly shaped the development of the national competition laws of EU member states. The EU competition regime will be described in further detail in Chapter 3.

Another famous example of the role of competition provisions in international agreement for shaping domestic competition policy is the US-Singapore Free Trade Agreement (USSFTA). The United States insisted on the inclusion of competition provisions in the agreement which influenced both the development and the design of the Singaporean competition policy.

Singapore passed its competition act in 2004, and did not have a competition law before (Ong, 2006). Interestingly, in discussions in the WTO working group on competition and trade¹⁰, taking place in the late 1990s, Singapore was one of the countries expressing the opinion “that, at least in the case of small economies characterized by a minimum degree of government intervention in markets, an open trade policy can serve as a substitute for competition policy” (Working Group on the Interaction between Trade and Competition

¹⁰ For more info on the Working Group, see section 3.2.2.

Policy, 1998, p. 12), thus implying that no specific competition policy was needed as long as the country was open to trade and had a small degree of government intervention.

However, this stance changed in the following years. According to (Ong, 2006), Singapore was generally implementing more liberal reforms in the late 1990s and early 2000s. Moreover, in 2001 the Singaporean Prime Minister set up an Economic Review Committee, tasked with reviewing the economic policies of Singapore. The sub-committee looking at Government-linked companies recommended the introduction of a competition policy that would also include these companies. An important influence was however also the regional trade agreement between the United States and Singapore, signed in 2003, the United States – Singapore Free Trade Agreement. In the agreement, chapter 12 deals with “anti-competitive business conduct, designated monopolies, and government enterprises” (United States - Singapore, 2003, p. 133). Each party is requested to adopt or maintain measures to proscribe anti-competitive conduct, and also to establish or maintain a competition authority. It clearly states that “Singapore shall enact general competition legislation by January 2005, and shall not exclude enterprises from that legislation on the basis of their status as government enterprises” (United States - Singapore, 2003, p. 133).

The United States was clearly concerned about Singapore’s government owned enterprises, and this was reflected in the RTA. Its main focus is on government enterprises and designated monopolies, and goes so far as to draw a chart to clarify what exactly constitutes a government enterprise. There is a long paragraph on exchange of information, and short ones on cooperation and on the exclusion of the provisions from the dispute settlement procedure of the FTA.

The USSFTA came into force in 2004, and by 2005, Singapore had a competition law. The law was based on the UK Competition law, given the historical links between Singapore and the United Kingdom, but adapted to Singapore’s circumstances. While it does not apply to the

Government, it does include government-linked companies (Ong, 2006). Today, Singapore has an active competition authority (WTO Secretariat, 2016b).

In this case, competition provisions in a regional trade agreement contributed to the establishment of a competition regime in a country that had previously not seen the particular need for a competition law. USSFTA ensured that the new competition law would also cover government enterprises.

Other examples show that competition provisions also can have consequences for already existing competition regimes. For instance, when the European Union and South Africa signed the Trade and Development Cooperation Agreement (TDCA) in 1999, both the EU and South Africa already had competition regimes. The TDCA included comprehensive competition provisions, including on comity, mergers and technical assistance (Holmes, Papadopoulos, et al., 2005). According to Baccini and Urpelainen (2014a), the South African government had an interest in including competition policy in the regional trade agreement because there was opposition to enforce and reform the competition regime properly from socialist party members and supporters, and successfully locked in domestic change in the agreement. The South African competition authority later also benefited from the cooperation with the European Union, for instance in merger investigations (Dawar & Holmes, 2011).

2.3 Conclusion

In sum, since the 1990s, a steep increase in the number of regional trade agreements can be observed. These RTAs are on average much broader and deeper in scope than WTO agreements and older trade agreements. They cover a number of new policy areas, of which competition policy is one of the most prevalent ones. While competition provisions in RTAs vary significantly, there is some evidence that they were relevant for shaping the competition regime of countries.

How exactly can regional trade agreements and the included competition provisions contribute to change in a domestic competition regime? In order to shed further light on this question, a theoretical framework will be developed in Chapter 4. Before that, as preparation for the theoretical framework, Chapter 3 will first analyse the EU competition policy, including its external dimension.

3 The EU and International Cooperation on Competition Policy

Competition policy has a long tradition of being regulated on supranational level in the European Union. In fact, competition was already included in the European Coal and Steel Treaty, and later became part of the Treaty of Rome. Therefore, it is an important field of EU competence, and the competition regime of the EU is widely regarded as a success (Dabbah, 2003).

In the first decades, EU competition policy was mostly focused on implementation of competition policy on the European and sub-European level. Since the 1990s however, the EU has increasingly sought to cooperate internationally on competition policy (Aydin, 2012; Dabbah, 2003; Papadopoulos, 2010). The inclusion of competition policy in trade agreements is one aspect of this internationalisation, but there are also other fora where the European Union is active.

This chapter provides an overview over the international aspects of the competition policy of the European Union and thus provides the necessary background information to develop the argument in more detail in the following chapters. This chapter is divided in two main parts. The first section looks at the competition policy of the European Union, explaining its origins and evolution. It focuses in particular on the institutional features of the EU's competition regime and its regulatory elements. Second, after establishing the domestic framework of EU competition policy, the chapter proceeds to present the international dimension of EU competition policy. More specifically, it first reviews the literature and highlights the reasons that lead countries to cooperate in the field of competition policy. After this, the chapter moves on to explain how the European Union dealt with competition policy in trade agreements, both on the multilateral and bilateral level. Lastly, an overview is provided of other international fora where the EU is active in competition-related policies.

3.1 Competition regime of the European Union

Competition policy has been a core element in EU policies since the very early beginnings of the European Union. Indeed, competition was already included in the European Coal and Steel Treaty, and later become part of the Treaty of Rome. Since the EU Treaties are regional trade agreements, the system is thus itself built on a regional trade agreement and is recognized as a “successful system of antitrust operating beyond national boundaries” (Dabbah, 2003, p. 86).

3.1.1 Institutional features

The European competition regime works on two levels: each member state has a National Competition Agency (NCA), which is responsible for regulating competition on member state level. As soon as anti-competitive behaviour affects more than one member state and thus has cross-border effect, it falls under the responsibility of the EU level.

On EU level, the institutions responsible for competition are the European Commission, the European Court of Justice and the General Court. The European Commission is the enforcement body or competition agency, with Directorate General (DG) Competition being the responsible entity. DG Competition is charged with several responsibilities: it “investigates, prosecutes and decides whether an infraction has taken place and what will be the penalty” (Graham, 2010, p. 34). DG Competition hence has broad responsibilities and occupies the central position in the competition regime of the EU. This administrative system is a typical trait of EU competition policy and stands in contrast to the US competition system, a judicial system, where decisions are taken in courts rather than by the administration (Fox, 2012).

Despite the fact that independence of a competition authority is seen as an essential aspect of a competition regime, the independence of DG Competition has sometimes been called into

question. Since decisions on competition issues are taken by the whole European Commission, and not only by the Competition Commissioner, it is sometimes argued that EU member states could try to influence decisions via their national commissioner. Indeed, observers have claimed that this possibility can explain, for instance, more generous merger investigations in larger European states than in smaller ones (Budzinski, 2012). While these allegations have led to repeated proposals to establish an independent European Competition Authority, which would no longer be part of the European Commission, these proposals have not yet been taken further (Budzinski, 2012; Graham, 2010; Wilks, 2010).

Nevertheless, the extensive rights of DG Competition are controlled by the European courts. If undertakings object to decisions of the European Commission, they can resort to the General Court and the European Court of Justice. The General Court is the first instance for competition cases. In 2008, roughly one fourth of its caseload was on competition and state aid. The General Court's decisions can be appealed and then transferred to the European Court of Justice (Graham, 2010).

In addition to the supranational system, each member state has a national competition regime. Some of them existed before the country joined the EU; others have been developed only later. The competition laws of the NCAs differ, but they have converged towards the EU laws over the years (van Waarden & Drahos, 2002). According to van Waarden and Drahos (2002), convergence was chiefly caused by court decisions interpreting treaty provisions as well as by communities of competition experts who shared ideas and information.

Whereas the national competition authorities take up investigations that only affect the national market, cross border anti-competitive behaviour is investigated by DG Competition. Since 2004, the NCAs are also allowed to deal with cross-border anti-competitive behaviour on the request of DG Competition in order to ease the workload of the DG. In these cases, the NCAs apply EU competition laws, rather than the national laws. Cooperation between DG

Competition and the National Competition Agencies is organised in the European Competition Network. The network was established in 2004 and is a forum for cooperation, discussion and exchange of information to ensure coherence between the various regimes (Graham, 2010; Papadopoulos, 2010)

3.1.2 Regulated behaviour

Competition laws are usually concerned with three types of behaviour that could be harmful for competition: agreements, dominance and mergers. Additionally, a number of countries restrict public restrictions to competition (Whish & Bailey, 2015, p. 3). In the European Union, the competition rules are contained in articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU). EU competition policy covers five areas of regulated behaviour: 1) horizontal and vertical agreements and concerted practice, 2) abuse of dominance, 3) mergers, 4) state aid and 5) liberalisation of services (Wilks, 2010). Regulations have been adopted either by the European Council or the European Commission to further operationalise competition policy. Notices and Commission guidelines help to clarify and explain EU competition policy. Furthermore, other articles of the TFEU can be relevant for competition policy decisions, e.g. to define goals (European Commission, 2013a).

The rules on concerted practice and horizontal and vertical agreements between enterprises (or undertakings, which is the EU term) are found in Article 101 of the Treaty on the Functioning of the European Union. Article 101 restricts ‘all agreements between undertakings, decisions of associations of undertakings and concerted practices which may affect trade between Member States’ and which aim at restricting competition. This includes horizontal and vertical agreements. Usually, horizontal agreements such as cartels are seen as the agreements most harmful for competition (Whish & Bailey, 2015). However, in the European Union vertical agreements are also very much in the focus of competition policy.

This is due to the fact that market integration is one important goal of EU competition policy, and vertical agreements in one EU member state might make it more difficult for competitors from other EU member states to enter the market (Graham, 2010; Papadopoulos, 2010).

The abuse of a dominant position of an undertaking is prohibited in Article 102 TFEU, which aims at reducing unfair behaviour of monopolists and oligopolists. In the European Union, a dominant position is usually seen to potentially exist when an enterprise controls 40% or more of the market share (Wilks, 2010). The way the EU handles abuse of dominance issues is different from other prominent competition systems such as the US competition regime. Indeed, the European Commission and the European Courts tend to be strict with dominant firms and put special expectations on companies with a high market share, even if an abuse of the dominant position is not verified; i.e. control takes place *ex ante* (Papadopoulos, 2010).

Mergers and acquisitions were first only dealt with under Article 102 TFEU, but in 1989 a Merger Regulation was adopted, which was later replaced by the new Merger Regulation 139/2004 in 2004. With this new regulation, enterprises that want to merge and whose annual turnover surpasses a certain threshold have to notify their plans to the EU Commission. In most cases the European Commission does not prohibit a merger, but poses conditions at the enterprises before allowing a merger (Wilks, 2010).

Article 106 TFEU deals with public undertakings and undertakings that have been granted special or exclusive rights. These are also subject to the competition rules, “in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them”. This article is used as basis for the liberalization of service markets in the European Union, such as telecommunication (Wilks, 2010).

Articles 107–109 TFEU cover state aid. State aid is defined as support to individual or selective groups of enterprises provided by public authorities, which may distort competition

and may affect trade between EU member states (European Commission, 2013b). Exceptions such as aid to economically disadvantaged regions can be granted; additionally, some block exemptions have been stipulated, e.g. for environmental measures, as well as research and innovation. Since state aid has to be notified to the Commission, the state aid provisions in EU law help to increase transparency in this field (Wilks, 2010).

Whereas the first three elements – rules on anti-competitive agreements, abuse of dominance and mergers - are classical competition policy elements, the regulations on state aid and on undertakings with special rights are specific to the EU competition regime. This has its origins in the fact that the European Union is a supranational entity based on a regional trade agreement. According to Papadopoulos (2010), the inclusion of the latter two issues was necessary to achieve true market integration and prevent national governments from supporting their own national enterprises.

The goals of competition policy are relevant for the interpretation of the above rules. Market integration has always been one of the goals of EU competition policy and decisions of the anti-competitive behaviour have been taken with this objective in mind (Graham, 2010; Papadopoulos, 2010). Yet it is not the only goal of EU competition policy. Despite the fact that the EU treaties “...do not define the operational objectives of competition law” (Parret, 2010, p. 343) in the paragraphs related to competition itself, objectives for competition policy are defined by the general goals included in the treaty. However, since the objectives of competition law are not explicitly stated in the treaties, there are differing views on the objective and also on the hierarchical order between them (e.g. Lianos, 2013; Motta, 2004).

Next to market integration, other objectives identified for EU competition policy are economic freedom, economic efficiency, consumer welfare and social and political objectives such as the promotion of Small and Medium Enterprises (SMEs) (Lianos, 2013; Parret, 2010). The objective of economic freedom stems from the ordoliberal roots of EU competition

policy. Ordoliberalism is an economic and legal approach that became popular in Germany in post-World War II, and which regards economic freedom as part of political freedom. As such, it seeks to ensure that people are both free from public, but also private power. Thus, competition is seen as an important element to ensure that no enterprise can concentrate too much economic power. In practice, ordoliberalism leads to a competition policy where investigators look at the level of competition in a market to analyse whether competition might be endangered, without necessarily taking into account the economic effects of this infringement on competition. The central idea of ordoliberalism is to enable (potential) competitors to compete in equal terms (Graham, 2010; Greiss, 2011; Papadopoulos, 2010).

In contrast, the Chicago School argues that the focus of competition policy should not be to “pursue structure for its own sake” (Hovenkamp, 2013, p. 391). According to the Chicago School, economic efficiency and consumer welfare are more important objectives of competition policy than economic freedom and competition per se. Thus, the focus is on economic outcome. According to this line of thought, reduced competition might be beneficial if the economic outcomes are positive and to the advantage of the consumer (Steinke, 2011).

Economic efficiency and consumer welfare are also important EU competition goals, and they tend to be associated in EU documents (Parret, 2010). However, some analysts point out that economic efficiency does not necessarily lead to consumer welfare, because businesses are not always required to pass on the gained efficiency to the consumers (Steinke, 2011). Thus, while competition policy might increase economic efficiency, this does not necessarily benefit consumers.

Lastly, social and political objectives are also part of EU competition policy. For instance, SME promotion is mentioned as an EU competition policy objective. While there is no strong proof that SMEs are indeed better suited for economic welfare objectives than large

enterprises, they are deemed thus worthy of protection by the EC and are therefore treated differently than larger enterprises (Motta, 2004; Parret, 2010). Motta (2004) also argues that market integration is a political objective, as deeper integration is based more on political than economic reasoning.

The hierarchy of relevance of these various goals is subject to change. Since the late 1990 and early 2000s, the European Commission has turned away from ordoliberalism and put a stronger emphasis on economic efficiency and consumer welfare. This trend also included a stronger reliance on economic, rather than only legal analysis. For this reason, the practice of the European Union has come closer to the US way of analysing competition. This evolution is generally seen as an “Americanisation” of EU competition policy (Graham, 2010; Greiss, 2011; Papadopoulos, 2010; Steinke, 2011). Nevertheless, the other objectives continue to be taken into account in the current decisions of EU competition law, and while they might have lost some relevance, they are still an important part of EU competition policy (Parret, 2010). This can still be seen in the area of abuse of dominance, where the EU has a rather interventionist approach (Fox, 2014).

In sum, it can be observed that the EU competition policy features several distinctive elements. It is characterised by a plurality of goals, among which are political goals such as market integration, as well as goals directed to promote consumer welfare and economic efficiency. The broad coverage of EU competition policy, which also covers the behaviour of states and state aid is a distinctive aspect, since commonly national competition policy only refers to anti-competitive agreements, abuse of dominance, and mergers (Whish & Bailey, 2015). Furthermore, the prominent role of the Commission as competition authority, and thus the focus on an administrative system rather than a judicial system, distinguishes the competition regime of the European Union from other established systems such as the regimes in the United States (Fox, 2012).

3.2 External dimension of EU competition policy

In the beginnings of the European Union, the focus of EU competition policy was on the internal development of the policies. In recent decades, with increasing global trade integration, the EU has put increasing emphasis on the international dimension of competition policy (Aydin, 2012; Dabbah, 2003).

The EU advanced international cooperation on competition policy in several fora. Although some cooperation takes place in settings which specifically focus on competition policy, quite often competition policy is also dealt with in the framework of cooperation on trade policy. This overlap occurs for two reasons: firstly, trade policy influences levels of competition in a market, by allowing more competitors in a market in the case of trade liberalisation, or less competitors in the case of a protective trade policy; and secondly, market access possibilities in turn depend on the level of competition in a market, which is influenced by competition policy. Competition policy has therefore been topic in multilateral and bilateral trade negotiations that the EU was involved in.

Next to competition provisions in trade agreements, competition cooperation is also organised in specifically dedicated competition agreements, which regulate cooperation between countries on competition matters. These agreements are often formal Agency-to-Agency agreements, i.e. agreements between competition agencies of two countries or regions. In addition, cooperation on competition policy also takes place voluntarily in three other settings: in the United Nations Conference on Trade and Development, which focuses on support for developing countries in competition matters; in the Organisation for Economic Cooperation and Development (OECD), which works on competition policy issues for its members, but has started to engage with a wider audience as well; and in the International Network on Competition (ICN), a forum for competition practitioners to exchange experiences and ideas.

The subsequent paragraphs first develop the reasons for international cooperation for the EU, before looking at competition policy cooperation in trade agreements. Subsequently, it will look at dedicated cooperation agreements and cooperation on competition policy in international organisations such as UNCTAD.

3.2.1 Reasons for international cooperation on competition policy

Increasing globalisation and trade integration has been one of the main drivers for increased internationalisation of competition policy in the European Union. Since European companies are increasingly active in many external markets, the European Union wants to ensure market access, equal treatment and easy procedures for European companies (Aydin, 2012; Blauburger & Krämer, 2010; Papadopoulos, 2010).

Since the 1990s, the European Union has negotiated more and more bilateral trade agreements, and is wary to ensure that market access granted in trade agreements is not rendered useless by uncompetitive practices by states and private actors. Indeed, it is often the case that actions by private companies and/or states make it difficult for foreign companies to establish themselves and operate in the partner's market, thereby undermining the spirit of the agreement (Damro, 2006; Hoekman, 1998). To avoid these uncompetitive practices, the European Union is keen to cooperate internationally on competition policy, and to promote the establishment of competition rules in other countries (Aydin, 2012; Woolcock, n.d.). As the European Commission (2006, p. 8) states in its strategy for external trade: "The absence of competition and state aid rules in third countries limits market access as it raises new barriers to substitute for tariffs or traditional non-tariff barriers. The EU has a strategic interest in developing international rules and cooperation on competition policies to ensure European firms do not suffer in third countries from unreasonable subsidisation of local companies or anti-competitive practices".

Also, cooperation on competition is important because anti-competitive practices originating in other countries can have negative effects on domestic markets. As the European Union liberalises its borders, more and more products and services can enter the internal market. Yet these might be subject to anticompetitive behaviour – e.g. the formation of a cartel – which takes place outside of EUs borders, but which still has an impact on the EU's domestic market. Indeed, the European Union has to increasingly investigate cross-border cases (Aydin, 2012; Papadopoulos, 2010). International cooperation can facilitate these investigations significantly.

Moreover, the higher the number of countries that have a competition policy, the more likely it will be that more countries apply their law extraterritorially. In the early 1980s, only around 20 countries had competition laws (Gal, 2003, p. 8); in 2015, the number of countries with competition laws stands at over 130 (Whish & Bailey, 2015). This can cause potential conflict. The US has applied its rules extraterritorially for a long time; rather than relying on the territoriality principle, it applies the “effects doctrine”, i.e. the effect on the domestic market is relevant, no matter where it originates. The European Union has also started to follow this example in the last decades and has incrementally moved towards the effects doctrine. The same is true for other countries such as Korea (Aydin, 2012; Behrens, 2016; Papadopoulos, 2010, p. 668). The extraterritorial application of competition law can lead to potential conflicts and could be avoided with international cooperation.

Finally, a further reason for increased cooperation is the fact that – mostly larger - countries often have an interest in exporting their own competition rules to other countries. With regards to the EU and the US, the WTO (2011, p. 144) suggests that “... the two trading powers are interested in exporting different aspects of their competition regulations to their PTA partners”. Exporting own competition rules can follow several reasons. For one, there are practical reasons. If state aid and competition rules of other countries are based on EU

rules, European companies operating in these markets only have to be aware of one system of rules, rather than many. Secondly, if more countries follow competition rules based on the European system, this might strengthen the EU position in the case that global competition rules are debated (Demedts, 2015). Furthermore, normative reasons can also spur internationalisation of own rules. For instance, Papadopoulos (2010) argues that the EU wanted to export its competition model because it deems it to be a successful model which should be spread. This ties in with observations by Orbie and Faber (2008) who find that the European Commission promoted the inclusion of ‘Singapore issues’¹¹ in Economic Partnership Agreements, because it normatively believed that reform in these areas is beneficial for economic development¹².

Thus, international cooperation on competition policy is relevant to ensure that anti-competitive behaviour does not make market access arrangements useless, to facilitate cooperation on cross-border anti-competitive cases, to deal with extra-territorial application of competition laws and to promote own competition rules. The European Union has been very active in promoting international cooperation on competition policy. It has been the main driver for discussion on competition policy on the WTO level, and has also put much effort into including competition provisions in regional trade agreements with third countries, as will be shown in the next section.

3.2.2 Competition policy in free trade agreements

One of the core aims of trade agreements is to provide improved market access to the parties to the trade agreement. The logic is simple: Tariffs are lowered, quotas are increased and

Singapore issues are the four topics which were included in WTO discussion on the WTO ministerial in Singapore in 1996: competition policy, investment policy, trade facilitation and government procurement (Woolcock, 2003)

¹² Next to these more technical reasons, internal power games also played a role in the internationalisation of EU competition policy. Aydin (2012) argues that the EU Commission and DG COMP also follow bureaucratic self-interest and try to strengthen their position towards member states by being the responsible actor for internationalisation.

regulations are simplified so that more products can be traded easier across the border. However, this newly provided access can in practice be limited by private and public anti-competitive conduct in the market. To guarantee market access it is also necessary to ensure a competitive market in both parties to the trade agreement. Therefore, trade negotiations have also included debates on the inclusion of competition policy in trade agreements since the 1940s. The following sections will first present competition policy as it is debated at a multilateral level, and then move on to discuss competition policy at the EU bilateral level.

Multilateral trade negotiations

In the 1940s, when the International Monetary Fund (IMF) and the World Bank were established, it was also proposed to set up an international organisation coordinating trade (Dawar & Holmes, 2012; Papadopoulos, 2010). The draft charter for this International Trade Organisation (ITO), the Havana Charter from 1948, contained regulations on anti-competitive business practices. ITO members would have been obliged to adopt appropriate legislation and cooperate with the ITO in this issue. However, the ITO never came into being, mainly due to US Congress resistance. In the end, only the General Agreement on Tariffs and Trade was adopted, without the competition provisions¹³ (Papadopoulos, 2010).

It took half a century until the topic of competition policy was again brought on the multilateral trade agenda. In 1996, at the WTO Ministerial Meeting in Singapore, it was decided to establish the Working Group on the Interaction between Trade and Competition Policy (WGTCPC). The working group studied multilateral aspects of competition policy, and the work resulted in a mandate to negotiate competition as part of the Doha Round of multilateral trade negotiations in 2001. The EU was a key driver in including competition in

¹³ This was not the first attempt to regulate competition provisions on international level. Already in 1925 a study for the League of Nations proposed a multilateral code for competition. Yet this was rejected due to the view that national competition attitudes were too diverse, and "...that an international regime would heavily infringe upon state sovereignty" (Papadopoulos, 2010, p. 25).

the Doha Round. They proposed a set of binding rules which would oblige each WTO member state to establish a competition authority and introduce a law to prohibit cartels (Botta, 2013). The European Union was interested in improving market access for European companies, harmonize competition rules internationally and transfer the successful regional EU competition policy to an international level. This was also driven by the EU experience that a common competition policy was important for market integration (Woolcock, 2003). The efforts of the European Union were influenced and supported by a group of competition law academics who were strongly favour of an international law (Fox, 2009; Papadopoulos, 2010). Moreover, the WTO agreements already contain several elements that are closely related to competition policy. For instance, article 40 of the WTO agreement on trade-related intellectual property (TRIPS) allows countries to enact laws regulating restrictive practices, there are rules on subsidies, and article VIII of the General Agreement on Trade in Services (GATS) deals with monopoly suppliers (Heydon, 2002; Matsushita, 2004; Woolcock, n.d.).

However, competition policy was taken off the negotiation agenda after the WTO ministerial meeting in Cancun in 2003. The proposal for a WTO agreement on competition was opposed by the United States, which did not want external regulations on its own competition policy, fearing that this would interfere with the US own application of antitrust policy. Moreover, the US argued that it was premature to have an international agreement on competition when many WTO members states did not even have an own competition law in place. In the same vein, some developing countries like India felt that international competition rules could potentially interfere with their industrial policy and development objectives, and that the implementation of competition rules would put high financial and technical burdens on some developing countries (Dawar & Holmes, 2012; Fox, 2009; Papadopoulos, 2010). Lastly, the EU and the US seemed reluctant to prohibit the existence of export cartels under the proposed competition agreement, even though this was an important issue for many developing

countries if a multilateral competition framework was to be established (Dawar & Holmes, 2012; Papadopoulos, 2010). As a result, a multilateral agreement on competition policy is currently not being pursued.

Competition provisions in regional trade agreements

The European Union is involved in several regional trade agreements that include aspects of competition policy. The most important of all is the Treaty of the Functioning of the European Union itself. As developed above in Section 3.1, the treaty, which is the basis for the European Union also includes competition provisions and is as such the basis for the competition regime of the European Union. Furthermore, some of the Association Agreements with former accession candidates and now members of the European Union were also regional trade agreements. They included competition provisions and required the acceding countries to adopt EU competition rules as a requirement to become members of the European Union. However, after the accession of the candidates to the European Union and their becoming a party to the EU Treaties, these Association Agreements became void.

Still, at the beginning of 2016, the EU had 36 RTAs in place with 60 countries (see Table 3.1 below).¹⁴ In most cases, these trade agreements are deep integration agreements that include provisions on a wider set of policies, including competition policy. In addition to the concluded regional trade agreements, negotiations are ongoing with several other countries and regions. Among these are the United States of America, China, as well as the Southern African Development Community and Mercosur (European Commission, 2016b).

Out of the 36 EU trade agreements with third countries that are currently in force, seven do not include competition provisions. Of these, two are Interim Economic Partnership Agreements. One is Interim EPA with Eastern and Southern Africa, and the other the Interim

¹⁴ The following section, if not otherwise mentioned, is based on the original trade agreements as found on the EU website or the WTO RTA database.

EPA with Cameroon; both contain so called “rendezvous clauses” on competition policy. The Rendezvous clauses state that competition policy will be included in the negotiations that will take place to turn the interim agreement into a permanent one. Thus, these two EU trade agreements could possibly also include competition provisions sometime in the future. The other trade agreements that include no competition provisions, as also no rendezvous clauses, are the free trade agreements with Syria (1977), Andorra (1991), San Marino (1995), the Interim EPA with Papua New Guinea and Fiji (2007), and the Trade and Cooperation Agreement with Iraq (2012).

All the 29 remaining trade agreements include competition provisions; which corresponds to 80% of EU trade agreements. These RTAs can be grouped into four major categories: 1) trade agreements with other European developed countries or regions (Norway, Iceland, Switzerland, Faroe Islands); 2) trade agreements with potential accession candidates (Macedonia, Bosnia Herzegovina, Albania, Serbia, Montenegro, Turkey); 3) trade agreements with Neighbourhood countries (Tunisia, Israel, Morocco, Jordan, Palestine, Egypt, Lebanon, Algeria, Ukraine, Moldova and Georgia); and 4) trade agreements with other developing countries (Mexico, Chile, South Africa, Cariforum, South Korea, Central America, Colombia & Peru and Ecuador).

Table 3.1: EU trade agreements with third parties

No	Signed	Partner country/ies	Name of the trade agreement	Competition provisions
Group 1: Quasi-member countries				
1	1972	Iceland	FTA	Short article, substantive article incl. state aid, no enforcement cooperation provisions
2	1972	Switzerland	FTA	See Iceland
3	1973	Norway	FTA	See Iceland
4	1995	Faroe Islands	FTA	See Iceland
5	1991	Andorra	Customs Union	No
6	1995	San Marino	Customs Union	No

Accession candidates				
7	1995	Turkey	Customs Union	Substantive provisions incl. state aid, as well as cooperation provisions
8	2001	Macedonia	Stabilisation and Association Agreement	Adoption of <i>acquis communautaire</i> ,
9	2008	Bosnia Herzegovina	Interim Agreement on Trade and Trade-Related Matters	See Macedonia
10	2009	Albania	Stabilisation and Association Agreement	See Macedonia
11	2010	Serbia	Interim Agreement on trade and trade-related matters	See Macedonia
12	2010	Montenegro	Stabilisation and Association Agreement	See Macedonia
ENP countries				
13	1995	Tunisia	Association Agreement	Substantive provisions incl. state aid, reference to EU laws as basis for analysis, no cooperation provisions but provision for adoption of implementation rules after 5 years
14	1995	Israel	Association Agreement	Substantive provisions incl. state aid, no cooperation provisions, provision for adoption of implementation rules after 3 years
15	1996	Morocco	Association Agreement	See Tunisia
16	1997	Jordan	Association Agreement	See Tunisia
17	1997	Palestine	Interim Association Agreement	See Tunisia
18	2001	Egypt	Association Agreement	Substantive provisions including state aid, provision for adoption of implementation after 5 years, reference to drafting process of Egyptian law with reference to EU law
19	2002	Lebanon	Interim Agreement	Short article, Lebanese competition law needs to enter into force
20	2002	Algeria	Association Agreement	Substantive provisions w/o state aid rules, cooperation provisions
21	2014	Georgia	Association Agreement	Substantive provisions incl. state aid, no cooperation provisions
22	2014	Moldova	Association Agreement	Substantive provisions incl. state aid, cooperation provisions, EU rules basis for the assessment of state aid
23	2014	Ukraine	Association Agreement	Substantive provision including state aid, enforcement cooperation, adoption of EU rules

Rest of World				
24	1977	Syria	Co-operation Agreement	None
25	1997	Mexico	Economic Partnership, Political Coordination and Cooperation Agreement	Short article, no state aid, no implementation rules (later added by EC-Mexico Joint Council)
26	1999	South Africa	Trade, Development and Co-operation Agreement	Comprehensive article incl. public aid and comity, implementation rules
27	2002	Chile	Association Agreement	Substantive article w/o state aid rules, cooperation provisions
28	2007	Papua New Guinea & Fiji	Interim Economic Partnership Agreement	No
29	2008	Cariforum	Economic Partnership Agreement	Substantive rules w/o state aid, including cooperation provisions
30	2009	ESA-4 (Madagascar, Mauritius, Seychelles, Zimbabwe)	Interim Economic Partnership Agreement	No (rendezvous clause)
31	2009	Cameroon	Interim Economic Partnership Agreement	No (rendezvous clause)
32	2010	South Korea	New Generation Free Trade Agreement	Substantive rules, cooperation rules, exclusion of dispute settlement
33	2012	Iraq	Partnership and Cooperation Agreement	None
34	2012	Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama)	Association Agreement	Comprehensive agreement, no state aid, implementation rules, exclusion from dispute settlement
35	2012	Columbia & Peru	Trade Agreement	See Central America
36	2015	Ecuador	Trade Agreement	See Colombia, Peru

Source: own elaboration based on (European Commission, 2014a, 2015a)

Norway, Switzerland and Iceland form part of the European Free Trade Area (EFTA), which has identical competition rules as the European Union. Norway and Iceland form part at the same time of the European Economic Area, which regulates the application of cross-border

competition issues between the EU and the participating EFTA countries (Papadopoulos, 2010). Switzerland has a specific competition policy agreement with the EU. Relations with the Faroe Islands are regulated via a special agreement with the EU and Denmark (European Commission, 2015a).

The second group of countries has agreed to adopt the EU competition policy rules, as this requirement forms part of the EU's membership conditionality. Thus, the EU's partner countries in these trade agreements accept EU competition rules with all their elements, including regulations on agreements, abuse of dominance and state aid. Moreover, they also adopt all the resulting legislation and implementation rules. This is the same procedure that the EU employed with countries that were accession candidates in the past and are now full members of the European club, as is the case of Eastern European countries like Poland, Hungary or Slovakia.

The third group is made up by countries in the EU's neighbourhood. These countries do not have an accession perspective, but are part of the EU's European Neighbourhood Policy (ENP). The ENP is aimed at countries with no membership perspective and includes the EU's Mediterranean and Eastern partners¹⁵ (Cardwell, 2011). The ENP was introduced in 2004 after the EU's Eastern enlargement in order to secure the outer borders of the European Union by cooperating closely with the neighbouring countries on economic as well as political matters. The policy is modelled on the enlargement process, with the clear intention from the European side to copy the political and economic reforms in Eastern Europe driven by the enlargement process. Therefore, the EU promotes the approximation of policies of neighbourhood countries to EU policies (Jones, 2011; Kelley, 2006; Sasse, 2008). Interestingly, most of these trade agreements include competition provisions that stipulate that EU competition law is used to analyse whether cross-border conduct was anti-competitive and

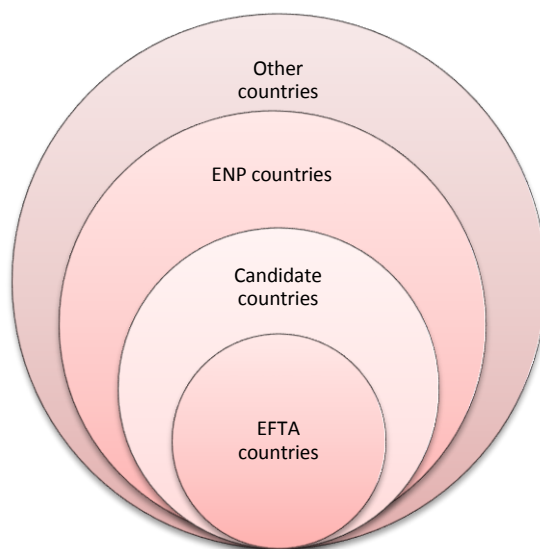
¹⁵ The ENP partner countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine.

infringed on free trade¹⁶. Thus, it is evident that the EU has an interest in exporting its competition policy model to surrounding regions, with the aim of harmonising their competition policies with that of its own internal market. Most of these agreements do not contain cooperation provisions, even though it is agreed that after a certain time frame – of usually five years – cooperation provisions are to be established.

The fourth category is formed by developing countries that are neither potential EU candidate countries, nor part of the ENP. None of the agreements signed with these countries mentions EU competition rules as a basis for the decisions on cross-border cases. In contrast to the agreements with the ENP group, all of these agreements include provisions on cooperation, and all but the South-Korean trade agreement include provisions on technical assistance in competition policy. Notably, while some members of this group are single countries that sign bilateral agreements with the EU, increasingly the EU is signing RTAs with entire regions. Although by the time of writing Cariforum is the only region of African, Caribbean and Pacific (ACP) states currently included in this category, more ACP regions are likely to join this group if more interim EPAs are signed and the rendezvous clauses are turned into full competition chapters in the trade agreements. Other groups of countries that the European Union has signed trade agreements with Colombia, Peru and Ecuador, which are members of the regional economic community “Comunidad Andina”, and with a group of Central American countries.

¹⁶ In the case of Moldova, Ukraine and Georgia it was agreed on previous agreements that the countries should adopt the EU acquis. Therefore, the competition provisions in the current trade agreements, which were all signed in 2014 or thereafter, do not name EU competition laws as the basis for decision-making in antitrust issues; it is however reiterated for state aid.

Figure 3.1: Required proximity to the EU competition rules



Source: own elaboration

The content of competition provisions in regional EU trade agreements thus fits the theory of concentric circles of EU external governance (Lavenex, 2011). The closer the countries are to the EU – i.e. countries that fall within the smaller circles –, the stronger the requirements enshrined in regional trade agreements to harmonise own competition rules with the EU’s own competition regime. As it can be seen in Figure 2.1, the closest circle encompasses European quasi-members (group 1), followed by a second and somewhat larger circle formed by candidate countries (group 2). A third circle includes the countries that form part of the European Neighbourhood Policy (group 3), which is in turn followed by a last circle encompassing the remaining countries of group 4. Here, cooperation is less part of an overarching political framework but follows specific goals. With regards to competition policy, the focus seems to be less on harmonising competition policy with the EU competition regime, but more on ensuring that a competition regime is present in these countries.

3.2.3 Other fora for competition policy cooperation

Although trade agreements have been an important space for international cooperation on competition for the EU, they are not the only settings where cooperation is coordinated. Designated competition policies are another legal framework for cooperation, and voluntary coordination also takes place in the International Competition Network, UNCTAD and the OECD.

Designated competition policy agreements

On a bilateral level, countries and regions regulate competition cooperation sometimes in so-called designated competition policy agreements. These Agency-to-Agency Agreements are cooperation agreements between competition authorities of two countries or regions, which specify the way to cooperate on enforcement, e.g. on notification, information exchange and comity procedures. These agreements are more common between Northern countries (Alvarez et al., 2005), as they are usually used to facilitate the cooperation between experienced competition agencies. The European Union has ten designated cooperation agreements between DG Competition and the competition authorities of other countries; these countries are Bosnia and Herzegovina, Brazil, Canada, China, India, Japan, Republic of South Korea, the Russian Federation, Switzerland and the United States of America (European Commission, 2015a). They are all either developed countries or emerging economies; there is no similar cooperation with lower middle income or least developed countries. According to an interviewee, the European Union is more likely to sign Agency-to-Agency Agreements with countries that are important trading partners of the European Union, as high trade volumes increase the likelihood of anti-competitive conduct affecting the EU.

International Competition Network

The International Competition Network was launched in 2001, and is an informal network organisation for competition agencies. Its membership has increased rapidly, and as of February 2016, it had 134 competition agency members from 121 jurisdiction (International Competition Network, n.d.-a). The network deals exclusively with competition law and competition policy, and does not consider the link with trade policy. Consequently, members are only competition agencies and no trade officials. In addition, the network is open to non-governmental actors, such as academics, consumer and business representatives as well as competition lawyers and economists. While these are not members, they participate in working groups and conferences¹⁷ (Fox, Fingleton, & Mitchell, 2013).

The ICN has no permanent secretariat, and work is organised in working groups, which mainly cooperate online¹⁸ (International Competition Network (ICN), 2009; Papadopoulos, 2010). Every year, members meet in the annual conference which is organised by one of the network member's competition agencies. In 2015, the annual conference took place in Australia and in 2014 in Morocco.

The International Competition Network was a result of US scepticism to include competition rules in the WTO. The US was afraid that at the WTO level, the competition regulations would be harmonised at the lowest common denominator, and that regulations would be rather based on the EU competition model than on the US approach. Additionally, the American government preferred a soft law approach to hard law (Fox et al., 2013; Sweeney, p. 10), and therefore proposed the establishment of an informal network with a view to making an agreement at the WTO unnecessary. The European Union supported the establishment of the network, while it insisted that this was not a substitute for more formal cooperation on competition (Aydin, 2012). Nevertheless, while there is no formal multilateral

¹⁷ However, this is strictly on invitation-only basis (International Competition Network, n.d.-b)

¹⁸ According to Damro (2006), around 90% of ICNs work is done online, via email and teleconferences.

competition agreement, the ICN has prospered and has increased its membership significantly (Fox et al., 2013)¹⁹.

The aim of the ICN is to foster competition policy and advance common benchmarks. It is built on voluntary cooperation and does not include arrangement to cooperate legally on competition issues. Yet contacts made at the ICN meetings can be useful at later stages if legal cooperation is required. The ICN's work has generally been seen as successful in developing best practices and supporting new competition institutions, and it has also led to convergence on certain competition issues. Especially for younger competition agencies it is an important forum to be introduced to global competition norms²⁰. However, some observer argue that there is a limit to convergence that can be achieved with such an informal network when issues of substantial differences are addressed, such as abuse of dominance (Aydin, 2012; Damro, 2006; Esteva Mosso, 2014; Sokol, 2011).

The European Union is actively involved in the International Competition Network. DG Competition is a member, as are the National Competition Agencies of the European member states. The European agencies, including DG Competition, have been members of the Steering Group of ICN and chair working groups. Nevertheless, the large membership and decentralised structure make it more difficult for any country, including the EU, to influence the agenda decisively (Aydin, 2012). Thus, according to Botta (2013, p. 83) the EU did not exports its model via the ICN, but "...was still successful in policy protection, ensuring that international negotiation outcomes did not conflict with key aspects of its domestic model".

OECD

The Organisation for Economic Cooperation and Development also works on competition topics, and tries to encourage cooperation on competition issues among its members. The

¹⁹ For more information on the foundation and development of the ICN, see Fox (2009) and Fox et al. (2013).

²⁰ As also underlined by some interviewees.

Competition Committee of the OECD exists since the 1960s, but only became more active in the 1990s. The Committee regularly organises peer reviews of members' competition policies, and disseminates studies, best practices, and discussion papers on competition (Sokol, 2011). Sometimes the OECD joins forces with the ICN, e.g. to undertake studies. Despite having a membership of only 34 developed and emerging countries, the OECD tries to spread its knowledge also among other, non-member countries. In the yearly Global Competition Forum, competition authorities of more than 100 countries participate and discuss competition related topics and ideas. The OECD also hosts the Latin American Competition Forum, which aims at improving cooperation in Latin America. Moreover, there are two OECD regional centres for competition. One is based in Hungary, and provides capacity building and technical assistance to Central, East and Southeast European regions. The other one is in South Korea, and performs a similar role for the Asian region (OECD, 2013; Sokol, 2007). The European Commission is not a member of OECD, but it is considered a quasi-member, since all of the EU members are also members of the OECD. As such, DG Competition is allowed to participate at meetings and other activities (Damro, 2006; European Commission, 2015a).

UNCTAD

Another stakeholder in international competition cooperation is the United Nations Conference on Trade and Development. UNCTAD was founded to prepare developing countries for their inclusion in the world trading system by focusing research on the interests of developing countries and better preparing them for negotiations in GATT. It is seen as expressing ideas of developing countries, and thus represents a counterpart to the OECD cooperation (Sokol, 2007).

In the 1970s, UNCTAD promoted the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices”, or Restrictive Business Practice (RBP) code. It was proposed by developing countries, out of concern that multinational enterprises would abuse their global market position. The Code was adopted in 1980. It consists of provision to prohibit anti-competitive conduct and covers vertical and horizontal collusion, and abuse of dominance. However, the code was not legally binding, and was therefore only of limited value (Alvarez et al., 2005; Papadopoulos, 2010). Nevertheless, some scholars like Anderson and Evenett (2006) have claimed that the RBP has helped to raise the understanding of the importance of competition policy at the international level.

Today, UNCTAD provides technical assistance in the area of competition, and organises seminars, conferences, and studies on the topic. It has also published a best practice competition law draft. The organisation hosts a yearly Intergovernmental Group of Experts on Competition Law and Policy, and has introduced peer reviews on the competition policy of its member states (Sokol, 2007; UNCTAD, 2013). The EU is not a full member of UNCTAD, but participates in its meetings as an observer. Moreover, the European Commission participates in trade policy reviews and the regular meetings of the institution (Damro, 2006; European Commission, 2015a). However, neither the European Union, nor the United States are significantly involved in the competition activities of UNCTAD (Sokol, 2011).

3.3 Conclusion

Competition policy is an important aspect of European internal policy, but also of its relations to other countries. In the 1990s, the European Union showed an increased interest in internationalising competition policy. The EU tried to include competition policy in the framework of the WTO, yet could not convince the United States nor important developing

countries. Since competition policy has been taken off the WTO agenda, the European Commission has followed other paths to cooperate internationally on competition policy.

The European Union works on international competition cooperation in several venues. It concludes Agency-to-Agency agreements with competition organisations of developed countries and emerging economies, and it is an active member of the ICN, a quasi-member in the OECD, and an observer in UNCTAD. Yet none of these venues is particularly important for the EU when it comes to understanding the EU's influence on the domestic competition policies of third countries. Agency-to-Agency agreements deal mainly with cooperation provisions, and as such may have only limited influence on the design of domestic competition provisions. Doleys (2012) finds that the EU had very little success in trying to harmonise the competition regime of Brazil, Russia or India with the EU regime. Moreover, the Agency-to-Agency agreements are designed for agencies with some experience and with an important share in EU trade; something which is clearly not the case for many developing countries. In UNCTAD, the influence of the EU is limited, and while it might be higher in the OECD, the outreach of the OECD is less broad than UNCTAD. The European Union is an active player in the International Competition Network and according to interviews also uses this forum to set topics that are deemed of importance; however, as the membership is broad and the EU only one – albeit important – actor, it cannot set the agenda.

Therefore, the EU's most important forum in the last years to work on competition policy with developing countries has been through the use of regional trade agreements. 83% of the regional trade agreements that the European Union has signed with developing countries contain substantive competition provisions, and the number is likely to rise in the future.

As the number of RTAs with competition provisions increases, it becomes more relevant to understand the consequences of these provisions, and how they impact on the development of

the competition regime in other countries. The next chapter develops an analytical framework which will help to address these questions in the case studies.

4 Analytical Framework: The influence of RTA competition provisions on domestic reform in Southern countries

This chapter develops the analytical framework of the thesis that will guide the analyses in the case studies. As set out in the introduction, this framework is essentially an international political economy framework, rather than one that seeks to further our understanding of competition law or policy. The chapter is divided in five parts. The first section provides an overview of the existing analytical approaches that link regional trade agreements with domestic reform. Two main approaches can be found in the literature, which try to account for the impact of RTAs on domestic change. The first approach regards regional trade agreements as helpful institutions for policy-makers to support their own efforts to reform the domestic competition regime. From this perspective, RTAs can be seen as external commitment devices that are used by a country's government to tie domestic reforms to international obligations. In this way, a government is expected to promote its own domestic interests through "locking-in" reforms, or credible commitment. The second approach however portrays trade agreements as coercive instruments that are promoted by major economic powers like the US and the EU in order to pursue their own economic and political interests abroad.

After assessing the explanatory power of these approaches and their usefulness to answer the research question of the thesis, the second section of the chapter moves on to introduce the concepts of "Europeanisation" and "Diffusion". These two analytical approaches complement the former two and provide different causal mechanisms that can be usefully employed to explain whether and how competition provisions in regional trade agreements affect domestic change in Southern countries. While the two concepts do not look specifically at the impact of trade agreements on domestic change, they explain how external actors can influence

domestic reform. Some of the mechanisms advanced by these approaches are useful to complement the two main approaches and thus build a robust analytical framework.

On the basis of these theories, section 4.3 presents the analytical framework for this thesis, which is structured around the three research sub-questions. The first sub-question (SQ1) examines whether “change” in the Southern country competition regime has occurred. The second sub-question develops three mechanisms through which trade agreements are likely to impact on the domestic competition regime of the country. Finally, the third sub-question controls for other explanations and external factors other than the EU’s RTA, which might be driving change in the domestic competition regime of the Southern country or region.

The fourth section of the chapter presents the research design of this thesis. It includes the selection of the case studies, the methodology employed in the thesis and the sources for data collection. Finally, the last section concludes.

4.1 The role of trade agreements for domestic reform

Scholarly work on the impact of RTAs on domestic reform can be grouped into two opposite approaches, which highlight different mechanisms on how RTAs influence domestic change. The first approach regards trade agreements as helpful institutions that support governments by locking-in reforms into broader international structures. The second approach, on the contrary, views trade agreements as coercive instruments that international actors use to coerce countries into pursuing domestic reform. Since these two approaches are commonly employed in the academic literature to understand the domestic impact of RTAs, the next section presents these two opposing approaches in more detail, highlighting their strengths and limitations.

4.1.1 Trade agreements as helpful institutions (lock-in)

Although domestic reform can be and regularly is implemented without external help, sometimes domestic efforts are not sufficient to bring about or maintain reform. Economic reforms always create winners and losers, even if the overall effect of the reform is beneficial (Fernández & Rodrik, 1991; Przeworski, 1991; Schamis, 1999). The potential losers of reform have an interest in opposing reform and in lobbying against its implementation. As a consequence, reform can be made more difficult, if not impossible for a government.

In such a situation, international agreements such as trade agreements can be helpful to overcome domestic resistance. The most elaborated theory relating trade agreements to domestic reform is based on research on the relationship between international institutions and economic reform. The central argument of this approach highlights the role of international institutions such as RTAs in helping countries to implement reforms at the domestic level. By generating commitments and constraints as well as side payments, RTAs help governments to overcome domestic opposition to reform.

There are two main ways in which regional trade agreements can help governments deal with domestic opposition: first, by allowing the country to credibly commit to reform and second, by creating side payments. The first way is what is usually referred to in the literature as “credible commitment” or “lock-in” mechanism (Ethier, 1998; Fernández & Portes, 1998; Zorob, 2007). This mechanism operates in the following way: once certain policy commitments have been agreed upon and included in a regional trade agreement, the governments are externally bound to their commitments and to implement these obligations, since trade agreements legally bind the two parts. Governments could face penalties by their trade partner if they do not comply with their commitments. Therefore, the lock in mechanism posits that governments that are willing to reform their domestic policies but face domestic opposition, agree to include their policy choices in the trade agreement and thus bind

themselves legally to undertake domestic reforms. This strategy makes a reversal to the situation prior to the agreement more costly, because a government could face retaliation by the other parties to the agreement in case it does not implement the stipulated reforms (Dee & McNaughton, 2011; Ethier, 1998; Whalley, 1998).

This credible commitment can contribute in two ways to reform. First, it signals the determination of the government to undertake reform. This might drive domestic opponents to acquiesce to the changes and focus their efforts on adaptation, rather than opposing reform. Moreover, the signalling effect also has the potential to attract foreign investors, who see the commitment of the government and might then be more willing to invest. These investments could in turn strengthen the economy and thus support reform efforts (Fernández & Portes, 1998; Sokol, 2008). Secondly, the trade agreement can serve governments as a scapegoat, helping them to shift the blame for any costs or losses incurred onto an external actor – the other party in the trade agreement -, whilst alleviating pressure on themselves. Instead of punishing the government for the negative effects of reform, for instance in the next election, citizens direct their anger towards the external actor, the international trade agreement and the other party to the RTA (Dee & McNaughton, 2011)²¹.

Secondly, trade agreements also create side payments, which can be used by governments to reduce the domestic opposition to reform (Baccini & Urpelainen, 2014a; Tovias & Ugur, 2004). These side payments can come in the form of foreign aid that is provided alongside the trade agreement, or through new market opportunities in the trading partner that are opened up by the trade agreements. Side-payments could, for instance, be used to cushion the effects of reform, e.g. by introducing subsidies or new market access for businesses that are

²¹ However, as Kahler (1992) rightly points out, this strategy only works if the negative effects of reform are estimated to be more damaging to the government than being perceived as a weak negotiator, who has yielded to the demands of the international institutions.

negatively affected by the reform. Equally, foreign aid might be used to alleviate costs of reform for governments.

For developing countries intending to promote reform, North-South RTAs are seen as particularly suitable. First of all, the commitment effect is particularly strong for the Southern country, because the Northern partner generally has the means to retaliate in case the Southern country does not comply with the agreement. In contrast, in a trade agreement with a partner that is neither economically nor politically powerful, the threat of being punished in case of non-compliance is much less credible. Also, regional trade agreements can be more specific and more concrete than multilateral trade agreements, because they are only valid for the small number of signatories and not for a large number as would be the case e.g. in a WTO agreement. The more concrete the prescriptions in the international agreement, the better the lock-in effect is thought to operate (Baccini & Urpelainen, 2014b; Fernández & Portes, 1998).

The classic example used in the literature to illustrate the locking-in effect of domestic reform via a trade agreement is Mexico. Scholars have argued that one of the main reasons for Mexico to enter into the North American Free Trade Area (NAFTA) with the US and Canada in 2000 was precisely to lock in liberal economic reforms. According to these studies, the non-traditional gain of support for reform was more relevant for Mexico than the traditional gain from trade liberalisation (Francois, 1997; Whalley, 1998).

In sum, this theoretical approach argues that regional trade agreements serve as a tool for governments facing domestic opposition to lock-in reform

4.1.2 Trade agreements as coercive instruments

However, some scholars oppose the argument that governments of developing countries enter freely into deep trade agreements to promote domestic reforms that they had planned beforehand. In their view, trade agreements are not a means to help developing countries to

implement reform, but an instrument used by Northern countries to impose domestic reform in Southern countries from the outside. In this sense, governments of Southern countries do not strategically cooperate with international actors to get backing for planned reforms; rather, they are forced to reform by powerful external actors.

This reasoning has often been applied to criticise international financial institutions and their loan policies for developing countries. In the 1970s and 1980s, many developing countries turned to the IMF to ask for loans in order to stabilize their economy. However, instead of only providing funds, the IMF tied the financial support to the fulfilment of structural adjustment programmes, which required countries to implement liberal reform policies. Critical scholars have argued that highly indebted developing countries had no other choice than to agree to structural adjustment programmes in order to obtain the loans necessary to stabilise their economies (Gallagher, 2005; Kahler, 1992).

The same argument has been applied to the study of trade agreements. For instance, Shadlen (2008) analysed trade agreements between some Latin American countries and the United States and found that Latin American countries were willing to agree to adjust regulations in investment and intellectual property in order to gain and retain market access to the US market. Rather than actively locking-in policies, countries feared exclusion from the US market and therefore accepted rules in behind-the-border issues in bilateral trade agreements in order to retain the possibility to trade preferentially with the US. The argument was also repeatedly made in the context of the negotiations of the Economic Partnership Agreements between the EU and the ACP states. Hurt (2012) claims that the EU coerced ACP countries into subscribing to neoliberal domestic policies with the help of Economic Partnership Agreements. While the majority of ACP countries wanted to negotiate agreements on goods only, the EU insisted on deeper agreement that included behind-the-border issues. According to Hurt (2012), since the ACP countries were reliant on EU market access, they had no choice

but to accept these provisions²². Heron (2011) blames the asymmetrical power relations between the EU and Cariforum for the outcome of negotiations for the EU-Cariforum regional trade agreement; according to him, these power relations led to the Cariforum accepting many of the EU's demands, even though these were not promoted by the former.

Asymmetrical power relations have already been made responsible for the fact that developing countries agreed to certain policy reforms in the framework of the WTO (Gallagher, 2005). In North-South RTAs this asymmetry of power is often even stronger, since there is only one developing party negotiating with a developed partner. Countries that are dependent on market access in the Northern country will find it hard to oppose the inclusion of stricter behind-the-border rules in RTAs (Gallagher, 2005; Phillips, 2005; Shadlen, 2005).

This approach thus argues that domestic reform in Southern countries is not driven by the willingness of the developing country to reform, but rather by the Northern country's willingness to impose reforms in the Southern countries. This interest could stem from several factors. One interest might be commercial considerations, e.g. improving the business environment for business from the Northern country (Girvan, 2010; Heron, 2011). Also, it is sometimes assumed that countries use trade agreements to export own regulatory norms to other countries, so that their businesses do not have to adapt to new rules and regulations when operating abroad (Horn et al., 2009; WTO, 2011, p. 144). The Northern country might also be normatively driven and believe that reform is good for the economic development of the Southern country (Hurt, 2012; Orbie & Faber, 2008).

²² Due to time constraints, several EPAs were only signed as interim agreements. These do not include behind-the-border provisions like competition policy. However, they do contain so-called rendez-vous clauses, where the parties to the trade agreement agree to negotiate on these issues in the future.

Thus, according to this approach, the more powerful country uses its leverage – be it market access, aid, or other means – to coerce the weaker country into entering into RTAs with specific provisions that impose domestic reforms on them

4.1.3 Assessment

The two main theories discussed propose two different and opposing explanations of how trade agreements influence domestic reform. Either trade agreements are coercive instruments that force countries to do something that they do not want to do, or they are actually useful instruments to help countries to implement policies that they wanted to pursue beforehand. Thus, these two approaches are rarely integrated or looked at together. For instance, as Baccini and Urpelainen (2014a, p. 7) write: “While such coercion is undoubtedly a part of the picture, we find surprisingly little evidence for the claim that developing countries form RTAs with the European Union and the United States because they have no choice. Instead, our evidence suggests that leaders of developing countries use these RTAs to implement economic reforms that they prefer”.

However, the assumption that leaders prefer all elements in a trade agreement and include those to promote domestic reform might be difficult to hold for all aspects of deep trade agreements. Indeed, since these agreements consist of many different and separate issues that are combined in one single trade agreement, it is very likely that some parts and elements of these agreements were not included on the explicit wishes of the Southern government, even if the latter had an overall interest in the agreement.

One prominent example illustrates this paradox neatly. Despite often being cited as the most iconic example for the helpful features of trade agreements, some scholars also argue that Mexico was partly coerced into domestic change by entering into NAFTA. Feinberg (2003) for instance claimed that Mexico was eager to sign a regional trade agreement with the United

States in order to advance domestic reform and growth. However, according to his analysis, certain behind-the-border provisions, e.g. on services and investment, were not included as a Mexican request, but due to the pressure of the United States. This finding, which is also supported by Fernández and Portes (1998), is interesting, because it suggests that not all elements included in NAFTA were favoured by the Mexican government. This raises the questions whether they still had some consequences? If so, the theoretical lock-in approach would find it difficult to explain why.

On the other hand, the theoretical approach that regards trade agreements as coercive instruments cannot fully explain how trade agreements are exactly supposed to impact on reform. Indeed, even though it might be easy to agree to include an article in a trade agreement, this does not necessarily mean that their inclusion will lead to a policy changed in practice. In other words, while a Northern country might have coerced a country into accepting certain provisions and the RTA might stipulate the goal and even indicate how this goal shall be pursued, in the end this imposition might be futile if the reform is not implemented.

Thus, just as it is important to understand how a RTA is negotiated and agreed, it is equally important to understand whether and how the provisions in regional trade agreements actually impact on the domestic level and induce reform. For instance, Claar and Nölke (2013)'s analysis of the draft competition provisions of the EPA between the EU and the South African Development Community (SADC) found that their implementation would lead to significant changes in the South African competition regime to the detriment of South African growth and development. However, the article does not provide a causal explanation of how the trade provisions are supposed to affect and change the competition regime in the South Africa. Hence, to understand what the consequences of these provisions might be for the domestic

policies, it is important to trace whether provisions actually triggered change and how they impacted on the domestic regime.

Another limitation of the two theories outlined above is that they focus exclusively on intergovernmental relations, yet neglect the richness of actors that participate in the decision-making and implementation stages at the domestic level (e.g. Dee & McNaughton, 2011; Fernández & Portes, 1998), and that the relevant domestic actors identified in the Southern country is often the government or leader (e.g. Baccini & Urpelainen, 2014a). Admittedly, while governments in the Northern and Southern are undoubtedly the leading actors in negotiating and implementing policy reform, change might also be introduced via actors other than governments. For instance, in competition policy, competition authorities can be powerful change agents. The relevance of these non-governmental actors might have an important role to play at the domestic level, yet this has not been appropriately taken into account in these theories.

4.2 Other theories linking external influence and domestic change

To address the limitations of these analytical approaches, this thesis draws inspiration from two other approaches that connect the influence of external or international actors on domestic reform: the Europeanisation and the Diffusion literature. Since these approaches look at the mechanisms by which international actors influence domestic change, they can be useful in addressing some of the limitations of the above mentioned approaches.

4.2.1 Europeanisation

Europeanisation research looks into how “[p]rocesses of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms which are first defined and consolidated

in the making of EU public policy and politics [...are] incorporated in the logic of domestic discourse, identities, political structures, and public policies” (Radaelli, 2003, p. 30). Although the Europeanisation literature first analysed the impact of the EU on its member states, its research agenda was then broadened to include the impact on accession candidates and new members (e.g. Schimmelfennig & Sedelmeier, 2005b). Recently, the scope study has extended further and aims to understand the impact of the EU on states and regions that are neither member states nor accession candidates (for instance Freyburg, Lavenex, Schimmelfennig, Skripka, & Wetzel, 2009; Lavenex, 2008; Lenz, 2012).

Most of these “Europeanisation beyond Europe” studies analyse whether third countries’ policies have converged towards EU policies as a result of interaction with the EU. Moreover, scholars try to assess whether the European Union has been the determinant actor inducing change in those countries, or whether other factors were at play. The vast majority of Europeanisation studies that have analysed the impact of EU policies and norms beyond the EU borders have focused on the promotion of democracy or on the spread of EU-style regionalism (Börzel & Risse, 2012; Lavenex, Freyburg, Wetzel, Skripka, & Schimmelfennig, 2015; Schimmelfennig, 2012a).

A small number of studies has started to analyse the external impact of the European Union on the development of competition regimes in accession and neighbouring countries. Some of these scholars have argued that the EU influence on the development of the competition regimes of the accession countries was strong, since the adoption of the *acquis* was a requirement for EU accession (Gwiazda, 2007; Holmes et al., 2006). Recent literature on the external impact of the European Union has also looked on the effect of the European Union on democratic governance in Moldova, Morocco and Ukraine, and used competition policy as case studies (Lavenex et al., 2015). However, due to their focus on democratic governance,

these articles only cover some aspects of competition policy, and they do not look in any detail at the impact that trade policy has on domestic reform.

In an attempt to structure the various scholarly articles on European influence beyond Europe, Schimmelfennig (2012b) defines four mechanisms through which the EU might have an impact: these are Conditionality, Socialisation, Externalisation and Imitation. Schimmelfennig (2012b) organises these mechanisms according to two dimensions: logic of action²³ and involvement of the EU.

The first of the mechanisms is the *Conditionality* mechanism, through which the EU “provides non-member governments with incentives such as financial aid, market access or institutional ties on the condition that they follow the EU’s demands “ (Schimmelfennig, 2012b, p. 8). For conditionality to be effective, the partner country must be more dependent on the EU than the other way around. Rewards will only be received by the partner country when conditions are met, and rewards must be higher than internal costs.

²³ The logic of consequence and the logic of appropriateness are two logics of action first theorised by March and Olsen (1989). The logic of consequence is based on the principle of rational actors that aim to maximising their welfare. According to this logic, actors evaluate the costs and benefits and the (expected) consequences of their actions and base their decision on this calculation. The logic of appropriateness assumes that actors try to fulfil “the obligations of a role in a situation” (March & Olsen, 1989, p. 161) and behave appropriately according to the norms and rules of a community. According to Checkel (2005), the switch from the logic of consequences to the logic of appropriateness implies that actors do not base their actions on the evaluation of the material consequence, but rather try to comply with the prevailing norms and ideas because these are seen as being legitimate.

Attempts by the European Union to teach EU policies, norms and values are part of the *Socialisation* mechanism. Rather than giving rewards, the focus is on convincing partners that these EU policies are appropriate. Socialisation is more likely to occur if the EU's partners are in an uncertain environment, feel close to EU ideas and values, and if there are frequent contacts between the EU and the partner countries.

The next two mechanisms are indirect effects where the EU does not play an active role. *Externalization* means that internal EU rules might create costs for countries if they ignore them, and therefore they chose to adopt them voluntarily. For instance, EU food regulations often create negative externalities in that countries need to apply them if they want to export to the EU, even if they are officially not forced to do so (Henson & Loader, 2001). Externalization effects are higher the more important a country's trade with the EU is, and the more important the adoption of the rules is to be able to trade.

Finally, the fourth mechanism, *Imitation*, follows the logic of appropriateness (Schimmelfennig, 2012b). Countries follow EU rules and examples because they are seen as appropriate and helpful. Like socialisation, imitation is more likely to occur if partners are in an uncertain environment, are close to EU values and ideas, and if there are frequent contacts between the EU and the partner countries. In this categorisation, lesson-drawing is also part of imitation. Countries analyse EU policies, judge them as good solutions to their own domestic problems and hence adopt them (Schimmelfennig & Sedelmeier, 2005b).

Importantly, all of these mechanisms can happen on a governmental level, but also on a transnational level "via societal actors within the target state" (Schimmelfennig, 2012a, p. 7; Schimmelfennig & Sedelmeier, 2005a). The intergovernmental mechanisms can therefore be mirrored at the transnational level. Thus, transnational conditionality denotes a situation where the EU offers individuals incentives so that they adopt EU rules and or lobby their governments for change. Second, transnational socialisation refers to situations where the EU

persuades these societal actors of the benefits of EU norms. These individuals then bring these norms back into their countries. Third, transnational externalisation comprises the indirect effects of the EU on individuals that might lead to change. Finally, societal imitation refers to circumstances where societal actors emulate and imitate EU policies because they conceive them as good solutions to address their own problems. In sum, the mechanisms of change can develop at both, a governmental or a societal level. This distinction will be relevant for this thesis to assess the impact of trade agreements on the domestic policies of developing countries.

To sum up, the Europeanisation lens is an interesting analytical approach to understanding how competition provisions in RTAs affect domestic change in the competition regimes of Southern countries. This is because it also focuses on the ways in which the European Union influences the domestic policies of other countries, and because it clearly spells out the causal mechanisms through which this influence takes place. Moreover, it underlines the importance of domestic actors outside of government. Since the thesis looks at impacts of regional trade agreements, rather than the EU per se, it is not possible to apply these mechanisms directly on the cases. But they will be drawn upon to develop the analytical framework for the mechanisms of influence of trade agreement

4.2.2 Diffusion

Diffusion has its origins in American policy studies, but has become a popular approach in International Relations in the past decade (Gilardi, 2013). Scholars of diffusion assume that the choices of national governments are not only conditioned by national factors, but are also subject to international influence. Simmons, Dobbins, and Garrett (2006, p. 787) define diffusion as occurring “...when government policy decisions in a given country are systematically conditioned by prior policy choices made in other countries (sometimes

mediated by the behaviour of international organizations or even private actors or organizations)”.

Diffusion research has covered all kind of policies from women’s rights to railway regulations (for a recent overview see Gilardi, 2013). Several studies cover the diffusion of liberal economic policies. For instance, a volume of the journal *International Organization* (Volume 60, No 4, Autumn, 2006), on which the later publication “Global Diffusion of Markets and Democracy” (Simmons, Dobbins, & Garrett, 2008) is based, is dedicated to the diffusion of liberalism and contains research on the spread of bilateral investment treaties, tax policy and public sector downsizing. Diffusion and trade agreements have been in the focus of research looking mostly at trade agreements as the dependent variable of diffusion. For instance, Solis, Stallings, and Katada (2009) look at the reasons for the proliferation of trade agreements in the Pacific. There is less work that is specifically focused on how RTAs could help diffuse policies and thus act as explanatory variable. An exception is Woolcock (2013), who looks at the diffusion of public procurement regulations via trade agreements. His research shows that diffusion of rules with the help of FTAs is observable and that cognitive learning about the benefits of a liberal procurement regime has taken place among policy makers. However, his study also observes that the actual implementation of rules is obstructed due to compliance costs as well as opposing political interests at the domestic level.

Research on diffusion often assumes that diffusion processes lead to policy convergence (Marsh & Sharman, 2009). A frequently used definition for convergence is proposed by Clark Kerr (for instance Bennett, 1991, p. 215; Knill, 2005, p. 765): “the tendency of societies to grow more alike, to develop similarities in structures processes and performances”. Thus, studies of policy convergence look at the tendency of policies in different countries to become more similar. However, the assumption that policy diffusion automatically leads to policy convergence is not uniformly accepted. Radaelli (2005) for instance argues that while the idea

of regulatory impact assessments (RIA) diffused successfully in Europe, the final RIA policies were quite different in each of the countries studied, and no convergence was observable. Nevertheless, even though policies might diverge in some cases, there might still be some of level of convergence taking place at least at the ideational and normative level.

Although there are plenty of ways for diffusion to take place (for an overview see for instance Graham, Shipan, & Volden, 2013), many studies now group these explanations together into four main mechanisms: coercion, competition, learning and emulation/socialization/mimicry (e.g. Gilardi, 2013; Graham et al., 2013; Marsh & Sharman, 2009; Simmons et al., 2006).

First, *Coercion* describes instances where countries adopt policies because they are forced to do so by other countries or international organisations. For example, attaching conditionality to IMF loans or the fulfilment of *acquis communautaire* requirements before EU accession are regarded as prototypes of coercion (Gilardi, 2013; Simmons et al., 2006). However, sometimes, countries might be induced to accept domestic reform in a less forceful way than through the threat of losing market access. This is what Simmons et al. (2006) call 'soft coercion'. While coercion is similar to the conditionality mechanism of Europeanisation, soft coercion mirrors the socialisation mechanism.

Second, *Competition* asserts that countries compete for benefits, mostly economic rewards such as Foreign Direct Investment (FDI) inflows, and therefore introduce policies to improve their competitive position. For example, a country could introduce competition policies to attract more FDI; and might especially do so if a country that is an economic competitor already has done so, in order to be on a par with the competitor (Marsh & Sharman, 2009; Simmons et al., 2006).

Third, *Learning* means that countries observe the experiences of other countries, draw conclusions and base their policy making on these (Gilardi, 2013; Marsh & Sharman, 2009).

Usually, learning requires dissatisfaction with the status quo, so that the country is open to look for new solutions.

Contrary to the other three mechanisms – Coercion, Competition, and Learning – which are all understood in the same or in a very similar way in different publications (see for instance Gilardi, 2013; Marsh & Sharman, 2009; Simmons et al., 2006), the fourth mechanism features in the literature under several names like emulation, mimicry and socialisation. Whereas Marsh and Sharman (2009) use the terms interchangeably, others make slight distinctions between some of these terms. Generally, emulation refers to a mechanism where the ideas and norms of phenomena are important and are therefore copied, even if the objective characteristics are less relevant (Gilardi, 2013). In this sense, emulation follows the logic of appropriateness. A country might therefore copy policies and institutions because of the implicit norms included (Marsh & Sharman, 2009).

Both Europeanisation and Diffusion are interesting for this thesis due to their proposed analytical mechanisms of influence. However, not all of the mechanisms are relevant for the analytical framework. The thesis seeks to understand the importance of the competition provisions in a regional trade agreement for domestic reform. Therefore, indirect mechanisms such as competition or emulation are not relevant, because they do not require an RTA in order to function. While competition with other countries might lead a country to enter into a trade agreement that includes competition provisions to lock-in reform, this is not the focus of the thesis. The research does not focus on the question why the country entered into an agreement, but how the RTA affects change. Thus, the thesis looks for the mechanism of how an RTA affects the implementation of reform after the agreement has been included. The following section develops the theoretical framework, which draws from the relevant approaches summarised above. These will be combined to build a robust analytical framework that will guide this thesis.

4.3 Model: influence of competition provisions on the domestic competition regime

To examine the consequences of competition provisions in EU-South trade agreements for change in the domestic competition regime in the Southern country, this section develops the analytical framework of the thesis. To structure the analytical framework, the research question is divided into three sub-questions. The first sub-question looks at what has changed in the domestic competition regime of the Southern country. In order to understand various influences on change in the regime, and to not overstate the influence of the RTA, the question first analyses the change without specifically looking at EU influence. Thus, the dependent variable of this thesis measures the change of the domestic competition regime over time, starting from the origins of the current competition regime.

Sub-question 1 (SQ1): How has the competition regime in the developing country changed in the periods leading to and after signing the trade agreement?

The second sub-question examines the pathways or mechanisms through which the trade agreement and the competition provisions enshrined in it influence change in the competition regime of the developing country. As will be developed in more detail below, change can occur via socialisation, coercion, or imitation. These mechanisms are the explanatory factors and the main focus of this thesis.

Sub-question 2 (SQ2): What are the mechanisms by which the regional trade agreement influences the change in the competition regime of the developing country?

Finally, sub-question three controls for other factors that might also have an impact on the development of the competition regime. When assessing the impact of the competition provisions on domestic reform, it is also important to account for such other factors that might be relevant, in order to be able to determine the relative importance of trade agreements. As some authors argue, factors such as cooperation with international financial institutions or

trade agreements with other countries are likely to influence domestic reform of the competition regime. Thus, introducing these control variables is necessary to ensure that the effect of the RTA and its competition provisions are not merely a spurious correlation.

Sub-question 3 (SQ3): Which factors, other than the trade agreement, were relevant for change?

The following sections look into each of these sub-questions in more detail and for each question a framework will be developed that guides the answer.

4.3.1 Dependent variable – change in the competition regime

The dependent variable of this thesis measures whether “change” in the domestic competition regime of a developing country has occurred. To capture the variation or change in a country’s competition regime over time, it is important to look at the various dimensions of change. While it can be relatively easy to enact a new policy or write down a new law, a mere adoption of a legislation does not represent a change in practices (Woolcock, 2013). Indeed, it is possible to adopt a competition law and establish a competition authority and still not initiate any action against anti-competitive behaviour. In this case, there might be reform on paper, but not in practice. In the Europeanisation literature, this distinction is referred to as institutional or formal change on one side and behavioural change on the other. Institutional change happens when EU rules are transposed into national legislation, and the required institutions are established. Behavioural change, however, makes reference to an actual change in behaviour according to EU rules and when change occurs in the policies and actions of the country (Börzel & Risse, 2012; Schimmelfennig & Sedelmeier, 2005b).

This thesis is interested in both institutional and behavioural change. While institutional change is an important step for reform in a country’s competition regime, for a competition policy reform to have any impact on the competition in a market – and thus in a country’s

economic performance -, actual implementation of the policies and enforcement is necessary²⁴. When looking at the reasons for including competition provisions in trade agreements, one important motive is ensuring enforcement of competition rules. As Dawar and Holmes (2011, p. 350) note, one of the aims of competition provisions is “...to ensure that the partner’s enforcement (or non-enforcement) of competition policy does not undermine the market access preferences granted in the agreements...”. Hence, since enforcement is a relevant aspect of domestic change, change will be measured both at the institutional as well as the behavioural or enforcement level.

In addition, it will be necessary to observe whether the reforms have led to an approximation of the domestic competition regime to the European competition system, as one of the EU’s reasons for including competition provisions in trade agreements is also the EU’s interest in exporting its own competition regime to other countries (Aydin, 2012; Horn et al., 2009; WTO, 2011, p. 144). Therefore, in order to see whether this export of rules has actually taken place, it first needs to be established whether the competition regime has become more like the regime of the European Union. As such, the category of EU approximation is included in the dimensions of change.

To sum up, the dependent variable “change of the domestic competition regime” will be measured on the following three levels: institutional change, change in enforcement, and EU approximation. The next sections explain each category in more detail, and outline how to measure the three dimensions of change.

²⁴ It could be argued that the institutions might themselves already have an influence on market competition, without actual behavioural change of the involved actors. E.g., if companies know that a competition authority exists, they might behave less anti-competitive out of fear that they can get caught. This is the signalling effect (Fernández & Portes, 1998). Yet in the long term, signalling without any policy change is likely to lose its signalling power. Therefore, signalling only influences markets in the short-term.

Institutional change

Institutions are the basic feature of any competition regime. As outlined in Chapter 1, competition regimes vary, but all include variants of the two basic features of a competition regime: implementing institutions and competition law.

The central implementing institution of a competition regime is the competition authority. A competition authority can be part of a judicial or an administrative system and should have a certain level of independence. Independence can be described at the institutional level, i.e. whether the authority is independent according to the law. This includes the question of how much if at all the political sphere can influence the decisions made by the authority. It can also be measured at a budgetary level – i.e. whether the institution has enough financing to be able to fulfil its role (Budzinski, 2012; Voigt, 2009). Furthermore, the powers of the authority to investigate and to sanction are relevant, because these are the main instruments for dealing with anti-competitive practices. Powers to investigate are needed to actually establish whether anti-competitive behaviour has taken place, and the power to sanction is necessary in order to penalize anti-competitive behaviour. In judicial systems, sanctions are decided upon by the courts. Finally, courts are necessary for enterprises to have a chance to appeal if they feel that a decision taken against them was not justified (UNCTAD, 2010).

The second area of institutional change is competition law. A competition regime requires a competition law that regulates anti-competitive behaviour. While competition laws vary between countries, they usually cover rules on restrictive agreements and abuse of dominance. They might also provide rules for mergers between companies. Furthermore, competition laws include goals and objectives that are important in order to interpret the rules of the agreement. Thus, change in the competition law will therefore be measured along these aspects. The aspects of institutional change in the two areas of implementing institutions and competition law are summarised in Table 3.1 below.

Change in Enforcement

The dimension of enforcement assesses whether reform has only taken place on paper, or whether it has also been implemented. To measure the enforcement of competition rules, one major aspect is to understand whether anti-competitive cases have been investigated and adjudicated. However, especially in the first years after establishing a competition authority, it might take some time before the authority begins to investigate (Shahein, 2010). Moreover, especially in young competition authorities in developing countries, raising the awareness of the importance of competition policy is an important task in itself (Gal, 2004; Mateus, 2013).

This thesis will therefore not only look at investigated and adjudicated cases to measure enforcement, but also at three further factors. According to literature on competition policy effectiveness, in addition to results, it also makes sense to measure processes, as these are easier to track and are at the same time important to ensure good results (Shahein, 2010; UNCTAD, 2007). The thesis will look at four main factors relating to enforcement that can be grouped into two categories: resources and implementation procedures (as processes) and competition advocacy and cases (as results).

The *resources* factor refers to whether the competition authority has the human and financial resources to operate effectively. Indeed, young competition agencies often cite the lack of skilled professionals and a small budget as problems for effectiveness in undertaking their tasks (ICN-Competition Policy Implementation Working Group, 2006). Although it is not sufficient in itself, an increase in skilled staff and budget can help to increase the effectiveness of competition authorities and, in turn, lead to better enforcement of competition rules.

The second factor or aspect of process looks at *implementation procedures* and examines whether the rules and procedures that are necessary to implement the law have been adopted by the agencies. Competition agencies need rules of procedures on how to progress, and

develop guidelines to inform involved stakeholders on what is allowed and how to proceed in the new legal environment (Alemani, Klein, Koske, Vitale, & Wanner, 2013). The development of these rules generates certainty and transparency and is a further step towards competition policy enforcement.

Competition advocacy is defined as “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 to the benefit of competition” (Advocacy Working Group, 2002, p. i). These activities include reviews of laws, advice on competition matters, outreach activities to the public, information activities – e.g. for judges and legislators –, and undertaking studies (Shahein, 2010, p. 249). In countries lacking competition culture this is seen as an important activity for newly competition agencies (Gal, 2004; Mateus, 2013).

Lastly, it is important to look at *anti-competitive cases* that have been deliberated and decided upon. This can be traced back by looking if cases of anti-competitive conduct have been investigated or if sanctions have been imposed. It is also interesting to know whether appeal procedures have been initiated, since these are also part of a functioning competition system. Moreover, it will also be analysed whether *cooperation* with European competition agencies has taken place to work on cases, as this is one important purpose of competition provisions in regional trade agreements.

Approximation to the EU system

The third dimension of change is approximation to the EU system. Besides leading to institutional change and change in enforcement, competition provisions in trade agreements might also lead to the adoption of features of the European competition regime.

As discussed in Chapter 3, the EU competition regime has certain aspects that are specific to this regime. One of the most obvious aspects of EU competition policy is that it does not only include rules on agreements, abuse of dominance and mergers, but that rules on state aid and state owned enterprises and enterprises with special and exclusive rights are also part of the regime (Papadopoulos, 2010; Whish & Bailey, 2015). Therefore, the inclusion of rules on state aid in a domestic competition regime will be used as a proxy for the approximation to the EU. Also, while anti-competitive behaviour like agreements and abuse of dominance are generally included in competition laws, the specific rules can be quite distinct, especially regarding abuse of dominance (Fox, 2014). Therefore, the wording of the rules on anti-competitive behaviour is relevant, as similarity with EU rules suggests approximation. This is also true for similarities in adopted implementation rules and guidelines, as these are important for the application of laws and can equally be influenced.

Summary: the Three Dimensions of Change

Table 4.1 summarises the three dimensions of change that are employed to measure the dependent variable: institutional change, enforcement and approximation to the EU system. While the left column introduces the three dimensions used to operationalise the dependent variable “change”, the right column of the table provides an overview of the key indicators employed in the thesis to measure the actual variation in the dependent variable.

Table 4.1 Dimensions of change of a domestic competition policy regime

Dimensions of Change	Measurement
1 Institutional change	Competition Authority <ul style="list-style-type: none"> - Independence - Powers of investigation - Power to sanction
	Adoption of Competition Law, covering <ul style="list-style-type: none"> - Abuse of dominance - Agreements - Mergers
2 Enforcement	Resources Implementation procedures Competition Advocacy Cases Cooperation cases
3 Approximation to the European System	Regulated behaviour: Wording (e.g. in legislation) regarding collusions and abuse of dominance similar to the TFEU; State aid covered public undertakings/ undertakings with exclusive rights is covered

Source: own elaboration

4.3.2 Explanatory variables – mechanisms of influence

Having established how the competition regime can change (i.e. the dependent variable of this thesis), the second and most important question is to determine whether and how the competition provisions included in trade agreements contribute to this change. This section therefore develops the framework to answer the second sub-question of the thesis: *Through which mechanisms does the trade agreement influence this change?*

To address this question, the analytical framework borrows heavily from the theoretical approaches outlined above: the lock-in mechanism on the one hand, and the approach that

regards RTAs as coercion instruments on the other hand. In addition, it draws on the Europeanisation and Diffusion literature in order to complement the former two approaches and include other relevant aspects that they do not cover in enough detail.

Firstly, it is important to recall that regional trade agreements are consciously concluded agreements between two partners with both parties actively involved in the process of negotiating and implementing the agreement. Therefore, the indirect mechanisms of influence identified in the Europeanisation and diffusion literature are not relevant for the analysis, since these do not require any contact between the countries and therefore make it very difficult to prove the causal relationship between the RTA and its domestic impact. For instance, emulation refers to the copying of institutions or policies of one country by another country, because these policies and institutions seem desirable at that moment. However, since emulation does not require a trade agreement, and since the trade agreement does not contribute to emulation either, emulation is not a useful mechanism to address the research questions. Nevertheless, it is useful to keep these indirect mechanisms in mind for sub-question 3, which assesses the impact of other factors on change.

Secondly, while both parties are actively involved in trade agreements, one of them may be more active, taking the leading role to drive change. For instance, for the approach that regards trade agreements as helpful institutions, it is normally the Southern country that takes the leading role to promote its own agenda of reforms. The mechanisms can therefore be differentiated by whether they are more EU driven or more partner driven (similar to Schimmelfennig & Sedelmeier, 2005b).

Furthermore, the mechanisms of change can work via several pathways. The literature that looks at trade agreements as a helpful institution usually assumes that the mechanisms work on an intergovernmental level. According to it, it is the 'leader' or the government in the Southern country that is regarded most of the times as the main actor driving domestic reform

(e.g. Baccini & Urpelainen, 2014a; Ethier, 1998). Other stakeholders like enterprises are only included as potential opponents to a reform (e.g. Birdsall & Lawrence, 1999).

However, this literature oversimplifies the dynamics, as more stakeholders can and are actually involved in the reform processes. To overcome this limitation, the Europeanisation literature (Schimmelfennig, 2012b) differentiates between intergovernmental processes on the one hand, and transnational processes on the other hand. EU socialisation for instance might actually affect societal groups rather than the government, and these then might organise themselves to promote change.

This behaviour can be equally relevant for the study of competition policy and trade agreements. Indeed, in competition policy, domestic players like enterprises, competition agencies, and consumer groups might also be involved in the process and take over a decisive role in the change process. Moreover, while institutional change most of the times needs to be decided by the government, e.g. by adopting a new law, this circumstance is different for the enforcement of the law and EU approximation. For instance, a competition authority could step up competition advocacy without the need of a prior government decision. This example is therefore illustrative of the importance and need to analyse the different levels where change can take place.

Furthermore, the distinction between logics of action, as in March and Olsen (1989), Schimmelfennig and Sedelmeier (2005b), and Schimmelfennig (2012b) can be usefully applied to the analytical framework. With regards to competition policy, the distinction is whether the mechanism requires a change in how the actors perceive competition policy. If the perception about the appropriate competition policy changes, the mechanism is based on the logic of appropriateness and presents a constructivist explanation. If however the perception does not change, the mechanism is based on the logic of consequence and follows a rationalist explanation.

To sum up, this discussion highlights that change can be driven by different actors, and not merely by governmental actors as often assumed in the mainstream literature. Second, it also illustrates the existence of different mechanisms through which change can occur. Importantly, the logic of domestic change varies enormously depending on whether it follows what March and Olsen (1989) call the logic of consequence or the logic of appropriateness.

First, if the process of change is EU driven and follows the logic of consequence – i.e. the government, or the societal actors, implement changes in the competition regime because the EU asks them to do so and offers benefits in return –, then change occurs via political *conditionality*. Change is implemented because the incentives provided by the EU affect the domestic actors calculations to reform, but not because there is an interest in the reform of competition regime per se. In fact, there might even be opposition to the reform.

Second, if change is driven by the willingness of the Southern country, then the domestic competition regime is changed because the trade agreement provides the required means to *enable* change. Importantly, and contrary to the lock-in mechanism, the EU's partner does not necessarily need to be a government, but can also be a constellation of other public and/or private actors. *Enablement* also follows the logic of consequence, as actors already interested in reform use the trade agreement to implement it. In this scenario, no change in the perception of competition policy is required.

Finally, change can also occur via *socialisation*. This mechanism can be EU driven, but does not need to be so. Indeed, it could also be driven by the Southern country, because it sees the trade agreement as a means to learn more about competition policy reform. In this case, this mechanism follows the logic of appropriateness, because the trade agreement has led to social learning about competition policy, and this new perspective on the relevance of competition policy triggers the implementation of reform.

Table 4.2 plots the three mechanism of change: conditionality, socialisation, and enablement. All three of these mechanisms can involve government stakeholders as well as other domestic actors. The next sections will delve more into each of these mechanisms and explain the circumstances under which they may take place and the ways in which they are likely to promote change.

Table 4.2 Mechanisms for domestic change

		Driver	
		EU driven	Partner driven
Logic of action	Logic of consequence	<i>Conditionality</i>	<i>Enablement</i>
	Logic of appropriateness	<i>Socialisation</i>	

Source: own elaboration

Conditionality

The conditionality mechanism describes a process where the EU drives change. Without the EU’s push, the partner country in the trade agreement would not consider pursuing change by itself. To induce change, the EU increases the cost for the Southern country in case it does not reform. If the latter perceives the cost of non-adoption as being higher than the benefits, then the Southern country implements reform. The mechanism follows the logic of consequence and is a “rationalist bargaining model” (Schimmelfennig & Sedelmeier, 2005b, p. 10). According to this model, countries reform because the trade agreement increases costs on non-reform. The corresponding hypothesis to test the conditionality mechanism is: “*The trade agreement influences domestic reform by increasing the costs of non-reform*”.

For this mechanism to work, several features need to be present. First of all, the EU needs to have an interest in reform. As mentioned in Chapter 3, the European Union was very

interested in including competition in the WTO. Moreover, the EU has also shown considerable interest in promoting competition regulations in several other fora (Aydin, 2012; Papadopoulos, 2010). Hence, the EU is generally interested in domestic change in the area of competition policy.

However, EU interest is not enough. In addition to interest, the EU must be able to increase the cost of no reform/inertia in the Southern country. Through the trade agreement, countries usually agree on providing each other with wider market access. For non-accession countries, market access thus substitutes EU accession, which was the main driver for reform in Eastern and Central European Countries (Schimmelfennig & Sedelmeier, 2005a; Vachudova, 2007). Access to the European market with a GDP of 18.46 trillion USD and a population of 500 million²⁵ is relevant for many countries. Indeed, having better market access than competitors due to the RTA can be an important competitive advantage. Non-reform could thus be sanctioned by not giving or by revoking market access, in case the other party does not stick to the rules agreed in the agreement. Interestingly, developing countries might be concerned with signing trade agreements not only to improve market access, but also just to retain it. Market access has often been granted unilaterally by the EU and, as such, it can easily be revoked. Reciprocal trade agreements however ensure that market access has a legal basis (Manger & Shadlen, 2011).

Another threat could be the revocation of financial support or aid, which would also increase the costs of no reform. For instance, if reform in the competition regime was set as a benchmark to receive the next tranches of aid, this would create costs in case of inertia. However, if aid were to be revoked only in the field of competition policy, this loss would be less significant for the Southern country. Therefore, if reform is not a priority, the revocation of aid to support that reform does not suppose high cost. Summarising, the main possibility

²⁵ Data from 2014, <http://data.worldbank.org/region/EUU>

for the EU to increase costs to a non-reforming Southern partner is to limit market access, and to take away financial support.

Additionally, the EU must be in a position to credibly threaten an increase in costs for the developing country. This was very important in the case of EU accession countries, as the possibility of not being allowed to become a member of the European Union was a main reform driver for them (Schimmelfennig & Sedelmeier, 2005a). But what is the credibility of using market access and financial support to drive up costs for developing countries? While it is certainly credible that the EU can provide market access, it is less certain that conditionality might be effective if no credible threat like the referral of EU membership is available. Indeed, in contrast to reform in accession countries, where reform was expected first and accession was granted afterwards, trade agreements with non-accession countries usually prescribe reform at the same time as they grant market access. Thus, countries already receive the benefit of improved market access only by committing to reform. This procedure diminishes the credibility of market access as a tool for reward and sanction. And even though the EU might be able to partly revoke market access if reform is not observable, there is no known case where it has done so based on its partner not fulfilling regulatory requirements of competition policy (Botta, 2013). Consequently, this weakens the credibility of threat with regard to market access.

On the other hand, the credibility that the EU might raise costs increases if the linkage made between reform and cost is strong. For instance, if it is explicitly stated that reform is needed in order to receive a reward or in order not to be sanctioned, it is more likely that the costs will be imposed in case of non-reform.

Table 4.3 summarises the elements of conditionality. The mechanism of conditionality works by increasing the costs of non-reform for the developing country. Costs are likely to increase

if the EU's interest in reform is high, if the costs of non-implementation of the reforms by the EU's partner are high, and if the threat that the EU will impose costs on its partner is credible.

Table 4.3: Elements of Conditionality

Hypothesis: <i>“The RTA influences domestic reform by increasing the costs of no-reform”.</i>	
Elements	Indicators
High EU interest in change	<ul style="list-style-type: none"> - General interest in competition policy - Continuing following up on implementation of change (e.g. through progress reports, in meetings)
Relevance of costs	<ul style="list-style-type: none"> - Trade dependency of Southern country, relevance of market access - Aid/financial support is economically relevant
Credibility of threat of costs	<ul style="list-style-type: none"> - It is possible to increase costs, e.g. by not offering or revoking market access - EU has already imposed costs in other fora - Clear linkage between reform and costs

Source: own elaboration

Socialisation

Unlike conditionality, socialisation does not operate by manipulating the cost-benefit considerations of the Southern country. On the contrary, when the socialisation mechanisms operates, actors adopt different norms voluntarily and therefore are willing to change their behaviour (Schimmelfennig, 2012b). By interacting with other international actors, the domestic actor learns to find competition rules appropriate and useful, and complies with them. This mechanism is evident in Deere (2008)'s work on the WTO TRIPS agreement and the intellectual property regime in developing countries. In her study, the author finds that one avenue of influence is what she calls ‘ideational power’²⁶ (Deere, 2008, p. 167). International actors shaped the way actors in developing countries thought about intellectual property rights

²⁶ Deere (2008, p. 167) has a broad understanding of ideational power: “Broadly speaking, ideational power was in play where actors sought to influence, alter, or build: (a) expertise, know-how, and institutional capabilities on IP matters, and (b) understandings, beliefs, and discourse”.

by dialogue, via epistemic communities and technical assistance. This in turn influenced domestic reform. Similarly, in their study on competition policy, Braithwaite and Drahos (2000, p. 215) note: “In most cases, nations have been persuaded to set up competition law authorities through a belief that this is something economies do when they want to become more efficient, internationally competitive and give better value to their consumers”. Trade agreements could encourage such social learning. This leads to the following hypothesis: *“Trade agreements influence domestic competition reform by encouraging social learning”*.

Social learning can be encouraged by providing the necessary fora for dialogue and exchange. Socialisation is based on persuasion and communication (Checkel, 2005; Schimmelfennig, 2012a). Such an exchange requires a favourable environment, and the RTA might provide such a venue. Socialisation can take place during the negotiations, since negotiators meet frequently and can debate ideas. Furthermore, socialisation might take place in later meetings where competition policy is discussed. Indeed, competition provisions in trade agreements regularly include provisions that stipulate cooperation between the countries on competition matters. Frequently, competition provisions include rules on mutual notification of competition cases, and on exchange of information between the competition authorities. Sometimes it also involves arranging regular meetings between the competition authorities of the parties to the trade agreement. Moreover, if countries cooperate on, for instance, a merger case, this could provide another setting for socialisation.

Socialisation might also take place via technical assistance activities. If training is conducted by EU competition experts, a certain European view on competition is likely to be transferred, and studies and reports might also contribute to transfer a certain image on the convenience of following certain rules and of adopting specific legislations to encourage competition. Regional Trade Agreements between Northern and Southern partners often include technical assistance provisions, which range from agreement on doing joint studies to deeper

cooperation and the exchange of experts (Holmes, Müller, Papadopoulos, & Sydorak, 2005; Teh, 2009).

Equally, socialisation might be encouraged by participation in epistemic communities. According to Haas (1992), epistemic communities are groups of experts that share normative and causal beliefs as well as a common policy mission. Epistemic communities can learn from each other, as members share their ideas and learn from the community at the same time. As Brown and Kenney (2006, p. 9) put it: “Members of an epistemic community interact with each other; ideas and policy alternatives circulate among them. They test their ideas on their colleagues by disseminating papers, publishing articles, holding conferences, consulting, drafting and promoting legislative proposals. They know each other’s’ ideas, proposals, and research; they may know each other personally”. In this way, new ideas can be used, other experiences to problems can be discussed, technical issues can be debated and altogether, this has the potential to improve the work of the experts. Thus, if Southern actors become part of these communities as a consequence of the trade agreement, the RTA could change attitudes towards competition policy and induce Southern actors to pursue reform.

Table: 4.4 Elements of Socialisation

Hypothesis: <i>“Regional trade agreements influence domestic competition reform by encouraging socialisation”.</i>	
Elements	Indicators
Spaces for exchange and dialogue are available	- Time spend in meetings, negotiations, trainings
Confrontation with new ideas and models	- Introduction to epistemic communities - EU models in trainings, information

Source: own elaboration

The mechanism of socialisation therefore works by encouraging socialisation. Socialisation is likely to be encouraged by providing spaces for exchange and dialogue, by being confronted with new ideas and models.

Enablement

Finally, the enablement mechanism is partner driven. In this mechanism, the Southern country wants to implement domestic reform, but faces domestic obstacles. The regional trade agreement is then used to provide the necessary means to overcome these obstacles. The hypothesis is therefore: *“Regional trade agreements influence reform by providing to reform-minded groups the necessary means to reform”*.

For this mechanism, it is important to have a reform-minded actor in the Southern country. Unlike the lock-in mechanism that focuses on governments or political leaders (Baccini & Urpelainen, 2014b; Fernández & Portes, 1998; Whalley, 1993), this mechanism posits that the driving actor does not necessarily need to be the government, but rather, that it can also be a public or private entity different from the government who is interested in promoting reform in competition policy. This thinking is in line with the Europeanisation research agenda, which has shown that EU influence can empower other domestic actors such as non-governmental organisations or regulatory interest groups (Börzel & Risse, 2003; Knill & Lehmkuhl, 2002).

In this vein, free trade agreements can empower non-governmental domestic actors. With regard to competition policy, one important group to take into account are the domestic competition authorities. They might benefit from competition provisions in trade agreements and use them to implement reform. Other relevant actors might, for instance, be non-governmental organisations such as consumer groups or business associations. In countries

that have set up competition institutions before signing the trade agreement, the EU might be more likely to find reform-minded groups.

For these reasons, reform-minded groups might actively seek a trade agreement with an international partner to overcome domestic obstacles, which can either be domestic opposition or lack of capacities for reform. Local opposition to reform might come from economic actors who benefit from the current, less competitive situation. Thus, reform-minded groups might overcome domestic opposition by using the trade agreement as a scapegoat for the negative externalities generated by reforms (Dee & McNaughton, 2011). Furthermore, RTAs can also bring benefits such as improved market access and increased aid (Baccini & Urpelainen, 2012; Tovias & Ugur, 2004). These side payments can then be used by governments or other actors to appease domestic opponents and convince them of the benefits of reform.

Regional trade agreements might also overcome domestic capacity problems. Financial and especially technical capacity needs to implement competition policy are high. Financial means are needed to create and maintain the competition institutions, while skilled and experienced people are necessary to implement competition policy. Since competition policy is a highly technical topic, it is generally difficult to find people who are able to work on these issues. Moreover, it is also difficult for governments to retain skilled workers in the public service, since they are often recruited by higher paying private entities (ICN-Competition Policy Implementation Working Group, 2006). The RTA might help to overcome these hurdles in several ways. First of all, side payments might be used to set up institutions for the competition regime. Second, aid and technical assistance can also be used to train staff, and might help to increase the attractiveness of public jobs to retain skilled people.

Table 4.5: Elements of Enablement

Hypothesis: “Regional trade agreements influence reform by providing to reform-minded groups the necessary means to reform”.	
Elements	Indicators
Reform-oriented group	- Group works towards a competition regime
problems that make change difficult	- Influential groups opposing the change - Lack of financial and technical capabilities
Allocation of necessary means	- Active use of lock-in mechanism - TA and FA

Source: own elaboration

As summed up in Table 4.5, the regional trade agreement enables domestic actors to pursue reform. For the enablement mechanism to work, it is necessary to have a domestic group interested in reform, and that the necessary means to overcome opposition can be provided for.

4.3.3 Control variables: other influencing factors

The last section has presented three mechanisms through which the competition provisions included in a regional trade agreement can have influence on the domestic competition regime. Yet it is also possible that the trade agreement with the EU is not the only – let alone the most important – external factor that influences competition reform in a developing country. According to Kronthaler and Stephan (2007), other factors like the level of economic development of a country, the size of its economy and its dependency on international institutions such as the IMF are often associated with the enactment of competition law. Thus, these other factors that might play a role in triggering change must be identified, analysed and their importance weighted. Therefore, sub-question 3 asks: *Which factors, other than the trade agreement, were relevant for change?*

First of all, the Southern country might have signed trade agreements with competition provisions with other countries. While the EU is the trade partner with the highest frequency

of competition provisions in its trade agreements, other countries, such as the United States and Canada have also signed trade agreements with Southern countries that include competition provisions (Sokol, 2008; WTO, 2011). Moreover, regional trade agreements could also lead to changes in domestic competition law. Regional economic integration processes might require the adaptation of the domestic laws to harmonise regional market integration. For instance, the development of the European Union competition law led to the creation of competition legislation in some of its member states and also required adaptation. Therefore, countries that are part of a regional economic community that includes a competition regime might be influenced by these regional rules (Dawar & Holmes, 2011; Teh, 2009).

Secondly, international financial institutions and their conditionality might be another external factor influencing reform. Indeed, the structural adjustment programmes that the World Bank and the IMF implemented in the 1980s and 1990s sought to increase competition in the markets to stimulate growth. In the beginning, liberalising trade and privatising state-owned enterprises was expected to increase competition, because both actions would allow new companies to enter the market. However, both trade liberalisation and privatisation did not automatically lead to more competition. As a result, the introduction of competition policy in subsequent programmes of these international financial institutions (IFIs) was promoted as a solution (Cramer, 1999; Gray & Davis, 1993). For instance, after the Asian financial crisis, IMF programmes in Asia included reforms in competition policy (Hamann & Schulze-Ghattas, 1999). Thus, the influence of international financial institutions needs to be kept in mind.

Thirdly, other international institutions involved in competition cooperation like the ICN, OECD and UNCTAD can also influence the domestic competition regime of a developing country. In fact, UNCTAD and OECD regularly provide training on competition issues and

facilitate models laws for newly established regimes (Sokol, 2011; UNCTAD, 2010). Similarly, ICN is an important forum for competition practitioners, where ideas and experiences are exchanged. All of these institutions might therefore also influence the development of the competition regime.

Lastly, it might also be possible that the EU influences change but through other mechanisms than the trade agreement itself. For instance, a country might copy and emulate EU policies without being induced to do so via a trade agreement. Indeed, countries might find EU policies useful and thus emulate the EU's example independently of any pressure exerted. In that case, it is not the trade agreement which influences change, but rather the appeal or the usefulness of EU policies themselves.

All of these factors need to be analysed in order to ensure that the influence of the EU trade agreement is estimated correctly.

4.3.4 Summary of the Analytical Framework

The analytical framework is structured along the three research sub-questions, which allow to answer the overall research question. The first sub-question specifies the dependent variable, and looks at change in the domestic competition regime. It measures change as institutional change, enforcement and approximation to the EU. The explanatory variables – the main focus of this thesis – are addressed in sub-question two, and specify the three mechanisms of influence: conditionality, socialisation and enablement. Finally, the control variables – other factors that can influence change – are analysed in sub-question three.

Table 4.6: Summary Analytical Framework

Dependent Variable	Change in the domestic competition regime: institutional change, change in enforcement, approximation to the EU
Explanatory Variable	RTA via the mechanisms: conditionality, socialisation and enablement
Control Variables	External factors: Other trade agreements, international institutions, international organisations, EU in other ways than RTA

Source: own elaboration

4.4 Research Design

Having developed the analytical framework, this section now introduces the research design of the thesis. It explains the methodology employed to analyse data on the impact of competition provisions in RTAs on the domestic competition policies of developing countries. The case selection is clarified and data collection explained.

4.4.1 Methodology

To understand the impact of competition provisions, it would be ideal to apply an experimental approach, where two very similar countries are selected and where one case receives the treatment (trade agreements with competition provisions), while the other case does not. In this way, results could be compared and differences could be traced back to the influence of the trade agreement. Yet such a research design is not possible in this thesis for a couple of reasons. First of all, it is difficult to find two countries that are completely alike. More importantly, however, the treatment *trade agreement* is not randomly assigned. Countries choose to be part of a trade agreement. Therefore, comparing countries with trade agreements to countries without trade agreements, or comparing countries with RTAs with competition provisions to countries without competition provisions will not yield valid results. Countries might sign up to a trade agreement exactly because they want to reform competition policy, or they might sign-up exactly because they do not want to reform.

Therefore, different impacts of RTAs can be expected, and it is not possible to compare them. Consequently, instead of comparing cases that have received treatment with cases that have not received it, this thesis will only look at cases where the treatment was applied – i.e. the trade agreement was signed – and analyse those in-depth.

Moreover, the main focus of this thesis is on the mechanisms of impact. To analyse these, in-depth case studies are especially useful. Through the use of process tracing, in-depth case studies can help explain the underlying causes and motivations without having to rely on controlled variation (Panke, 2012; Starke, 2013). “The process-tracing method attempts to identify the intervening causal process – the causal chain and causal mechanism between an independent variable (or variables) and the outcome of the dependent variable” (George & Bennett, 2005, p. 206).

To disentangle the effect of the EU’s trade agreement from other factors, this thesis follows the bottom-up approach proposed in Radaelli (2003) and Radaelli and Pasquier (2007). These authors criticise that in Europeanisation studies, the impact of the EU tends to be overstated. They blame what they call a top-down approach, which is only concerned with the way EU regulations are implemented on the ground. Instead, they propose a bottom-up approach, where the analysis starts from the domestic developments and aims at identify domestic processes and choices. Only when these are identified can the researcher try to pick out the EU impact in these processes and choices, while always being aware of other domestic and external decisive factors (Radaelli, 2003). This procedure helps to identify other influences next to the EU. The same scheme will be followed in this analysis: each case study starts off with a detailed analysis of the changes in the domestic system, as described in 3.3.1., before identifying the mechanisms of EU impact.

4.4.2 Case selection

As identified in Chapter 2, EU trade agreements with competition provisions can be grouped in four groups: trade agreements with developed countries, trade agreements with accession candidates, trade agreements with EU-neighbourhood countries and trade agreements with countries further away. Only the last two groups are of interest for the present research. First, since the study looks at the impact of North-South trade agreements, trade agreements with developed European countries are not relevant for the analysis. The second group, trade agreements with accession countries, is also not useful for the focus of this study – the impact of trade agreements. This is due to the fact that in the case of accession countries, the accession to the EU is often the main motivator for policy change, rather than the trade agreements in itself (Holmes et al., 2006). Rather than making it possible to disentangle the effects of the RTA on policy change, the presence of EU accession possibility will confound the analysis. Therefore, the selection of cases will be restricted to those where the effect of potential membership can be eliminated. Furthermore, the thesis does not consider trade agreements that have been signed after 2010. Since the adaptation and implementation of a reform package takes times, this temporal limit is chosen to make sure that the effects of trade agreements have at least five years' time to take place and hence, that they can be observed. With these considerations in mind, the potential case studies are presented in Table 4.7.

Table 4.7: Potential case studies

ENP countries		Rest of the World (ROW)
<ul style="list-style-type: none"> • EU – Algeria • EU – Egypt • EU - Israel • EU – Jordan • EU - Lebanon 	<ul style="list-style-type: none"> • EU – Morocco • EU – Palestinian Territories • EU - Tunisia 	<ul style="list-style-type: none"> • EU – Chile • EU – Mexico • EU – South Africa • EU – Cariforum

Source: own elaboration

Of these potential case studies, two cases have been chosen: the Morocco-EU Association Agreement, signed in 1996, and the Cariforum-EU Economic Partnership Agreement. The Morocco-EU Association Agreement and the competition provisions it includes are a good example of the type of agreement concluded between the EU and its Mediterranean partners. Moreover, for the time being Morocco is the only country that has agreed with the European Union the implementing rules as agreed in the competition provisions. While it is foreseen in most of the Mediterranean trade agreements to agree on cooperation rules after three to five years, Morocco is the only country to actually have done so²⁷. In this sense Morocco is a most-likely case. Morocco is one of the most active ENP countries, which is also proven by the fact that it was the first to be given advanced status in ENP relations (Martín, 2009). Also, it receives most ENP funding (European Commission, 2015b). If effects of competition provisions should be able to be measured, it should be there.

Second, the Cariforum-EU RTA is also interesting for several reasons. It is the Economic Partnership Agreement with an ACP region that was signed first. Negotiations with other ACP regions have only recently been concluded, so it is interesting to see what can be learnt from the Cariforum-EU EPA. It is the first region-to-region agreement, which is becoming increasingly common with EU regional trade agreements. Moreover, it is also a most-likely case. The Cariforum region was the first ACP region to sign a reciprocal trade agreement with the EU because it was most interested and eager.

However, while both trade agreements are in some ways characteristic for their group, it will not be possible to generalise from these findings. The competition provisions, especially in the case of non-EU neighbourhood countries, are very different and vary from case to case. Nevertheless, it will allow us to understand the impact of competition provisions in most-likely cases and the mechanisms of change.

²⁷ Algeria is the only country where cooperation rules were directly included in the trade agreement.

4.4.3 Data collection

The analysis will be based on various data sources. Important is information published by governments and competition authorities. For instance, information on competition laws and competition authorities can usually be found on their own websites or in government publications. Additionally, international fora such as the International Competition Network or journals like the Global Competition Review publish information on competition enforcement, agencies and regulations. Furthermore, academic studies and policy papers on the topic of competition policy and trade agreements will be analysed. Sometimes, information can be found in newspaper articles or in written accounts of staff.

The information obtained from the secondary sources was complemented with interviews. In total, 24 elite interviews were conducted, either in person or via skype, of which 10 were on Morocco, the rest on Cariforum. The interviewees were people involved in the development of the competition regime in Morocco or Cariforum. They include members of domestic ministries, competition authorities, negotiators of competition provisions as well as international stakeholders, including officials of the European Union²⁸. Tansey (2007) argues that elite interviewing can be particularly useful for process tracing, as elites can have special insights into events. For instance, talking to negotiators of a trade agreement can provide information not publicly available. Therefore, interview partners were not randomly chosen, but specifically selected, also based on recommendations from other interview partners. The interviews were semi-structured, i.e. questions were prepared beforehand, but spontaneously adapted during the interview if unexpected new information was revealed by the interviewee.

²⁸ Interviewees were promised anonymity and are therefore not identified further. However, details were provided to the examiners during the viva.

4.5 Conclusion

This chapter has developed the analytical framework and presented the research design of the thesis. After reviewing the relevant literature, the analytical framework was constructed. The dependent variable is change in the competition regime of the Southern party to the trade agreement, measured based on three dimensions: institutional change, change in enforcement and EU approximation. The explanatory factors are three mechanisms: conditionality, socialisation, and enablement. The mechanism of conditionality denotes the situation when the Northern country offers incentives via the regional trade agreement to the Southern country in order to induce reform. Socialisation refers the situation where the regional trade agreement creates room for exchange and dialogue which leads to social learning on competition policy and policy change in the Southern country. Lastly, in the mechanism of enablement, the competition provisions enable actors in the Southern party to the RTA to implement change in the competition regime. The third part of the analytical framework underlines the importance of other influences for change, in order to not overstate the relevance of the competition provisions in the RTA.

This analytical framework will be applied to two case studies, as explained in the research design. The chosen case studies are the Association Agreement between the European Union and Morocco, signed in 1996, and the Economic Partnership Agreement between the European Union and Cariforum, signed in 2008. The methodological approach taken is process tracing, and data are collected from a variety of resources, including elite interviews.

The following chapters will apply this analytical framework to the case studies of Morocco (Chapter 5) and Cariforum (Chapter 6).

5 Morocco

This chapter analyses the impact of the competition provisions in the Association Agreement, signed between the European Union and Morocco in 1996, on the competition regime of Morocco. Firstly, the chapter gives a short overview over Morocco's political and economic situation and its relationship with the European Union (5.1). Section 5.2 introduces the competition provisions contained in the EU-Morocco Association Agreement. It provides an overview over the provisions and analyses the obligations resulting from the competition provisions for Morocco. The third section examines the development of the Moroccan competition regime (5.3), stretching from its beginnings in the 1990s to the current situation, and identifies the major periods of change in the development of this competition regime. Section 5.4 analyses the way in which the competition provisions in the EU-Morocco Association Agreement have influenced these changes, applying the analytical mechanisms of conditionality, socialisation and enablement, as set out in the analytical framework. The importance of other external influences for change in the competition regime in Morocco are then analysed in section 5.5. Finally, section 5.6 concludes and highlights the findings of the chapter. These are that the Moroccan competition regime has converged towards the international and European standards of a competition regime, especially in the institutional aspect. The Moroccan competition regime has witnessed a significant development over the past decades and institutions were formed and became stronger. The competition provisions in the regional trade agreement between the EU and Morocco contributed to this change, in particular via the mechanism of conditionality and enablement.

5.1 Morocco: Overview

The Kingdom of Morocco is a country with 33 million inhabitants, located at the southern coast of the Mediterranean, in the North of Africa (World Bank, 2016a). It became

independent from France in 1956 and established itself as a monarchy under King Mohammed V. The adoption of a constitution in 1996 turned it officially into a constitutional monarchy. In July 2011, a new constitution was adopted after a referendum on constitutional reform had been held. The current King Mohammed VI ascended to the throne in 1999, after the death of his father King Hassan II. Elections for the parliament are held regularly every five years. The King appoints the Prime Minister based on the electoral results. The governments in the first decade of the reign of Mohammed VI were formed by various parties loyal to the King. In 2011 however, the Party for Justice and Development (PJD), an Islamist Party, which is less close to the royal family, won the elections. The Prime Minister is Abdelillah Benkirane from the PJD (Benchemsi, 2012; Kausch, 2009).

Categorised as a liberalised autocracy, Morocco is the politically most liberalized regime in the region (Freyburg, 2011). The new constitution of 2011 was introduced in the wake of the Arab spring. It curtails the power of the monarch, but does not fundamentally change the power relations in the country. Among many other rights, the King can still overrule any law from the legislature by using the royal decree ('dahir') and most central posts are appointed by him. Thus, despite these changes, the central position of the King in Morocco's political system is not challenged by the new constitution (Benchemsi, 2012; Maggi, 2013; Maghraoui, 2011). The King is surrounded by the so-called 'makhzen', which originally means storehouse but which now refers to powerful families in the country. These families are closely connected to the King and have important political and economic influence (Kausch, 2009; Maggi, 2013).

Morocco is a lower-middle income country (World Bank, 2016a), with a medium Human Development Index and a GNI per capita of around 6905 USD in 2013 (UNDP, 2014, p. 162). In the same year, the nominal GDP stood at USD 103 billion (WTO Secretariat, 2016a, p. 11). In Morocco, the services sector contributes 57 % to the GDP. The contribution of

agriculture to the GDP is only 14%, but 40% of the population is employed in this sector, the same percentage as in the service sector (CIA, 2016). Morocco's key sources of foreign exchange are, agricultural products, remittances, tourism, the automotive sector and phosphates (WTO Secretariat, 2016a).

Like many countries in the region, Morocco's economic model after independence was state led, until the country embarked on a liberal economic reform program in the 1980s. The reform became necessary due to a spiralling debt crisis in Morocco in the 1970s and early 1980s. Foreign debts rose to 120 % of GNP and could not be sustainably serviced as foreign exchange earnings were low (Joffé, 2009). To deal with the unstable financial situation, Morocco sought help from the IMF and World Bank in 1983. Under the auspices of these institutions, Morocco followed a structural adjustment programme that included measures to reduce the fiscal deficit and to liberalise the exchange rate as well as trade policy. Privatization of state-owned enterprises and deregulation was also part of the measures²⁹. Additionally, Morocco was given debt relief, and thus finally managed to stabilize its economy (Harrigan & El-Said, 2010).

In the framework of economic liberalisation, Morocco joined the General Agreement on Tariffs and Trade in 1987 and the World Trade Organisation in 1994. Moreover, the country signed regional trade agreements with the European Union (Association Agreement, signed in 1996), EFTA (1997), Turkey (2004), US (2004) and a joint agreement with Egypt, Tunisia and Jordan, the so-called Agadir Agreement (2004). Morocco is also part of the Pan Arab Free Trade Area (PAFTA), to which most members of the Arab league are signatories (Moroccan Investment Development Agency, n.d.; WTO Secretariat, 2016a).

²⁹ Despite the privatisation however, Morocco has still well over 200 state-owned enterprises (WTO Secretariat, 2016a), which is in comparison significantly higher than in other countries in Middle East and Northern Africa (Raballand, Veillot, Habhab, & de Meneval, 2015, p. 23).

EU-Moroccan trade relations are currently governed by the Association Agreement, signed in 1996 and in force since 2000. The two parties had trade agreements before the Association Agreement, which were signed in 1969 and 1976. But while these focused on the trade liberalisation of industrial goods, the Association Agreement from 1996 is far more comprehensive. Besides economic elements the agreement also includes social and political aspects, such as arrangements regarding good governance and human rights (Kausch, 2009). Thus, it represents a deep trade agreement, covering not only border issues, but several other topics. Importantly, competition policy is covered in several paragraphs of the agreement (see below section 4.2). The European Union is Morocco's main trading partner: around half of Morocco's imports originate in the EU, and around 60% of Morocco's exports go to the European Union. In contrast, Morocco's share of total imports of the EU and of total exports from the EU accounts for less than 1 % of EU trade³⁰ (DG Trade, 2015a; ITC, 2015).

The trade relationship between the EU and Morocco is embedded in the regional Mediterranean strategy pursued by the EU. In the 1990s, the EU signed regional trade agreements with several Mediterranean countries, which aimed to create a Euro-Mediterranean Free Trade Area in the long run. A conference held in Barcelona in 1995 brought together the 15 countries that were EU member states at that time with twelve Mediterranean countries. The aim of this 'Barcelona Process' was to foster cooperation on economic, political and cultural matters (Kausch, 2009). In 2004, this Euro-Med process was complemented by the introduction of the European Neighbourhood Policy, which has since been more in the forefront than the Barcelona process. The ENP is aimed at countries with no membership perspectives and includes next to the Mediterranean countries also Eastern partners³¹ (Cardwell, 2011). It aims at securing the outer borders of the European Union by

³⁰ The major exporters to Morocco on country level are Spain, France, US and China and the major importers from Moroccan products are France, Spain and Brazil (ITC, 2015).

³¹ Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine.

cooperating closely with the neighbourhood countries on economic as well as political matters. The ENP is modelled on the Eastern enlargement process of the European Union; however, the final goal is not EU accession, but association, which is supposed to bring political and economic benefits (Sasse, 2008). From the beginning, Morocco has cooperated closely with the European Union in the framework of the European Neighbourhood Policy. As a result, the country reached an advanced status in the ENP in 2008 and became the main recipient of ENP funds (European Commission, 2015b; Martín, 2009).

The economic relations between the EU and Morocco were deepened in 2012, when the two parties signed the EU-Morocco Agreement on Agricultural, Processed Agricultural and Fisheries Products. This agreement further liberalises trade in these areas, even though trade is still hampered by several EU regulations (WTO Secretariat, 2016a, p. 9). In addition, in 2013 the two parties started negotiating a Deep and Comprehensive Free Trade Area, which will extend the scope of the Association Agreement currently in force. The DCFTA aims to bring Morocco's legislation even closer to the EU's legislation, so that Morocco can integrate into the EU single market in the long run. Therefore, the DCFTA is expected to include several new topics such as public procurement and services. Additionally, the DCFTA is expected to deepen provisions on topics already included in the Association Agreement, such as competition policy (European Commission, 2015c).

5.2 Competition policy in the EU-Morocco Association Agreement

The Association Agreement between the European Union and Morocco was signed in 1996, and came into force in 2000. In the same year, in 2000, Morocco adopted its first competition law. When the regional trade agreement was negotiated and signed, Morocco therefore did not yet have a competition law. Indeed, the RTA and the first Moroccan competition law were respectively negotiated or developed around the same time. The close connection of these two

events suggests that the EU's RTA had a direct influence in promoting change in competition policy in Morocco.

The Association Agreement replaced the 1976 Agreement on Liberalised Trade in Industrial Goods. The new Association Agreement is broader than the RTA of 1976 and also includes behind-the border provisions on issues, including competition policy. Indeed, the Association Agreement is the first regional trade agreement between Morocco and the EU to also cover competition policy, in Chapter II, Title IV, Articles 36 to 38 (EU/Morocco, 2000). The competition articles are mainly comprised of substantive provisions dealing with types of anti-competitive behaviour. Rules for enforcement cooperation or development cooperation are not included, but the agreement stipulates that implementation (i.e. cooperation) rules shall be set up five years after the agreement has entered into force.

Article 36.1 defines all anti-competitive agreements and concerted practices, abuse of dominance and anti-competitive official aid not conforming to EU standards as incompatible with the agreement, in so far as they may affect trade between the two parties. According to article 36.2, the assessment of these anti-competitive practices shall be based on EU legislation, i.e. on "criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community and, in the case of products falling within the scope of the European Coal and Steel Community, the rules of Articles 65 and 66 of the Treaty establishing that Community, and the rules relating to State aid, including secondary legislation". Article 36.3 stipulates that within five years of entering into force, the association council shall adopt rules on cooperation in competition matters. Article 36.4 further defines how Morocco can resort to state aid in the coming five years, and that both sides shall be transparent regarding their state aid. Article 36.5 exempts agricultural and fishery products from the application of the state aid rules and states that these shall be evaluated according to EU rules. Article 36.6 sets out how to proceed if one

party deems a practice to be incompatible with the agreement. Article 37 regulates state monopolies of a commercial character, and article 38 public enterprises and enterprises with special and exclusive rights, to ensure that after 5 years of entering into force of the agreement these cannot discriminate against nationals of one of the parties (EU/Morocco, 2000).

Mergers are not mentioned in the agreement. There is also no mentioning of competition authorities or competition laws, nor are the parties explicitly requested to adopt a law or establish an authority. However, the provisions on competition in the agreement imply that Morocco would have to adopt some sort of regulation to prevent anti-competitive practices, if it wanted to comply with the rules. Furthermore, the competition provisions also fall under the dispute settlement rules.

Cooperation is not specifically mentioned. However, Article 36.3 stipulates that the parties have to negotiate rules for cooperation within five years of entry into force of the agreement, i.e. by 2005. These implementation rules were indeed adopted in April 2004 by the Association Council, a ministerial level group set up to overview the implementation of the Association Agreement. In these rules, Law 06-99 is defined as the Moroccan competition law, and the competition authority is the “Deputy Ministry for Economic and General Affairs and the Upgrading of the Economy”. The second competition agency declared in Morocco’s Law 06-99, the Competition Council (CC)³², is not mentioned in the implementation rules. The rules regulate notification, exchange of information and confidentiality, coordination of enforcement activities and negative comity. It is also agreed that parties “shall be open to technical cooperation”, and that this may include training for officials, seminars and studies (EU-Morocco Association Council, 2005, p. 4). Table 4.1 below lists the elements of the contents of the competition provisions in the Association Agreement and the implementation rules.

³² The original French name for the Competition Council is Conseil de la Concurrence. This thesis employs the two terms interchangeably.

Thus, in sum, the competition provisions in the Association Agreement are not very broad and mostly cover substantive issues. However, enforcement and development cooperation are covered by the implementation agreement, and thus expand the competition provisions.

Table 5.1: Competition provisions in the Association Agreement, and Implementation Rules

		EU-Morocco Agreement (signed 1996)	Association	Implementation rules (2004)
Chapter/ substantive article		x		
Explicit requirement to establish institutions (laws and/or competition authorities)				
Mentioning of institutions (laws and/or competition authorities)				x
Regulated behaviour	anti-competitive agreements	x		
	abuse of dominance	x		
	merger			
	state aid	x		
	public enterprises and enterprises with special and exclusive rights	x		
	State monopolies	x		
EU law mentioned as reference point		x		
Provisions on enforcement cooperation				x
Technical assistance				x
Exclusion from dispute settlement				

Source: own elaboration

Several direct requirements are derived for both signatory parties from the competition provisions. Both parties are required to ensure that state aid does not negatively affect trade, and are required to provide annual reports on the amount and distribution of state aid. Furthermore, both parties have to ensure that within five years after the Association Agreement has entered into force, public monopolies of a commercial character are adjusted so that they do not discriminate between EU and Moroccan nationals in the procurement and

marketing of goods (Article 37). Also, they have to ensure that after five years public enterprises do not adopt measures that negatively affect trade between the EU and Morocco (EU/Morocco, 2000). Furthermore, the competition provisions implicitly require Morocco to establish a competition regime in order to be able to ensure that anti-competitive behaviour in Morocco's market does not affect trade. The competition provisions do not require Morocco to adopt the same competition rules as the European Union. However, as Greiss (2011) argues for the similar case of Egypt, in light of the fact that anti-competitive behaviour that affects trade between the nations it to be judged according to EU rules, it is sensible to at least align own domestic rules with these requirements, in order to not have conflicting rules for domestic and international cases. Moreover, Article 52 of the Association Agreement generally states that cooperation shall help Morocco to bring its legislation closer to that of the EU. This combination could be expected to have as a result some kind of approximation. Thus, the competition provisions clearly stipulate that Morocco has to implement certain policy reforms and as such should influence the development of the competition regime in these fields³³.

The RTA does not specify what happens if these reforms do not take place. Yet the provisions are subject to the dispute settlement process of the Association Agreement. Therefore, in case of "any dispute relating to the application or interpretation of this Agreement" (EU/Morocco, 2000, pp., Art 86), the Association Council should take a decision on this issue and if they do not come to a conclusion, three arbitrators, nominated by the two parties to the RTA, will decide upon the issue. Therefore, according to the RTA, one party to the Association Agreement could raise a problem in the Association Council, if the other party does not implement the provisions of the RTA.

³³ The obligations resulting from the competition provisions also need to be met by the European Union. For instance, the requirement to be transparent on state aid applies to the EU just as much as to Morocco. However, since the European Union already publishes information on state aid, this requirement is already met, without requiring any policy change from the EU side.

5.3 Morocco's competition regime

Morocco's competition regime has undergone several changes since the first competition law was adopted in 2000. While this first competition law, Law 06-99 on Freedom of Prices and Competition, led to the establishment of competition authorities and some enforcement activities, it had several flaws and was never properly implemented. Therefore, it was replaced in 2014 by two new laws: Law No. 104-12 on Freedom of Prices and Competition and Law No. 20-13 on the Competition Council.

These changes in the Moroccan competition regime are analysed based on the three dimensions of change proposed in the analytical framework: institutional change, enforcement, and approximation to the EU. Institutional change mainly refers to the establishment of competition policy authorities and legislation, whereas enforcement looks at the ways these institutions are put to use. Approximation to the EU looks at whether the changes in the competition regime make the agreements more similar to the competition regime of the European Union.

5.3.1 Origins of the competition regime

As a consequence of the debt crisis and macroeconomic instability in the 1970s and early 1980s, Morocco embarked on a structural adjustment programme and liberalised various sections of the economy. One of the goals of these policies was to increase competition in the market, in line with the liberal view that increased competition would contribute to economic growth. It was expected that trade liberalisation would lead to higher competition, since it opened the market to foreign competitors. Also, prices – which had been regulated in previous years - were liberalised and subjected to market forces. Only a few products – sugar, flour and

petroleum products, among others – continue to be regulated³⁴ (Verme et al., 2014; WTO Secretariat, 2009).

In the 1980s and early 1990s competition was thus affected by trade and price policies, but the country did not have an explicit competition law. However, work on the liberalisation of prices led to a discussion about the necessity of a specific law. At that time, the Directorate for Prices in the Ministry for Economic and General Affairs was being advised by USAID. The Directorate for Prices was responsible for price setting in the economy and would later become the Directorate for Competition and Prices, one of the competition agencies of Morocco. As early as 1987, USAID planned to provide technical support for the development of competition legislation to the Directorate, but had not yet implemented this project (USAID Morocco, 1987, p. 4).

In the early 1990s, Morocco also received technical assistance on the development of competition legislation both from the European and the US. The French competition directorate ‘Direction générale de la concurrence, de la consommation et de la répression des fraudes’ (DGCCRF) advised the Directorate for Prices from 1993 to 2000 and helped to develop Law 06-99 (Lavenex et al., 2015). Parallel to the French efforts, from 1994 to 1996, USAID financed a project on competition policy in Morocco, which was implemented by an US American University. The project aimed at evaluating the possibility of a competition law in Morocco and at proposing possible approaches for the country. According to interviewees, these two projects did not cooperate well and differed on their advice as to what was the most suitable competition law for Morocco. Advisors from both sides accused the other of only transferring own competition rules, rather than looking at what is best for Morocco. However, in the end the European project proved to be more dominant and influenced the Moroccan competition regime more decisively.

³⁴ Currently, the government is working on liberalising these as well (Verme, El-Massnaoui, & Araar, 2014)

The draft competition law that was developed in Morocco in the 1990s was eventually based on the French competition law dating from 1986, the French Ordinance (Geradin & Petit, 2004). While interviews confirmed that this was convenient because no translation was necessary, the French project also had an influence in the choice. Several drafts had to be produced until the final law was decided upon. The content of the law changed from draft law to draft law, and over the course of these drafts, the rights of the Competition Council were curtailed on important issues, e.g. in terms of rights of investigation and independence (Conseil de la Concurrence, 2010). In the end, the resulting law was very long and complicated, included cross-references and jumped between issues, which left “huge scope for restructuring and simplifying its provisions” (Dabbah, 2007, p. 148). Nevertheless, according to the Moroccan government, it “mark[ed] a transition from a policy of price liberalization to a policy of competition” (Moroccan answer TPR, p. 14).

5.3.2 Competition Law from 2000

Law No. 06 – 99 on Freedom of Prices and Competition was adopted in 2000 and came into force in July 2001. The purpose of the law was to regulate price policy as well as competition policy in the country (Morocco, 2000)³⁵. The Moroccan law followed some of the articles of the French Ordinance and was therefore in parts very similar in wording. For instance, the whole Article 6 on anti-competitive agreements and abuse of dominance was taken directly from the French Code de Commerce, article 420 (France, 1992). Overall however, the law ended up being unstructured and many responsibilities were not clearly assigned. The following paragraphs take a closer look at the institutional framework, the regulated behaviour and enforcement of competition policy as regulated by Law 06-99.

³⁵ The following paragraphs rely on information directly taken from the Law 06.99, if not otherwise mentioned.

Institutional framework

According to Law 06.99, the Prime Minister (or Head of Government, as the position was renamed in the 2011 Constitution) occupied a central position in the Moroccan competition regime. He was among other things responsible for price fixing, initiation of investigation on anti-competitive matters, authorisation of monopolies and mergers, the appointment of the competition council (Merghadi, n.d.). In the everyday functioning of the government though, this authority was delegated to the Directorate for Competition and Price (DCP), a directorate in the Ministry for Economic and General Affairs, which is responsible to the Prime Minister. Therefore, in practice the DCP became the institution with most powers to regulate competition, despite not even being named in Law 06.99. To legalise this situation, Decree 2-08-516 was passed in 2009, which finally gave a legal mandate to the DCP and which brought the DCP directly under the control of the Prime Minister. This institutional setting also entailed the consequence that from then onwards, the Director of the DCP had to be nominated directly by royal decree, i.e. by the King, and not by ministers anymore (Jaros, 2010). From 2001 until the new laws were introduced in 2014, the DCP was therefore first practically and then legally the main competition agency in Morocco.

The second institution involved in the competition regime in Morocco was the Competition Council. A whole section in the Law 06.99 is devoted to the CC, but in contrast to the DCP, it had only very limited responsibilities. In earlier drafts of the law the Competition Council was meant to have a central role in the competition regime, but the final law give it mainly an advisory role. The CC needed to be consulted by the Prime Minister and government if changes to competition or state aid laws were envisaged, and could issue opinions, recommendations and consultations on competition issues when asked by parliament, government, the judiciary as well as some economic stakeholders such as chambers, consumer organisations, and regions and communities. In contrast, private enterprises or

consumers could not directly request these opinions. According to Law 06-99, the Competition Council consisted of its President, nominated by the Prime Minister, and twelve members, and was supported by administrative staff. Of the twelve members of the Competition Council, six were representatives of the governmental administration, three had to be experts on competition and consumer protection and three were representatives of chambers of commerce (Jaros, 2010). The fact that six members were from government institutions increase the opportunities for political influence and can thus limit independence.

Thirdly, Law 06.99 gave an important role to the judiciary. Courts were responsible for the imposition of sanctions once the Prime Minister had referred any given cases to the court. DCP and CC did not have the right to assign administrative sanctions. There was however no special court for competition matters, which means that any court could technically decide on cases, even if not being specifically trained for these issues (Dabbah, 2007; Jaros, 2012).

Thus, the institutional framework of Law 06-99 was set up in such a way that there were several limitations to the independence of the responsible competition agencies and several pathways for political influence.

Regulated Behaviour

The preamble of Law 06-99 defined its objectives: to set out the regulations for the freedom of prices and to organise free competition. It aimed at stimulating economic efficiency and at improving the well-being of consumers, as well as at achieving transparency and fairness in consumer relations. Looking at the exemptions set out in the text, it is clear that the achievement of economic development was also an important objective. It was thus a law containing several objectives, and several with a social outlook (Morocco, 2000).

Law 06-99 prohibited anti-competitive agreements and concerted practices (Article 6), especially if these limited access to the market for other enterprises, impeded the free

formation of prices, limited or controlled production, investment or technical progress, and divided markets. Article 7 prohibited abuse of dominance, and gave examples of particular abuse of dominance. Article 8 spelled out the exemptions. Exemptions could be particularly granted if there was a special regulation or law, if the anti-competitive behaviour was beneficial for economic progress and gains were distributed, and if small and medium sized enterprises and agricultural projects were concerned. Mergers were dealt with under Article 10 to 13. The articles explained what mergers needed to be notified to the Prime Minister and the process that followed. According to Jaros (2012) the way the threshold for notification was set – at 40% of market share - was in practice difficult to verify and therefore not very operational.

The law was applicable to “all activities of production, distribution and service” (Art. 1.2) and therefore included state-owned enterprises. However, due to the liberal exemptions, state-owned enterprises could be protected from the application, according to interviews with officials and international consultants.

State aid was not covered in the law. The only reference that was made was the fact that the government was obliged to consult the Competition Council in case it introduced a new or modified state aid regime (Art. 15.4). However, there is no law or regulation yet concerning state aid in Morocco, despite the fact that it is an important policy instrument in Morocco (OECD, 2011). The Competition Council made a report on state aid in Morocco in 2012 and concluded that in 2010, around 3 billion Euros were spent on state aid, and that these might have a negative effect on competition. However, since the payments are not clearly documented, it is difficult for the Competition Council to properly assess the claim. Therefore, the study called for transparent documentation of state aid (El Khattabi, 2012).

In sum, Law 06-99 covered most substantive issues relevant for competition policy. However, complicated procedures and several exemptions made it difficult to properly use the law. Additionally, the important topic of state aid was not covered at all.

Enforcement

The Moroccan competition Law 06-99 was never properly enforced. Especially in the first few years, resources devoted to competition were limited. The DCP, which was the institution with most power, was only a small entity with around ten staff members. Of these, most were involved in price regulation rather than regulation of competition (Jaros, 2010). In the first years after the competition law 06-99 had been adopted, the DCP organised seminars to introduce involved stakeholders to the issue of competition. They also cooperated with the EU to develop the implementation rules for the competition provisions with the EU and successfully applied for technical aid projects from the EU. However, they did not start proper investigations into anti-competitive behaviour.

The Competition Council on the other hand received very limited funding in its first year, of less than 100.000 Euro, according to interviews. The Council was appointed in 2002; yet given the limited mandate and funding, it only met a few times, before stopping to work altogether for the next few years. The term of the Competition Council ended in 2007 and no new Council was appointed, so the inactivity continued. It took until August 2008 for a new President for the Competition Council to be appointed. Interestingly, it was the King appointing the President, rather than the Prime Minister, as stipulated in the Law. The Competition Council, under the new President Abdelali Benamour, took up its work in January 2009. The Council could count on 19 staff members in 2009, which grew to 27 staff members in 2013. It was given a budget of ca. 1.5 million Euro annually (Conseil de la Concurrence, 2013a). This was a substantial increase on the 100.000 Euro annually provided

to the Competition Council in 2002. Nevertheless, according to interviews with officials this was not its own line of budget, but part of the budget of the Prime Minister. Thus, it was easier for the ministry to interfere in day-to-day decisions of the Competition Council, thus once again reducing independence.

The reactivation of the Competition Council in 2009 led to a significant increase in activities on competition. When becoming the new president of the Competition Council, Abdelali Benamour, acknowledging the limited powers of the Competition Council, focused on competition advocacy and lobbying for changes in the competition law to improve the standing of the Competition Council. To improve competition advocacy, several steps were taken. The Competition Council organised seminars, workshops and conferences to raise the awareness of stakeholders on competition issues. It produced several studies on sectors that are likely to have anti-competitive issues in Morocco, and published these on its website, as well as informing about the findings in the media. The findings were also included in the yearly published annual reports, which can also be found on the website of the Competition Council (Jaros, 2012).

The Competition Council was also supported in its efforts by a Twinning project funded by the European Union and running from August 2007 to July 2010. As beneficiary of the European Neighbourhood Policy and signatory to the trade agreement, Morocco has access to special instruments provided by the European Union such as TAIEX (Technical Assistance and Information Exchange) and Twinning. These had been successfully implemented in EU accession countries to support them in the adoption of the EU *acquis communautaire* and were therefore later extended to ENP countries that have signed an Association Agreements (Whitman & Wolff, 2010, p. 9). TAIEX is a short-term instrument and for example provides for short study trips and workshops, Twinning is a long-term instrument that lasts from a minimum of 12 months to 30 months. Both Twinning and TAIEX enable cooperation and

information exchange between administrations of EU member countries and the beneficiaries (European Commission, 2014b).

During the last decade, Morocco was both beneficiary of a Twinning and several TAIEX projects. The Twinning project lasted from October 2007 to July 2010 and had the following three overall objectives: improve the competitiveness of Morocco's economy with the help of competition law and policy; approximate the Moroccan competition regime to the EU competition regime; and contribute to the implementation of the competition provisions in the Association Agreement (Morocco, 2008). The project was coordinated by the resident advisor, based in the Department for Competition and Price. Among the measures were training of civil servants of the DCP and the Competition Council and judges, the implementation of a programme for competition advocacy, study visits in Europe as well as the participation in international conferences on competition, according to interviews. After the Twinning project had finished, several TAIEX study trips and workshops were organised for the Moroccan competition authorities³⁶.

Despite this increased visibility of competition policy, these efforts did not lead to an increase in cases being brought to court. Indeed, in all those years, no comprehensive investigations took place, the judiciary was never active on competition matters and no enterprise was fined under the law in its 14 years of existence, and while, theoretically, managers can be put in prison for anti-competitive behaviour, this has never happened, according to interviews in 2015. Some so-called "simple inquiries" have taken place. They are more similar to sector inquiries than a proper investigations, as they only allow for superficial work without access to important documents (Jaros, 2010, 2012). These only rarely showed results and when anti-competitive behaviour was discovered, this was dealt with in an "amiable way" (Bouayad, 2014, p. 20). While several enterprises notified planned mergers to the DCP, they were all

³⁶ See TAIEX database: http://ec.europa.eu/enlargement/taieux/dyn/taieux-events/index_en.jsp.

given green light without deeper analysis and without publishing the decisions in official papers. According to interviews, only one merger was referred by the Prime Minister and DCP to the Competition Council and involved a deeper analysis: the merger of Kraft Foods and Cadbury. The merger was approved by the Competition Council in 2010.

In sum, Morocco's first competition law, Law 06-99, established a competition regime with a law that covered many aspects of competition policy. However, independence of the institutions was limited, and rules and procedures were rather complicated. Moreover, they only partially covered non-competitive state behaviour. Enforcement in the first years was limited, but increased in the years following 2008, especially in the area of competition advocacy. Still, this did not lead to any adjudication of anti-competitive behaviour.

5.3.3 Morocco's competition regime under the new laws

After the reactivation of the Competition Council in 2008/2009, the next important moment for Morocco's competition regime was the inclusion of the Competition Council in the new Moroccan Constitution. The Constitution was adopted in 2011, partly as a reaction to the Arab Spring. It includes several paragraphs on good governance, transparency and the rule of law. Article 166 relates to competition policy and states that the Competition Council is an independent administrative authority, to organise free and fair competition and charged with the assurance of transparency and equity in economic relations³⁷. Having competition policy raised to the constitutional level was an important accomplishment for the advocates of competition policy. The fact that an independent competition authority was now included in the Constitution gave new arguments for the urgency of adopting an improved competition

³⁷ Article 166 on the independence of the Competition Council in the Constitution of Morocco : « Le Conseil de la concurrence est une autorité administrative indépendante chargée, dans le cadre de l'organisation d'une concurrence libre et loyale, d'assurer la transparence et l'équité dans les relations économiques, notamment à travers l'analyse et la régulation de la concurrence sur les marchés, le contrôle des pratiques anticoncurrentielles, des pratiques commerciales déloyales et des opérations de concentration économique et de monopole. » (Article 166, Moroccan Constitution of 2011).

law; something that had been prepared by the Competition Council with support of the Twining project since 2009. Nevertheless, it would still take until 2014 until revised competition legislation was approved.

In 2014 the Moroccan parliament adopted two new laws: Law 104-12 on Freedom of Prices and Competition, and Law 20-13 on the Competition Council. They replaced Law 06-99, and meet, in contrast to the old law, the standard of good practice in terms of competition law (World Bank, 2015). For instance, the competition authorities are broadly independent and the procedures have been clarified and reinforced. The implementing decree No 2-14-652 was adopted and published in December 2014³⁸.

Institutional Framework

The main change in the institutional framework is the fact that the Competition Council became the main competition authority. It is now set up as an independent authority with its own budget, rather than being part of the budget of the Prime Minister (Art. 15, Law 20-13). The Competition Council is split in two parts, the decision making council and the case handlers. The decision making council consists of the President, four Vice-Presidents and eight advisory members, all appointed for 5 years. The President is appointed by the King, whereas the others are appointed by the Court of Magistrates or relevant government authorities (Art. 9 and Art. 10, Law 20-13). None of the members of the Competition Council is member of the government. This is very different to the rules in the old law, where six members were members of government. Thus, the new competition law means a significant increase in independence for the agency responsible for implementing the competition law.

With the new law, the CC has the right to initiate investigations, make decisions and sanction enterprises for anti-competitive practices, rather than being limited to an advisory function as

³⁸ If not otherwise noted, the following explanations are based on these laws (Maroc, 2014a, 2014b).

before. This means that it can carry out simple and comprehensive investigations. Mergers have to be notified to the CC, rather than to the Ministry, and the CC is responsible for the review procedure. In cases of special economic importance however, the Prime Minister can take over the case³⁹ (Asins & Thill-Tayara, 2015).

The CC is not the only institution that has been given more rights with regard to the initiation of investigations. According to the new law, individual private enterprises are also allowed to request the Competition Council to investigate a case (Article 3, Law 20-13), in addition to the chambers of commerce, agricultural association, etc. which were already able to do so in the old law.

The new law has also introduced new sanctions as well as leniency legislation. Leniency had not been part of the old law. Now, an enterprise can have full or partial reduction of fees and immunity if it cooperates with the CC and provides new information to the case (Asins & Thill-Tayara, 2015).

Finally, the courts have lost some of their powers of sanction to the CC. However, they can still be called upon if criminal sanctions are to be implemented or if decisions made by the CC are to be appealed (Asins & Thill-Tayara, 2015).

Regulated behaviour

As to the goals, the law 20-13 on the Competition Council refers to the 2011 constitution, stating that the council works in a framework of a free and fair competition, to ensure transparency and equity in economic relations. Economic development considerations can justify exemption. In addition, there is no significant change to regulated anti-competitive behaviour from the old to the new law. A de minimis rule has been agreed to exempt

³⁹ This is similar to the German „Ministererlaubnis“, where the Minister for Economy can override a decision by the German competition authority if she/he considers the merger to be beneficial for the overall economic development of Germany. That it is also included in the Moroccan law can in part be attributed to the German advisers who helped design the first drafts of the new competition law (Interviews, June 2015).

agreements and concerted practices that do not exceed a certain threshold from the rules on agreements. This facilitates the application of the law because agreements between small enterprises with little market share do not need to be notified and thus do not unnecessarily block administrative capacities. The definition of merger has now been brought up to international standards, and new thresholds and procedures have been introduced (Asins & Thill-Tayara, 2015).

The law also covers public enterprises; however, the exemptions are still broad so they could again lead to a situation where the law is not fully applied to public enterprises. State aid is not covered by the law; it is only stipulated that the Competition Council must be consulted before a new law on state aid is passed. Nor is state aid covered in any other law, and the way state aid is distributed is not made transparent, according to interviews with officials and international experts. Thus, while the new competition laws have made significant progress in comparison to the old competition law 06-99 in terms of independence and the clarity of procedures, this will most likely affect mainly private actors; public behaviour is still less scrutinized.

Enforcement

Although two new competition laws, Law 104-12 on Freedom of Prices and Competition, and Law 20-13 on the Competition Council, were adopted in 2014 and the implementation decree was published in December 2014, the Competition Council was still inactive in early 2016, as the President and the members of the Council have not yet been nominated. The old Competition Council, which started its work in January 2009, had been nominated for 5 years and thus officially stopped working in 2013. The old President and the administrative staff of the Competition Council continue to work on competition advocacy. For instance, they organised the Annual Conference of the International Competition Network in 2014 in

Morocco, a high profile meeting. Furthermore, the Council keeps in touch with the media and there are regularly articles in the Moroccan news covering the fact that the new Council has not been convened (e.g. Chambost, 2015; Chaoui, 2016; Trari, 2015). However, to properly take up their work and start investigations, the new Council has to be nominated. Executing the new functions will also require an increase in budget, staff and technical training (Asins & Thill-Tayara, 2015; Jaros, 2012).

5.3.4 Summary – the dimensions of change

The following table summarises the change of the Moroccan competition regime over time along the three dimensions developed in the analytical framework. Change is measured in institutional change, change in enforcement, and approximation to the EU.

Important changes on the institutional level took place in 2001 and 2014. In 2001, Law 06-99 was adopted and the Directorate for Competition and Prices was charged with regulating competition. A year later the Competition Council was established, although it did not start working until 2009. Yet Law 06-99 had several flaws, and the DCP and the Competition Council were not independent institutions. The DCP was first part of a ministry, and later under direct control of the Prime Minister, and half of the Competition Council members were government officials. The laws adopted in 2014, Law 104-12 and Law 20-13, are consistent with international standards (World Bank, 2015). In Law 20-13, the CC was upgraded to an independent competition authority with full investigative and sanctioning rights. In the new system, the Competition Council is independent both under the Constitution and the Competition law, and also has an own budget line.

With regards to changes in enforcement, 2009 is most relevant, because that is when the Competition Council started working properly. While this still did not lead to the prosecuting of cases, it meant that financial and human resources for competition policy were enlarged

rapidly, and the work on competition advocacy increased significantly. Since 2009, the number of minor investigations increased; yet comprehensive investigations still have not been implemented. Cooperation with the DG Competition on cross-border cases has not taken place, according to interviews.

Approximation to European law can also be observed, and can be pinned down in the years 2001 and 2014, when new competition legislation was introduced. The first law was already based on the French law and thus widely compatible with EU law. The new competition law, introduced in 2014, has some elements such as the de minimis rule, which brings it even closer to EU legislation. However, important EU competition policy aspects such as state aid are not being dealt with and public enterprises, while being under the competition law, benefit from exemptions.

Table 5.2: Changes in the Moroccan competition regime

Dimensions of Change	Indicators	Situation 2001	Situation 2009	Situation 2015
1 Institutional change	Competition Authority <ul style="list-style-type: none"> - Independence - Powers of investigation - Power to sanction 	DCP (not mentioned in the law, but executing function for the PM) <ul style="list-style-type: none"> - not independent, part of a Ministry - right to initiate investigation - powers to sanction CC: <ul style="list-style-type: none"> - partially independent (financed by Ministry) - no right to initiate investigation - powers to sanction 	DCP now official, same rights as before CC, same as 2001	Conseil de la Concurrence – main competition authority <ul style="list-style-type: none"> - Independent - Rights to initiate investigation - Powers to sanction DCP – not specifically mentioned in the new laws, administration limited functions
	Adoption of Competition Law, <ul style="list-style-type: none"> - Abuse of dominance - Agreements - Mergers 	Law 06.99 <ul style="list-style-type: none"> - Abuse of dominance, agreements, mergers 	Law 06.99 <ul style="list-style-type: none"> - Abuse of dominance, agreements, mergers 	Law 104-12 on Freedom of Prices and Competition, Law 20-13 on the Conseil de la Concurrence <ul style="list-style-type: none"> - Abuse of dominance, agreements, mergers

Dimensions of Change	Indicators	Situation 2001	Situation 2009	Situation 2015
2 Enforcement	Resources	DCP – Department in a Ministry, staff also responsible for regulating prices CC – 12 members appointed, but not working, no administrative staff	DCP: 13 staff members, well skilled, but mostly working on price regulation CC – 12 members of CC, around 19 administrative staff; budget: 15 mil Dirham (around 1.5 mil Euro)	CC – own budget, yet to be proclaimed Members of staff: around 30
	Implementation procedures	-	-	
	Competition Advocacy	Partly by DCP	By CC	By CC
	Cases, including cross-border cases	-	-	-
3 Approximation to European System	Wording (e.g. in legislation) regarding collusions and abuse of dominance similar to the TFEU; State aid covered public undertakings/ undertakings with exclusive rights is covered	Wording of Law 06.99 similar to French law State aid not covered, Public undertakings covered	As before	New law includes some aspect of several European Laws (Germany, French, EU de minimis rule) No state aid Public undertakings covered

Source: own elaboration

5.4 Influence of the Association Agreement on Morocco's competition regime

The sections above have traced the change in Morocco's competition regime over the years. Three major periods of change can be distinguished. The first period is comprised by the years around 2001, the second period by the years around 2009 and the third period by the years around 2014. In the first period Law 06-99 was adopted and the DCP took up its role as the major institution in the Moroccan competition regime. This period mostly meant change

in the institutional sense, as a law and institutions were established. These were based on EU rules, i.e. a partial approximation to EU rules took place. Yet despite these institutional changes, there was only minor change in enforcement. Moreover, institutional change only led to incomplete convergence towards a competition regime, as the law had several problems and the competition agencies only limited room for manoeuvre.

The second period of change took place in the years 2008 and 2009. While no particular institutional change occurred at this time and no further approximation to the EU was observable, the enforcement of competition policy intensified. Thanks to the revival of the Competition Council, competition advocacy became more relevant and more minor investigations took place. The third period of change was in 2014 and was mainly concentrated on institutional change, with the adoption of the two new competition laws. Further approximation to EU rules occurred in selective issues, while change in enforcement did not take place.

Did the Association Agreement signed in 1996 between the EU and Morocco have any impact on this change? The following section discusses whether the RTA actually influenced the reform of the competition regime in Morocco, and establishes the mechanisms through which this change took place. As will be argued below, the RTA and the competition provisions enshrined in it did indeed have an impact on domestic reform. However, while necessary, the effect of the RTA was largely mediated by the interest of domestic actors, who lobbied and promoted reform from within, and took advantage of the opportunities provided by the RTA. In the next section, it will be analysed whether the trade agreement influenced the above mentioned changes via the possible mechanisms identified in the analytical framework: conditionality, socialisation and enablement.

5.4.1 Conditionality

According to the mechanism of conditionality, the regional trade agreement influences domestic reform by increasing the costs of non-reform for the government in the developing country. If the costs of non-reform become too high, the government of the Southern country reforms the domestic policy. For the regional trade agreement to be able to influence costs, the EU must have an interest in change, the costs must be relevant to the Southern country, and the threat of increasing the costs must be credible. To be credible, there must also be a clear link between the RTA and the need to reform via the competition provisions.

Table 5.3 Elements of Conditionality

Hypothesis: “ <i>The RTA increases the likelihood of reform by increasing the cost of non-reform</i> ”	
Elements	Indicators
High EU interest in change	<ul style="list-style-type: none"> - General interest in competition policy - Continuing following up on implementation of change (e.g. through progress reports, in meetings)
Relevance of costs	<ul style="list-style-type: none"> - Trade dependency of Southern country, relevance of market access - Aid/financial support is economically relevant
Credibility of threat of costs	<ul style="list-style-type: none"> - It is possible to increase costs, e.g. by not or revoking offering market access - EU has already imposed costs in other fora - Clear linkage between reform and costs

Source: own elaboration

The European Union has at least two reasons why it would be interested in the development of a competition regime in Morocco. First, the EU is generally interested in building competition regimes to ensure market access and equal treatment for its companies and ensuring that anti-competitive private or public behaviour does not discriminate against European enterprises (European Commission, 2006). Second, the European Commission has

an interest in harmonising the competition rules of neighbourhood countries with EU rules (Aydin, 2012). Harmonisation in competition rules facilitates trade and cross-border enforcement of competition infringements. Moreover, the adoption of European competition rules is one requirement for the participation in the EU's internal market, which is envisaged for Morocco (European Commission, 2015c).

According to interviews, it was on the EU's initiative that competition provisions were included in the Association Agreement signed between Morocco and the EU in 1996. Since all the regional trade agreements negotiated by the European Union with the Mediterranean negotiated at that time include competition provisions, and many of them similar to each other, it seems likely that the EU had an interest in including these provisions.

The second element of the conditionality mechanism is the requirement that the EU could at least theoretically impose relevant costs on the Southern country to increase the costs of non-reform. Again, this was the case in Morocco, as the market access to the EU's internal market is very important for Morocco. While the Moroccan market is only of minor importance to the European Union, trade with the EU is very important for the Kingdom. When the trade agreement was signed, around 70% of Morocco's exports were destined for the EU. Currently, it is around 60% (ITC, 2015). Thus, any measure that would worsen the market access to the European Union would be a substantial threat to the economy of Morocco.

Theoretically, the European Union could use this leverage to push for reform, by threatening to restrict access in case of non-reform. Next to market access, official development assistance provided by the EU is relevant for Morocco. The EU institutions are one of the most important donors for the country, and have contributed an average around 30 to 35% to Morocco's official development aid since 1995. The lowest contribution was 21% in 1995 and the highest 45%, in 1999 (OECD, 2016). Therefore, the EU is an important donor. Moreover, these are just Official Development Assistance (ODA) contributions by EU

institutions. If development aid by EU member states is added, it becomes even more relevant. Thus, if ODA would be reduced as a consequence of non-reform, this would again constitute a significant problem for Morocco. Lastly, Morocco also has a reputation gain from good relations with Europe. The leadership has an interest in being seen as one of the countries in the region with the closest connections to Europe, and has ‘advertised’ this special position in the region (Kausch, 2010, p. 2). Losing the status as reformer in the Mediterranean due to non-reform in regulatory issues would equally be a loss for Morocco’s image and status.

Non-reform could therefore be potentially costly for Morocco, as this could threaten market access to the EU’s market, EU aid and the special status as a moderniser and liberal country in a non-reformist and conflictive region. The competition provisions, as established in Section 5.2, are also formulated in such a way that they oblige Morocco to certain reforms. Also, the provisions are subject to the dispute settlement mechanism. Thus, technically, the EU might challenge Morocco via the dispute settlement mechanism in case the country does not reform. Yet the likelihood that the European Union would take such a step and as a consequence downgrade market access on the basis that Morocco has not reformed its regulatory regime is highly unlikely. As Botta (2013) notes, the EU has never suspended market access because of lack in regulatory reform. Therefore, the possibility of losing market access is a very unlikely threat.

Nevertheless, market access considerations are more likely to have influence on reform *before* a RTA is signed. As the literature on the enlargement of the European Union shows, the incentive of EU accession led to domestic reforms in the accession countries (Schimmelfennig & Sedelmeier, 2005a), also in the area of competition (Gwiazda, 2007; Holmes et al., 2006). Since Morocco is currently negotiating the DCFTA agreement with the European Union (European Commission, 2015c), this incentive could be used by the EU to

ask for further steps in competition policy. The EU could insist on reforms agreed in the Association Agreement by threatening that the future trade agreement – the DCFTA – will not be signed.

While market access is certainly a credible threat that the EU could use to push Morocco to enforce reforms in its competition regime, EU threats regarding the restriction of ODA are more limited. It seems unlikely that the EU would introduce cuts based on non-reform in the area of competition, especially since they also rely on Morocco's cooperation in some areas, e.g. in areas such as migration flows (Kausch, 2010).

In summary, in the case of Morocco it is plausible that the mechanism of conditionality could be employed. The EU has an interest in reform, the costs that Morocco might have to bear in the case of non-reform are relevant and threats of restricted market access are to a certain extent credible. Were these means used to increase the costs of non-reform? This will be analysed based on the three periods of change defined above.

The first major change in the Moroccan competition regime happened around 2001, when the first Moroccan competition legislation, Law 06-99 was introduced. Change concentrated on institutional change and EU approximation. This change did not come suddenly, however. In the 1980s, Morocco set out on a liberal economic pathway, supported by World Bank and IMF, whose structural adjustment programmes were aimed at increasing competition. In this context, the Department for Prices, which would later become the Department for Competition and Prices and the main authority for competition according to Law 06-99, had been advised by USAID in the late 1980s, including on competition policy (Lavenex et al., 2015; USAID Morocco, 1987). Thus, the EU was not the only external actor active in promoting competition policy in Morocco, and it seems likely that even without the EU, some form of competition regulation would have been set up in the context of the general economic policy direction of the country. Yet the trade agreement and French advisory work in the

years prior to the adoption of the competition law clearly helped to ensure that the competition provisions would be in line with the EU competition regime. The competition provisions were taken into account when drafting the first law, and were equally essential for the drafting of the new competition law. As interviews confirm, the draft was always cross-checked against EU requirements, to make sure that it would conform by EU standards. Thus, the competition provisions in the RTA clearly had an impact on making the Morocco competition law compatible with EU rules.

Although the Association Agreement clearly seems to have had an impact on Morocco's reforms, another factor that could have partially driven the changes in 2001 could also have been the Moroccan government. However, this possibility seems unlikely when looking at the fact that the drafts of competition Law 06-99 were watered down over the drafting period through interventions by the government. The final version of Law 06-99 put important limits on the independence of the competition authorities, thus suggesting a hesitance to introduce a competition law. As will be seen below in the enablement mechanism, while the King and the government regularly declare interest in competition policy, they also have an interest in keeping the current concentrated economic structure. Thus, without the external inducement of change, it seems unlikely that a law would have passed. EU conditionality has contributed to institutional change, but was particularly important for EU approximation.

The next significant change took place in 2008 and the following years, when enforcement of competition policy intensified. Prior to this, the DCP had organised a few seminars on competition policy, but the Competition Council had not been active. In 2008/2009, the Competition Council was reactivated and competition advocacy was significantly stepped up. The turning point was the nomination of the new president of the Competition Council in August 2008. Four months later, in January 2009, the Competition Council took up its work. The appointment of the new President of the Competition Council came as a surprise to many

after the Council had been inactive since 2002, according to interviews with national and international stakeholders. It remained unclear why the King had suddenly announced a new President of the Competition Council.

One explanation could be EU conditionality. Over the years, the EU continued pushing for reforms in the area of competition provisions. A link was made between progress in reform and future benefits such as improved market access and financial aid, for instance in the action plans. The Action Plans were drawn up to organise the implementation of the Association Agreements and lay out the objectives of EU-Moroccan cooperation, the first for the period 2006 to 2010 (EU/Morocco, 2005) and second for the period 2013-2017 (EU/Morocco, 2013). The first Action Plan (2005-2010) states that the aim is to integrate Morocco into the market, yet that “the rate of progress of this ambitious plan will depend on the efforts and concrete achievements in meeting jointly agreed priorities” (EU/Morocco, 2005, p. 1). In this report, actions for the implementation of the competition provision, including state aid, are set out. For instance, it is agreed, to “[i]mplement and consolidate commitments made on competition (Article 36 of the Association Agreement) and develop legislation and an enforcement mechanism compatible with those in the EU” (EU/Morocco, 2005, p. 17). 2007 and 2008 was also the period when Morocco obtained the Advanced Status, i.e. received an upgrade in its relationship with the EU, which meant closer political and economic cooperation in the future (Kausch, 2009). In the document where the Advanced Status was proclaimed, it was also agreed that Morocco would work on harmonising its policies with the *acquis communautaire*, and that the EU and Morocco should negotiate a deeper RTA. Competition policy is mentioned as one area of deeper cooperation between the two partners (EU/Morocco, 2008).

Parallel to this, the EU Twinning Project on competition policy had started in August 2007. The DCP was the main partner of the twinning project on the Moroccan side. Even though the

Competition Council was not active when the project had been designed, it had been included in the planned activities. However, when the project started in August 2007 the Council was still not active. Therefore, the project implemented its activities only with the DCP in the first months. However according to interviews with involved actors, while the cooperation with the DCP was friendly, the cooperation possibilities with the DCP were limited, both because of capacities of the small Directorate as well as lack of engagement. Therefore, the EU considered cutting short the project after only a few months. In August 2008 this was followed however by the announcement of the King of the appointment of Mr. Benamour and by the reactivation of the Competition Council, so the Twinning Project had a motivated partner.

External factors might have also been a contributing factor to change during this period: high food prices became a worldwide problem in 2008 and led to unrests in several countries, including Morocco (Saif, 2008). Competition policy was seen as one means of bringing down prices (Agueniou, 2008). In a speech, given in August 2008, in which the King announced the revival of the Competition Council, he related consumer protection and competition law with fighting high prices (Morocco, 2013). The reactivation of the Competition Council could have thus been accelerated in the hope that it might help to slow down price increases, according to interviews. It is therefore not clear whether conditionality or external factors were the main driver for change. As one interviewee said, it is only the King that knows what brought him to appoint the new president of the Competition Council.

For the institutional change in 2014, when the new laws were introduced, conditionality certainly played a role. In the years prior to the adoption of the new law, debates abounded on how the competition regime could best be reformed. The minister responsible for competition at that time preferred keeping a strong role for the ministry and the DCP, whereas the Competition Council lobbied for an independent organisation, according to several

interviewees. The European Delegation, according to interviews, also supported an independent institution and frequently mentioned the necessity of introducing competition law in Morocco that met international good practices in competition policy, when meeting with Moroccan officials. It was for instance brought up in a workshop on competition policy organised by the Competition Council in 2010. In an opening speech, the head of the EU delegation in Morocco, Eneko Landbaru, underlined the importance of changes in Law 06-99 and the creation of a truly independent competition authority. He also underlined that “competition law is an essential element of the approximation between Morocco and the EU” (Saad Alami, 2010, own translation from French). In the second Action Plan, agreed between the European Union and Morocco for the years 2013 to 2017, the importance of institutional change is also clearly mentioned: it is planned that Morocco establishes a new independent competition authority, with more than only a consultative role and all necessary rights to properly implement competition policy (EU/Morocco, 2013, p. 46). Thus, change in competition policy is always linked with Morocco progressing to the next stage of the neighbourhood process and entering into the DCFTA, which offers improved deals in market access, cooperation, and also reputation.

Since these Action Plans are jointly agreed by EU and Morocco, it could be argued that there was no pressure from the EU to change, but that the Moroccan leadership planned to change all these aspects. However, there is little evidence of enthusiasm for competition policy in the Moroccan leadership. The various governments were slow in working and adopting new legislation, as well as appointing a president for the Competition Council.

To sum up, conditionality via the trade agreement did play a role in the development of Moroccan competition policy in the past years. It contributed to institutional change and in particular EU approximation in the first period of change, and institutional change in the third period of change. The role of conditionality in the changes in 2008 seems also important, but

is difficult to confirm the extent to which conditionality triggered these changes, as it remains unclear what led to the King appointing the new President in 2008. Yet to the extent conditionality was relevant for change, the threat to increase the costs of reform did interestingly not come only from the Association Agreement – rather, the necessity to reform was linked with next step of economic integration: the future full access to the internal market of the European Union and the signing of the follow-up RTA, the Deep and Comprehensive Free Trade Agreement.

Finally, the case of state aid and also rules on public enterprises show that the Moroccan leadership has some policy space left and does not need to implement the provisions in trade agreements and actions plans meticulously. Despite being included in the Association Agreement and in the Action plans, the Moroccan leadership has not introduced a law on state aid, nor has there been any significant progress in increasing transparency, albeit this was agreed upon in the various documents. Neither has there been much change on rules on public enterprises. However, state aid was also specifically not included in the Twinning project, for instance, and it was less prominent in Action Plans.

5.4.2 Socialisation

The second mechanism through which change can happen is the mechanisms of socialisation. When the mechanism of socialisation is at play, the competition provisions in the trade agreement help to create spaces where socialisation can take place. Socialisation means that actors in Morocco learn more about competition policy and become convinced that it is important to apply competition policy in their country, to achieve economic reform and development. If socialisation is at play, the way these actors think about competition policy

changes. The EU can try to actively promote this socialisation, for instance by promoting certain policies⁴⁰.

Table 5.4.: Elements of Socialisation

Hypothesis: <i>“Regional trade agreements influence domestic competition reform by encouraging socialisation”.</i>	
Elements	Indicators
Spaces for exchange and dialogue are available	- Time spend in meetings, negotiations, trainings
Confrontation with new ideas and models	- Introduction to epistemic communities - EU models in trainings, information

Source: own elaboration

Spaces for exchange and dialogue can be provided by the trade agreement in several ways. Firstly, the space can be created in the time the regional trade agreement is being negotiated. Negotiators can spend much time together, and this continued exchange and dialogue can work as a place for socialisation. The trade negotiations between Morocco and the EU lasted two years, and thus provided space for exchange.

Second, meetings resulting from cooperation started due to the regional trade agreement can provide space for exchange. This might be cooperation between competition officials working together on cross-border cases, or cooperation on in technical assistance projects. While according to involved stakeholders on both the European and Moroccan side, enforcement cooperation on actual anti-competitive cases has not taken place between Morocco and the EU, technical assistance projects took place. The Twinning project on competition policy lasted from 2007 to 2010. Work focused especially on competition advocacy, training of staff and the development of the new competition law (Jaros, 2012). After the Twinning project

⁴⁰ This needs to be distinguished from mere technical learning about competition policy. E.g., while it is possible to be in a training and learn about new ways to analyse abuse of dominance, this does not require a change in the way competition policy is regarded. Pure capacity building, that merely hands the means to accelerate change to domestic actors, will be considered in the section on the next mechanism, enablement.

had finished, several TAIEX study trips and workshops were organised for the Moroccan competition authorities. These activities provide room for exchange of ideas, discussion of policy issues and exposure to training and capacity building measures. As Freyburg (2011) notes: “The socializing potential of the Twinning programme is acknowledged by both policy and scholarly work”.

Thirdly, socialisation might be organised by introducing actors to a particular epistemic community or expert group where ideas are exchanged that agree with the EU view on competition policy. On such forum could have been the Mediterranean Competition Bulletin, which was set up in 2008 by an EU civil servant from DG Competition to exchange experiences on competition policy in the MENA region. The first publications were on the EU website⁴¹, but later moved to an independent internet site, which was not managed by the EU anymore. However, according to interviews, exchange was irregular and not frequent⁴². Furthermore, the International Competition Network could be one forum for socialisation. Indeed, the ICN has been very important for several interviewees as a forum to learn about competition policy. However, according to one interviewee, it was Google rather than the European Union that introduced Morocco to the International Competition Network. Therefore, the participation of Morocco in the ICN was not a result of EU socialisation. Given the network character of the ICN and the difficulty to control the agenda (Aydin, 2012) it is understandable that the EU does not rely too much on the ICN as a forum for socialisation. Instead, the EU can resort back to tested socialisation instruments with TAIEX and Twinning. Now, did the Association Agreement provide a forum for deeper dialogue and exchange of ideas that led to socialisation? And, as a consequence of this socialisation, did the RTA play a determinant role for the development of the competition regime in Morocco?

⁴¹ <http://ec.europa.eu/competition/publications/mediterranean/index.html>

⁴² The idea of having a Mediterranean forum to exchange ideas on competition policy is however currently being revived by UNCTAD.

Before the first period of change, from 1993 to 2000, Morocco benefitted from a cooperation project with the French Directorate-General for Competition, Consumer Affairs and Repression of Fraud (Lavenex et al., 2015). The DGCCRF advised the Moroccan DCP in developing Law 06-99. In 1994, a further support project for competition policy was introduced in Morocco, which was financed by USAID. However, according to one consultant involved in the project, the value of the US American advice was significantly reduced, because the DGCCRF had already a strong standing and the Moroccan beneficiaries of the project were therefore less open to the Anglo-Saxon view. Moreover, the French competition law became the basis for the Moroccan law. Thus, the French project clearly played a role in influencing decisions on Law 06-99 and contributing to its European alignment.

However, the French project was not a direct result from the competition provisions of the Association Agreement. Indeed, the competition provisions do not mention technical assistance. Only in the implementation rules – signed in 2004 – is the provision of technical assistance stipulated. Nevertheless, the competition provisions in the RTA have framed the provided advice.

The following period of change – the increase of competition advocacy after the reactivation of the Competition Council in 2008/2009 – coincides with the Twinning Projects, which ran from 2007 to 2010. The Twinning Project was indeed set up to implement the provisions of the RTA. Yet while in the official set up of the project the institutional partner was the DCP, the project seems to have been more influential for the Competition Council. The Competition Council was more receptive of the ideas provided by the project than the DCP, according to interviews. The project contributed to the work of the Council by supporting its competition advocacy activities. However, it is also the case that the President of the Competition Council, Dr. Abdelali Benamour, started lobbying for competition right from his appointment,

according to interviews. He had never worked on competition policy before and had therefore not been subject to EU socialisation efforts⁴³. Yet he was interested in change towards a more competition regime and hired people with the same view on competition as staff for the Competition Council, according to interviews. Thus, the technical support from the Twinning project already fell on fertile ground.

Moreover, when asked about where they learned most about competition policy and formed their opinion on it, Moroccan officials often cited the International Competition Network as relevant to social learning. According to one interviewee, the ICN “is very informal, the approach is like in a university. So it is very easy to learn with them” (Interview June 2015). As they confirmed in interviews, the staff of both DCP and Competition Council participates in the annual meetings and are part of virtual working groups. An important contribution of the Twinning Projects therefore seems to have been to provide the relevant means to implement ideas already present – in this case, enablement was more important than socialisation, which will be seen below.

What was the contribution of socialisation to the institutional change in 2014, when new competition laws were adopted? Law 104-12 is based on a draft provided by the project and was shaped by the training provided. However, by then the learning from other organisations such as ICN was also important. Thus, it seems that socialisation was mostly relevant for the fact that the Law 06-99 conformed with EU standards (dimension of change: EU approximation). For the change in 2008 and 2014, it was less important.

⁴³ Before taking his role, the President of the Competition Council had founded and run his own business, a management school (Institute des Hautes Etudes de Management, HEM). The HEM has a good reputation, which can also be seen by the fact that the International Finance Corporation (IFC) of the World Bank Group has recently agreed to invest 7 million USD in the school, to increase access (IFC, 2013).

5.4.3 Enablement

Finally, the third mechanism of influence is enablement. Here, the regional trade agreement helps to provide the necessary means to developing countries for reform. A reform-oriented group in the Southern region uses the trade agreement to overcome obstacles that make reform difficult. For the enablement mechanism to work, the following must be present: a reform-oriented group in the Southern country that wants change; problems in independently pursuing reform that can be overcome with trade agreement (domestic opposition, domestic capacities); and the allocation of the necessary means with the help of the trade agreement.

Table 5.5 Elements of Enablement

Hypothesis: <i>“Regional trade agreements influence reform by providing to reform-minded groups the necessary means to reform”.</i>	
Elements	Indicators
Reform-oriented group	<ul style="list-style-type: none"> - Group works towards a competition regime - Part of the international epistemic community on competition
Problems that make change difficult	<ul style="list-style-type: none"> - Influential groups opposing the change - Lack of financial and technical capabilities
Allocation of necessary means	<ul style="list-style-type: none"> - Active use of lock-in mechanism - TA and FA

Source: own elaboration

According to this mechanism, a reform-oriented group uses the trade agreement to get access to the means that are necessary for change. The first possible candidate for this role is the Moroccan leadership, i.e. the King and the government. When the competition law was developed, Morocco was still under the leadership of King Hassan II. He was followed by his son Mohammed IV in 1999. Both supported officially a liberal economic policy, which opened the Moroccan economy to external trade, undertook the privatisation of state-owned enterprises and liberalised prices (Harrigan & El-Said, 2010). Competition policy is a natural companion to these policies, as it equally aims at strengthening market forces. Mohammed VI appointed the President of the Competition Council in 2008, and thus gave the development

of the competition regime a new impetus. Equally, he elevated competition to the constitutional level and included the independence of the competition authority in the new constitution of 2011.

At the same time, King Mohammed IV and the royal family are heavily involved in the Moroccan economy. The royal family holds the majority of shares of the biggest conglomerate in Morocco, Société Nationale d'Investissement (SNI) whose revenues have sometimes totalled 8 % of Morocco's GDP (Benchemsi, 2012). SNI has invested in several important sectors in Morocco, such as banking, sugar and supermarket chains and often holds dominant positions (Ecofin, 2012). In a report by the Competition Council on the Moroccan banking sector, the Attijariwafa Bank, also part of SNI holding, is named as the biggest bank in an oligopolistic market (Conseil de la Concurrence, 2013b). Another report by the Competition Council reports an oligopolistic position of SNI-owned supermarkets in Morocco (Conseil de la Concurrence, 2011). While dominance alone does not necessarily mean abuse of dominance, competition law enforcement would facilitate entry of new firms or the increase of the market share to existing smaller firms, thus challenging the current economic structure. Moreover, an unofficial national strategy of supporting 'national champions' in exactly these oligopolistic sectors further decreases the interest in competition policy (Jaros, 2012). These national champions are supposed to lead Morocco's export and investment expansion to other African countries (Michbal, 2014).

Furthermore, it is not only the royal family who is widely represented in the Moroccan economy, but also the makhzen. Privatization of state-owned enterprises took place in sectors such as finance, telecommunication and construction (Biygautane & Lahouel, 2011), many of which are now oligopolistic markets. Beneficiaries of this privatization policy in the 1990s and especially 2000s were the makhzen, families close to the King. Mohammed VI was thus able to further stabilise his power (Biygautane & Lahouel, 2011). A properly implemented

competition regime could possibly pose challenges to these political and economic arrangements.

The government and the parliament in Morocco have traditionally been close to the King and thus often act according to the will of the King and the makhzen (Kausch, 2009). The governments in the first decade of the reign of Mohammed VI have been made up of various parties loyal to the King, and were thus equally following the general liberal policies, without confrontational politics towards the King and the makhzen (Benchemsi, 2012; Kausch, 2009). They generally signed up to liberal politics, but no government or minister stands out as someone who was willing to take up the fight for competition policy. Law 06-99 was watered down in the drafting process, and both the DCP and the Competition Council were only allocated limited resources in 2000. Neither were there attempts to reactivate the Council in the years prior to 2008.

However, things changed in 2011, when the Party for Justice and Development (PJD) won the elections. The PJD is an Islamist Party which is less closely connected to the traditional power (Benchemsi, 2012; Kausch, 2009). The government formed by the PJD and a coalition party has reiterated its interest in reform in competition policy (Jaros, 2012). Nevertheless, despite these proclamations, it has taken several years to pass the new competition laws. While this does not mean that there is necessarily a fundamental opposition to competition policy, it equally shows that there is no particular interest in the topic. Also, the government has made no efforts to strengthen the position of the Competition Council; e.g. in 2014 it approved a merger in the cement sector without consulting the Council first (Faquihi, 2014). Moreover, more than a year after the adoption of the laws, the Competition Council has still not been appointed, a duty of the King, who appoints the President, and the government, responsible for the appointment of the twelve members of the Council. Thus, neither the King nor the

government, despite publicly supporting competition policy, have shown any eagerness to promote a competition regime.

A group interested in reform of the competition policy however could be found in the Department for Prices and Competition. Kovacic (1996) mentions young enthusiastic officials in the Moroccan Department for Price and Competition that were very interested in competition policy and contributed to the development of Law 06-99. Yet the DCP was and still is a small department with only around ten employees, of which most are involved in regulating prices rather than working on competition issues (Jaros, 2012). Given these limitations, the DCP had only restricted room to manoeuvre to promote competition policy in Morocco. Moreover, being part of a Ministry, it is difficult to be independent from political considerations. Although the DCP used its competencies to organise seminars, lobby for the Twinning Project and make a few light investigations, however, its role in fostering competition policy remained limited.

A new actor with interest in competition policy in Morocco emerged in 2008 with the reactivation of the Competition Council. Morocco's Competition Council had not been active from 2000 to 2008. Yet with the appointment of the new President end of 2008 and the reactivation of the Council in January 2009, it has become the most important actor promoting competition policy reform in Morocco. The 06.99 law restricted the role of the Competition Council to an advisory one. Taking over as President of the Council in January 2009, Abdelali Benamour soon realized the limits of the Competition Council. However, the Competition Council decided to follow a two-track strategy: "Draw the maximum from the current text and fight for its amendment" (Interview, June 2015, own translation from French). Drawing the maximum from the text meant answering well to requests by the DCP and writing studies to raise awareness of competition in sensitive sectors, for instance banking and supermarkets. The studies and the opinions are all publicly available on the website of the Competition

Council, as well as the annual reports (Conseil de la Concurrence, 2015). The Council also published a study on the issue of state aid, requesting a transparent reporting system, to be able to properly analyse the effects of state aid on competition (El Khattabi, 2012).

Furthermore, the Competition Council embarked on increasing the awareness of economic actors with regards to the benefits of a competition regime. To that end, seminars, workshops and conferences were organised, for business, judges and other stakeholders, according to several interviews. Equally, international experts on competition policy were frequently invited to Morocco to point out the importance of the issue. The biggest event was the organisation of the 13th annual conference of the International Competition Network in Marrakesh in 2014 – the first ICN annual conference that took place in a country where the competition regime is in its very beginnings. The ICN annual conference is the most important yearly event in competition matters, and therefore the meeting receives important participants from all over the world⁴⁴. Each ICN conference also focuses on a special topic; for the conference in Morocco, the Competition Council chose the topic of State-Owned Enterprises, which again underlines how the conference was used to promote discussion on issues important in Morocco. A focus was also put on cooperation with media, to raise the visibility of the topic in Moroccan newspapers, according to interviews. Staff of the Competition Council also blogged and wrote regular comments in important economic newspapers in Morocco. This increased competition advocacy was also used to campaign for an improved competition law, which would give more powers to the CC. The Competition Council started advocating a new law very soon after taking up its work in January 2009, with support from the EU Twinning project, which had already prepared a first draft law (Jaros, 2012).

⁴⁴ The advocacy role of the event is also underlined by the motto on the conference website: “More than a meeting, it’s our future” (<http://www.icnmarrakech2014.ma/>).

For both pillars of the strategy, the competition provisions in the EU Association Agreement were of importance and facilitated action. First of all, the Twinning Project provided the Competition Council with the means to work on change. The Twinning Project had already been running for more than a year when the Competition Council started its work and was therefore ready to support the reactivated Council with training and advice, both in the area of competition advocacy as well as in the development of the laws. The project team had already developed a draft law, and then supported the Competition Council in developing the law. Thus, the trade agreement was useful in that it provided – via the twinning project - technical assistance needed to develop the current laws adopted in 2014.

Furthermore, the Association Agreement also provided a means to lobby for changes in the domestic competition regime. The standards set in the competition provisions in the trade agreement were used as an argument in discussions with ministries why the competition laws had to comply with certain standards. Furthermore, the help of the European Delegation in Morocco was sought in stressing the importance of compliance with EU *acquis communautaire* in competition, which, according to interviews, the EU delegation did, by regularly underlining the importance of issues such as independence in meetings. Thus, the Competition Council and its President used the competition provisions in the RTA to lobby for change. Hence, the RTA was used as an enablement mechanism to overcome domestic opposition. However, it was not the government locking in reform to overcome domestic opposition, but other actors using the RTA to overcome opposition by the leadership.

However, the EU was not the only external force enabling change. The cooperation with ICN was relevant, because it allowed the Competition Council to advocate competition policy and its benefits for the society in the annual conference. Being host for this event increased pressure on the Moroccan government to agree to changes in the law. Furthermore, the World Bank was an important player. Its Economic Competitiveness Support Programme (ECSP)

includes the approval of the competition law as one important indicator (World Bank, 2015). According to the Interviewees, the World Bank was immensely helpful in pushing for the adoption of the new competition law because it made it a requirement for the provision of the next loan.

Hence, the mechanism of Enablement has been very important for change in the Moroccan competition system. While less relevant in 2000, it enabled the Competition Council to act as a driver for change in Morocco in 2008 and 2014.

5.4.4 Summary – Influence of the trade agreement

The sections analysed the influence of the Association Agreement between the European Union and Morocco on domestic change in the Moroccan competition regime, as mapped out in section 4.2. The table below summarises the findings.

Around 2001, the main change was institutional and included an approximation to the EU. For these, conditionality and socialisation were relevant. In 2008/2009, the main change was in enforcement. The trade agreement contributed via the mechanisms of conditionality and enablement. Change in 2014 was mainly on institutional level, and produce a minor approximation of Morocco’s legislation to that of the EU. Here, the mechanisms of conditionality and enablement were the most important, while socialisation played a minor role.

Table 5.6: Influence of mechanisms on specified periods of change

	2000		2008	2014	
	Institutional change	Approximation to the EU	Change in enforcement	Institutional change	(Approximation to the EU)
Conditionality	x		x	x	x
Socialisation		x		(x)	x
Enablement			x	x	

Source: own elaboration

An interesting finding of this case study is the fact that the mechanism of enablement was important to drive change, but not on the level of the country's leadership. On the contrary, it enabled competition policy practitioners to lobby for change in their field, by providing the means to promote change. Moreover, conditionality was important to foster reform. However, it was not only the competition provisions in the Association Agreement that were important for generating the right incentives for change, but more importantly, the upcoming DCFTA was used as a bargaining tool by the EU to demand other change from the Moroccan authorities. This combination of the mechanisms of enablement and conditionality led to important changes in enforcement, and contributed to the development of competition legislation that is up to international standards.

5.5 Other factors leading to change

As outlined in the analytical framework, the RTA with the European Union might not be the only factor leading to change; and indeed in Morocco, other factors were also relevant for change. This section examines the influence of these factors on domestic change in the country.

The basis of competition policy in Morocco was laid after the debt crisis in the early 1980s when, to fight the crisis, the government changed from state led economic policy to a more liberal approach. This policy change was accompanied by programmes of the World Bank and IMF, as well as the USA, and included advice on price liberalisation and competition policy (Harrigan & El-Said, 2010; Joffé, 2009; USAID Morocco, 1987). It seems likely that they would have accompanied Morocco in developing competition policy legislation, had the European Union not taken that role; even more so since USAID funded a project in the area of competition policy in the 1990s.

The World Bank was also instrumental in the adoption of the competition legislation of 2014. Tying access to the next loan to the adoption of competition policy was a classic case of conditionality, which contributed to the institutional change of 2014.

In addition, the influence of the International Competition Network as a source for ideas cannot be understated. According to the interviews, ICN meetings and working groups provided an important forum for learning. Moreover, it also contributed to raising the profile of competition policy in Morocco through the organisation of ICN's Annual Conference in Marrakesh in 2014. The ICN also helped to establish connections with other competition actors. For instance, according to interviews, the Competition Council is also looking to cooperate with the Competition Bureau in the Federal Trade Commission of the United States. Contacts were made at the ICN meetings, and the idea is to learn more about other approaches to competition policy, as the United States have a different approach to some aspects of competition policy. A formal cooperation with the Federal Trade Commission would enable Morocco to learn more about the US take on antitrust policy.

Learning also took place during the negotiations in the Working Group on the Interaction between Trade and Competition Policy (WGTCP) in the framework of the WTO, which was active until 2003. According to interviewee, the meetings of the working group were an important source of information for members of the DCP. The discussion in the group shaped ideas about best practices and avenues for competition policy in Morocco, especially during the early years of the competition regime.

Lastly, political and economic crises have contributed to the development of the competition regime. The debt crisis of the 1980s led to a turn in economic policy that made the introduction of a competition regime possible. It was on the basis of the policies introduced as a solution to the debt crisis that the competition regime was developed. Similarly, the rapid increase in food prices in 2008 led to a situation where competition policy implementation

was stepped up with the hope that this would help deal with this crisis and thus take pressure from the government. In 2011, the Arab Spring and the resulting unrests in Morocco led to the quick adoption of the new constitution (Benchemsi, 2012; Maggi, 2013), and the inclusion of Article 166 established the independence of the Competition Council. Thus, crises facilitated change.

In the analytical framework, it was argued that the European Union could also influence the development of a competition regime via other measures than the regional trade agreement. However in Morocco, due to the Neighbourhood Policy, the trade agreement is part and parcel of EU-Morocco cooperation. And since cooperation with Morocco on competition issues has been close from the early beginnings, it is impossible to say whether the EU had any other impact, not directly derived from the Association Agreement.

Finally, other regional trade agreements as avenues for influence were not important. The EFTA-Morocco RTA, signed in 1997, and the Morocco-Turkey RTA, signed in 2004, both contain competition provisions in Article 17 and Article 25, respectively (EFTA/Morocco, 1997; Morocco/Turkey, 2004). The competition provisions are very similar to the competition provisions in the EU-Morocco Association Agreement; yet there was no evidence that these have been particularly influential on the development of the Moroccan competition regime. The regional trade agreement between Morocco and the United States, signed in 2004 and which entered into force in 2006, does not contain any specific competition provisions.

5.6 Conclusion

Morocco's first competition law came into force in 2001. It was largely compatible with EU legislation, especially regarding regulated behaviour. However, the competition law had several flaws. Due to these problems, lobbying efforts to improve the law began, especially from the Competition Council after it was reactivated in 2009. The new laws (Law 20-13 and

Law 104-12) were adopted in 2014. The new laws meet current requirements for competition laws and are compatible with EU regulations, as well as international standards such as UNCTAD and OECD (Asins & Thill-Tayara, 2015; World Bank, 2015). It provides for an independent competition authority, the Competition Council, with rights to investigate and sanction. Abuse of dominance, agreements and concerted practices as well as mergers are regulated. State aid however is still not regulated in any law.

Nevertheless, the enforcement of Moroccan competition law has been limited so far. Although competition advocacy has significantly increased since 2008, no cases have been brought to court, nor has any enterprise ever been fined. The new law has been adopted in 2014; therefore, it is too early to say how it might change enforcement. However, the first signs do not look promising. The Competition Council was only appointed for five years until 2013, and since then, no new President and no new members have been appointed. The new law on the Competition Council was passed in 2014, yet still, the Competition Council has not been appointed and thus cannot make use of the competencies provided by the new competition laws until its formally constituted.

Also, the actual implementation of the competition provisions included in the Association Agreement has been slow. As interviews have revealed, the requirements on transparency on state aid (Article 36.4) and the adjustment of public enterprises and monopolies as required in Article 37 and 38 of the Association Agreement have not been fulfilled from the Moroccan side. The implementation agreement was adopted in the foreseen timeframe, which distinguishes Morocco from all its other Mediterranean partners. Nevertheless, it has not yet been used by either party for enforcement cooperation; the only articles that have been implemented were the paragraphs on the provisions of technical assistance.

Morocco's competition regime has undergone important institutional changes in the last decades, and some changes to enforcement, especially in the field of competition advocacy,

took place. The analysis shows that the regional trade agreement between the EU and Morocco has influenced this change. The mechanism of conditionality was important for institutional changes of the competition regime. However, conditionality was not mainly driven by the benefits and potential threats provided by the EU-Morocco Association Agreements. Rather, it was the prospect of further integration into the European single market and the upcoming DCFTA that was used as an incentive.

Based on the evidence, the Moroccan leadership did not have a strong interest in competition policy reform, and therefore, according to the credible commitment and lock-in theory, the trade agreement should not have much impact. However, the analysis also shows that this is not correct and that the trade agreement did indeed have an impact, via conditionality, but also via the mechanism of enablement. While the means provided by the trade agreement to implement change were not used by the leadership, competition policy experts working in the competition authorities made use of these means and used them to lobby for a better implementation of a competition system. The combination of domestic commitment and external conditionality led to improved enforcement in the years after 2008 and institutional change in 2014, which created a competition regime that meets international standards. What remains to be seen is whether these new laws will finally be enforced, and whether the competition provisions contribute to this change.

6 CARIFORUM

This chapter analyses the competition provisions in the Cariforum-EU Economic Partnership Agreement and their relevance for the development of the competition regime in Cariforum. It starts with providing an overview of Cariforum, which includes its history and the economic situation in the region. Importantly, it presents the various regional integration schemes in the region, as these are relevant to understand the competition policy in Cariforum (6.1). After thus setting the scene, the chapter turns to the first sub-question and dependent variable – the competition regime in Cariforum and its change over time (6.2). This section also identifies the major period of change in the competition regime. The following section presents the Economic Partnership Agreement and analyses the impact of the trade agreement on the change of Cariforum’s competition regime, via the mechanisms of conditionality, socialisation and enablement (6.3). Section 6.4 looks at control variables, i.e. factors other than the EU-Cariforum EPA that shaped the reform of the domestic competition regime. Section 6.5 concludes that the competition provisions in the Cariforum-EU Economic Partnership Agreement sped up the already ongoing domestic development of the competition regime, especially via the mechanism of enablement.

6.1 Cariforum – Overview

The following section gives an introduction to Cariforum. It starts with the history of the Cariforum grouping as part of the African, Caribbean and Pacific group of countries (the so – called ACP Group), as the membership of this group explains the trading relations with the European Union. After an introduction to Cariforum, the thesis will present two other important regional integration schemes that exist in the Caribbean: CARICOM and the Organization of Eastern Caribbean States (OECS). These are necessary to understand the

structure of competition policy in the region. Cariforum itself has no unified competition regime, but consist of several regimes: the regional competition regime of CARICOM and national regimes.

6.1.1 Cariforum, ACP Group and EU relations

Cariforum is a subgroup in the African, Caribbean and Pacific group of countries. The ACP Group was formally constituted in 1975 with the signing of the Georgetown Agreement and consists of 79 African, Caribbean and Pacific countries, of which most are former colonies of European nations. The group formed so that the ACP countries could jointly negotiate with the European Union about the agreements regulating their relations, rather than each ACP country negotiating with the EU on their own. The negotiated agreements, the so-called Lomé Conventions, were the basis for the cooperation between the ACP Group and the EU from 1976 till 2000. They consisted of two main parts: aid and trade. Development aid, given by the European Union to the ACP countries, was distributed via several financing instruments, of which the European Development Fund (EDF) was the most important one. Not less important were the unilateral trade preferences granted to the ACP by the EU. These gave ACP countries preferential market access to the European market for many products economically important for the ACP, such as sugar and bananas (Bernal, 2013; Clarke & Evenett, 2004).

The year 2000 brought a change to the ACP-EU relations. The EU and the ACP agreed on the successor to the Lomé Conventions, the Cotonou Agreement. The Cotonou Agreement, signed in 2000, consists of three parts: trade, development cooperation and political dialogue. One of the main differences between the Lomé Conventions and the Cotonou Agreement is in the area of trade policy. Rather than providing EU trade preferences for all the ACP countries as under the Lomé Agreements, the Cotonou Agreement settled that ACP and EU countries

should negotiate reciprocal trade agreements. This was necessary because multilateral developments put the trade preferences granted by the EU to the ACP in question: the unilateral preferences were not compatible with the WTO system since they violated the most-favoured-nation rule. Developing countries that did not benefit from the preferential ACP access to the EU market therefore challenged some EU preferences in the WTO dispute settlement body. Additionally, the Lomé system was criticized for not promoting ACP development, but rather locking countries into low-value commodity export. The trade preferences for commodities such as sugar and bananas provided no incentive to process these products and increase value added, as processed food faced higher tariffs. Therefore, the EU looked for new ways of promoting development (Bernal, 2013, pp. 12, 16; Heron, 2014, p. 43).

Thus, in the Cotonou Agreement, the EU and ACP agreed on negotiating reciprocal trade agreements that would comply with WTO rules and should support the development of the ACP regions. While it was not specifically stipulated in the Cotonou Agreement, the EU preferred to negotiate regional trade agreements, rather than having a trade agreement for all ACP countries. This was supposed to make it easier to tailor the agreements to the specific needs of the regions, rather than having to cater for 79 countries in one agreement (Bernal, 2013). Moreover, due to its own experience, the EU views regional economic integration as a useful tool for economic progress and promotes it as a development device. The regional negotiations and trade agreements were supposed to give an additional push to regional integration and thus spark further development (Orbie & Faber, 2008). On the other hand, some authors argue that the EU wanted to negotiate with ACP regions rather than the whole group so as to weaken the ACP and strengthen the European negotiating position (Slocum-Bradley & Bradley, 2010). In the end, the EU and ACP decided to negotiate regional trade agreements, rather than an RTA for the whole of the ACP.

Originally, the negotiations on Economic Partnership Agreements with six ACP regions were envisaged to finish by 2007. The deadline was inspired by the fact that the WTO waiver for the trade preferences granted by the EU to the ACP ran out in 2007. Yet the ambition to finalise negotiations by 2007 was largely a failure, and several EPAs are on an interim basis and only include a small number of countries, rather than all countries of the originally envisaged regions. The Caribbean grouping – Cariforum – was the only region to negotiate and sign a comprehensive EPA in time: the agreement was initialled in 2007 and signed in 2008 (Bernal, 2013; European Commission, 2016a).

6.1.2 Introduction to Cariforum

The ACP subgroup Cariforum was formed in 1992. While the European Development Fund already supported some regional projects in the Caribbean in the years prior to 1992, these funds were administered by CARICOM (for more information on CARICOM, see below). Yet after Spain's accession to the European Union, the Dominican Republic, a former Spanish colony, joined the group of ACP countries. Since the Dominican Republic was not part of CARICOM, it became necessary to find a new way of organising the regional EDF funds in the Caribbean. Therefore, Cariforum was founded to negotiate and implement the regional European Development Fund programmes for the Caribbean region (Byron & Lewis, 2007; Caricom Secretariat, 2011a). Thus, Cariforum exists only for coordinating the relationship of Caribbean ACP countries with the EU. Cariforum relies on the infrastructure of CARICOM; for instance, the Cariforum Secretariat is based at the CARICOM Secretariat.

Cariforum consists of all 16 Caribbean ACP countries; but since Cuba has not signed the Cotonou Agreement, it did not participate in the EPA negotiations. The other 15 members jointly negotiated the EPA with the European Union: Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint

Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines, Suriname, and Trinidad & Tobago (Caricom Secretariat, 2011a). They are mostly small island states, with populations between 10 million (Dominican Republic) and 50,000 (St. Kitts and Nevis) (World Bank, 2013). Almost all countries have a high human development index, only Guyana is classified as middle and Haiti as low. Haiti is also the only country that falls into the UN classification *least developed country* (LDC). Gross national income per capita reflects this dispersion of economic strength. Trinidad & Tobago has the highest Cariforum income with a GNI of 25325 USD per capita in 2013, and Haiti the lowest with 1636 USD (UNDP, 2014) as seen in Table 6.1 below.

Table 6.1: Characteristics of Cariforum EPA members

No	Country	Population 2013 ⁴⁵ , total	HDI rank ⁴⁶ 2014	GNI p. capita in 2013 (2011 ppp USD) ⁴⁷	World Bank lending category ⁴⁸
1	Antigua and Barbuda	89,985	High	18800	High income
2	Bahamas	377,374	High	21414	High income
3	Barbados	284,644	High	13,404	High income
4	Belize	331,900	High	9364	Upper middle income
5	Dominica	72,003	High	9235	Upper middle
6	Dominican Republic	10,403,761	High	10844	Upper middle
7	Grenada	105,897	High	10339	Upper middle
8	Guyana	799,613	Middle	6341	Lower middle income
9	Haiti	10,317,461	Low	1636	Low income
10	Jamaica	2,715,000	High	8170	Upper middle
11	St. Lucia	182,273	High	9251	Upper middle
12	St. Kitts and Nevis	54,191	high	20150	High Income
13	St. Vincent and the Grenadines	109,373	High	10339	Upper middle
14	Suriname	539,276	High	15113	Upper middle
15	Trinidad and Tobago	1,341,151	High	25325	High income

Source: own compilation

⁴⁵ World Bank Development Indicators (World Bank, 2013).

⁴⁶ UNDP (2014, p. 160).

⁴⁷ UNDP (2014, p. 160).

⁴⁸ World Bank (2016b).

The Caribbean economies rely on production of primary products such as bananas and sugar, as well as services, mainly tourism. Trinidad & Tobago also benefits from petroleum resources and Jamaica from bauxite. Enterprises that trade regionally are mainly owned by people from Barbados and Trinidad & Tobago (Stewart, 2012). The small size of the Caribbean countries leads to a situation where economies of scale can quickly lead to a dominant position. Oligopolies are therefore common. Moreover, capital is concentrated (Stewart, 2012).

6.1.3 Other regional integration schemes

As mentioned above, Cariforum was established in 1992 as the Caribbean subgroup of all ACP countries to deal with organisational matters of EU cooperation. It is therefore not a forum for deeper economic integration (Stewart, 2012). However, 14 out of the 16 Cariforum countries (all minus Cuba and Dominican Republic) are also part of a regional economic community, the Caribbean Community. CARICOM consists of these 14 countries plus Montserrat, a small, British overseas territory with about 5000 inhabitants.

The Dominican Republic has repeatedly applied for membership in CARICOM, but has not yet been accepted⁴⁹. Therefore, the Dominican Republic is the only country that is part of the Cariforum EPA group that is not part of CARICOM. In 1998, a Free Trade Agreement was signed between the Dominican Republic and CARICOM. Yet it is only partially implemented (Bishop et al., 2011).

CARICOM was established in 1973 with the Treaty of Chaguaramas, with the aim of promoting economic integration. CARICOM wanted to expand on the Caribbean Free Trade

⁴⁹ Just in 2013 new aspirations for accession were brought to a halt when the Constitutional Court of the Dominican Republic took away Dominican citizenship from people of Haiti descent. CARICOM condemned that behaviour and any discussion of accession was stalled (Caricom Secretariat, 2013).

Association (CARIFTA)⁵⁰ to create a common market. Despite economic integration, there is an explicit commitment that Caricom is a community of sovereign states, and the member states are reluctant to pool political sovereignty on the supranational level (Bishop et al., 2011).

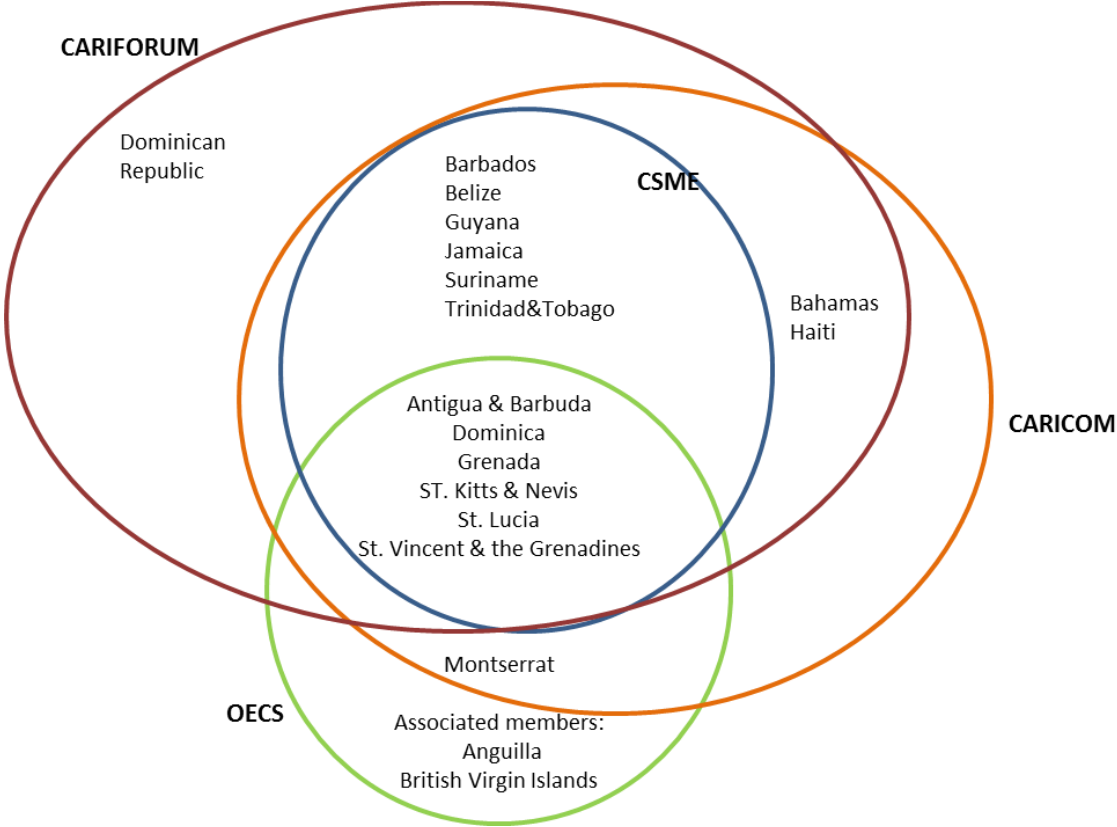
The economic integration in CARICOM advanced only slowly in the first decade. Dissatisfied with the slow progress, the heads of state of CARICOM member countries announced the renewal of the efforts to deepen integration in the Grand Anse Declaration of 1989. Working groups were established, regulations analysed and recommendations developed. These were reflected in the Revised Treaty of Chaguaramas (RTC), which was signed in 2001. There, the Caribbean Single Market and Economy (CSME) was agreed upon, which entails free movement of goods, services, capital, business enterprise and labour; it came into effect in 2006 (Papadopoulos, 2010). All but two CARICOM countries participate in the CSME. Haiti has not yet joined due to its less developed economy, but it is partly integrated. The Bahamas did not sign the RTC because of objections regarding the free movement of people and generally only limited trade with other CARICOM countries (Hartnell, 2014; Stewart, 2012). Despite coming into effect in 2006, the CSME is not fully implemented. For instance, when negotiating with the EU, the CARICOM countries did not yet have a Common External Tariff towards the EU (Stevens, Kennan, & Meyn, 2009).

Seven members of CARICOM are also part of the Organization of Eastern Caribbean States. Antigua & Barbuda, Dominica, Grenada, St. Kitts and Nevis, Saint Lucia & St. Vincent, the Grenadines and Montserrat all form part in this regional organisation established in 1981. The aim of OECS is to cooperate politically and integrate economically. The OECS sees itself not as an organisation competing with CARICOM, but as a first step in the wider CARICOM

⁵⁰ CARIFTA was founded in 1965 by Antigua and Barbuda, Barbados, Guyana, and Trinidad & Tobago, and was later joined by Dominica, Grenada, St. Kitts-Nevis-Anguilla, Saint Lucia, St. Vincent and the Grenadines, Montserrat, Jamaica and Belize. The aim was to integrate economically and build a regional market (Rolfe, 2007).

integration. The OECS has a single currency, and cooperation has traditionally been strong (Bishop et al., 2011).

Figure 6.1: Caribbean regional integration



Source: own elaboration

The fact that there are so many different levels of regional integration leads to a situation in which there is actually no single Cariforum competition regime. Rather, there are competition regimes in the region, on regional as well as national levels. These various elements of the ‘Cariforum competition regime’ will be presented in the next section. The developments will be traced over time, to see how the regime has changed over the years.

6.2 The Cariforum competition regime – development over time

The following section responds to the first research sub-question (“How has the competition regime in the developing country changed in the period leading to and after signing the trade agreement?”) and thus establishes the dependent variable. It will trace the development of the Cariforum competition regime over time. However, in the case of Cariforum this presents a challenge as there is no such thing as *the* competition regime. As mentioned above, Cariforum is not a regional integration project and as such has no coordinated competition regime. Rather, the competition regime consists of various elements. The most important element is the CARICOM competition regime, which works on regional and national levels. It includes all CARICOM members, with the exception of the Haiti and the Bahamas. Haiti is currently implementing neither CSME nor the EPA and does not have a competition regime, due to its political and economic situation. The Bahamas are not part of the CSME and therefore not part of the competition regime; they have to develop their own competition regime on the national level. Next to CARICOM and the Bahamas, the competition regime of the Dominican Republic is a separate system, since the Dominican Republic is not part of CARICOM. Thus, the Cariforum competition regime contains three elements: the competition regimes of CARICOM, the Bahamas and the Dominican Republic. The CARICOM competition regime works on regional and national level.

6.2.1 Cariforum competition regime up to 2001

The CARICOM competition regime has its origins in the 1970s. The original Treaty of Chaguaramas from 1973, establishing CARICOM, contained some non-enforceable provisions on competition. In 2001, it was agreed in the Revised Treaty of Chaguaramas to establish a fully-fledged regional competition regime for CARICOM in the framework of the Caribbean Single Market and Economy project. The CARICOM competition regime can thus

be traced over several decades back in time. In contrast, the Bahamas does not have a competition regime. In 2009 the regulator for public utilities was transformed into the Utilities Regulation and Competition Authority. Despite the name, it currently only works as a regulator and does not deal with competition issues outside of its sector. Therefore, it cannot be counted as a proper competition authority. The Dominican Republic established its competition regime in 2008 (Singh, Silva, Hare, & Thompson, 2014). Therefore, much of the initial discussion will focus on CARICOM.

When CARICOM was established in 1973 with the Treaty of Chaguaramas⁵¹, the founding charter already included some aspects on competition policy⁵². In the annex to the Treaty, which contains the rules for the Caribbean Common Market⁵³, Article 30 in Chapter III relates to anti-competitive business practices. It states that “(a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or result the prevention, restriction distortion [sic] of competition within the Common Market; (b) actions by which one or more enterprises taken unfair advantage of a dominant position, within the Common Market or a substantial part of it” are incompatible with the agreement if it they obstruct the aims of the agreement. It is also stated that it should be considered whether further provisions might be necessary, and that countries should “undertake to introduce as soon as practicable uniform legislation for the control of restrictive practices by business enterprises” (Art. 30.4). There is no mentioning of a regional competition authority. Article 25 and Article 26 state that government aids and practices by

⁵¹ CARICOM was founded by Barbados, Guyana, Jamaica and Trinidad & Tobago in 1973. The OECS countries, Montserrat and Belize joined in 1974, the Bahamas in 1983, Suriname in 1995 and Haiti in 2002 (Caricom Secretariat, 2011b).

⁵² Indeed, the agreement establishing the CARIFTA, the predecessor to the CARICOM, in 1965 included an article on restrictive business practices. Article 19 states that “agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or result the prevention, restrictions or distortion of competition within the Area; (b) actions by which one or more enterprises take unfair advantage of a dominant position within the Area or a substantial part of it” are incompatible with the agreement if they hinder trade (1965). It also includes regulations on state aid and public enterprises. Thus, even the very early Caribbean regional trade agreements contained competition aspects.

⁵³ The Caribbean Community and the Caribbean Common Market were originally two separate legal instruments; therefore, the common market rules are only annexed to the original Treaty of Chaguaramas (Pollard, 2003, p. 7).

public enterprises that might have a negative effect on the agreed trade liberalisation shall be eliminated (Barbados/Guyana/Jamaica/Trinidad & Tobago, 1973).

Interestingly, the provisions seem to be inspired by the competition provisions in the original convention of the European Free Trade Association, the Stockholm Convention. The provisions on anti-competitive agreements, abuse of dominance and public enterprises are identical to the original EFTA provisions, with the exception of a few words such as Common Market instead of Area of the Association, and some exceptions on agriculture in the Treaty of Chaguaramas. There are similarities between the EFTA convention and the EU treaties in the area of anti-competitive agreements, and therefore between the Treaty of Chaguaramas and the EU treaties. Yet the fact that the wording is exactly the same as EFTA indicates that the EFTA Convention has been the main source. According to Pollard (2003) similarities with the EFTA agreement can be found in several places of the original Treaty of Chaguaramas and indicate that EFTA was a greater inspiration to the agreement than the European Union. In view of the fact that CARICOM was and continues to be an organisation of sovereign states, similar to the EFTA, drawing inspiration from EFTA seems reasonable.

The paragraph calling for the introduction of legislation on restrictive business practices in the original Treaty of Chaguaramas had only limited effect. Almost 30 years later by 2001, when the Revised Treaty of Chaguaramas was signed, only one CARICOM member country, Jamaica, had a competition authority (Stewart, 2005). Jamaica had created its competition regime in the early 1990s. Yet rather than the Treaty of Chaguaramas, the main motivation for the introduction of the competition law was a general liberalisation package introduced in the country in the 1980s and 1990s under the auspices of IMF and World Bank (Fair Trading Commission Jamaica, 2006; King, 2000; UNCTAD, 2005). The Fair Competition Act (FCA) was enacted in 1993. It drew inspiration mainly from the US and Commonwealth jurisdictions, and the institutional structure of New Zealand and Australia (Stephenson, 1999).

The law includes regulations on abuse of dominance as well as vertical and horizontal agreements. It does not include merger provisions. According to UNCTAD (2005) this was due to the active lobbying of Jamaican business. The Jamaican competition authority is now an established competition agency. It has successfully handled cases and is active in competition advocacy (UNCTAD, 2005). Much focus was initially put on consumer protection such as misleading advertising, in order to gain public support for the competition authority (Stephenson, 1999). This took the focus away from investigations into anti-competitive behaviour, but the focus has shifted recently.

The implementation of the original Treaty of Chaguaramas was slow not only in the area of competition policy, but in most other policy fields as well. To give regional integration a new impetus, the Caricom heads of state proclaimed a common market as a joint goal in the Grande Anse Declaration of 1989 and set up the West Indian Commission to analyse and suggest next steps for Caribbean integration. While competition policy was not itself mentioned as a recommendation in its “Time for Action” report (West Indian Commission, 1993), it became part of the issues debated in working groups, according to interviews, and was consequently included in the Revised Treaty of Chaguaramas, signed in 2001. Chapter 8 of the RTC deals with competition policy and consumer protection and sets up a regional competition regime.

In sum, competition policy was already included in the Original Treaty of Chaguaramas in 1973. The Treaty also mentioned the necessity to look into the need to establish national competition agencies. Despite this, only Jamaica had established a competition authority until 2001, when the Revised Treaty of Chaguaramas was signed. Moreover, the reasons for the establishment of the Jamaican Fair Trading Commission (FTC) were not the Treaty of Chaguaramas, but a general reorientation towards more liberal policies under the auspices of

the international financial institutions. With the exception of Jamaica, the Cariforum competition regime in those years barely existed.

6.2.2 The Revised Treaty of Chaguaramas

In 2001, the Revised Treaty of Chaguaramas was signed, to move CARICOM regional integration to a new level. One main feature to advance integration was the establishment of the Caribbean Single Market and Economy (CSME), which aimed at further integrating the participating countries economically (Papadopoulos, 2010).

As part of the CSME, the Revised Treaty of Chaguaramas includes a whole section on competition policy. Chapter 8 of the RTC sets out the competition regime for the CARICOM CSME countries. It stipulates among other the creation of a regional competition commission, the establishment of the missing national competition commissions and includes substantive provisions on competition rules. The Treaty does however not include any deadlines on when these tasks should be fulfilled.

The following paragraphs describe the institutional setup and the anti-competitive behaviour regulated in the Revised Treaty of Chaguaramas. The competition section in the RTC has some flaws and unclear paragraphs, and is therefore set to be changed in the next revision of the Treaty. Interviewees have confirmed that the issues are already being discussed but it is not yet clear when they will be included in the Treaty.

Institutional setup

Article 171 of Chapter 8 of the RTC regulates the establishment of the Caricom Competition Commission (CCC). The Commission consists of seven members, who are appointed for five years. The mandate of the Commission is to deal with competition issues that have cross-border effects; similar to the EU system, anti-competitive behaviour that only affects one

CARICOM member shall be dealt with by the national competition authorities. The Commission is tasked with monitoring and investigating anti-competitive practices, advising on the effectiveness of the competition policy, promoting the harmonisation of competition laws of members states, reviewing the progress in establishing competition policy institutions, cooperating with national competition authorities, providing support to member states, facilitating the exchange of relevant information and expertise and disseminating information on competition policy (Article 173). The Treaty (Article 170) also requires each country to establish or maintain a national competition authority and introduce the legislation necessary to comply with the RTC.

The Council for Trade and Economic Development (COTED) is a political body in CARICOM, formed of ministers of each CARICOM member state and charged with developing trade and economic development policies for the region. In the area of competition, COTED is responsible for the development of the regional competition policies and sector policies (Caricom Secretariat, 2001; Stewart, 2012). COTED is also important in case the CCC and a national competition authority do not agree on the nature and effects of un-competitive behaviour; in such a situation, the case will also be passed on to COTED to decide (Article 176). If no final decision is taken in COTED, it is, according to Kaczorowska-Ireland (2015, p. 261), likely that the case will end in the Caribbean Court of Justice (CCJ). The CCJ can also be called upon in the event that a party does not support decisions taken by the CCC (Beckford, 2012).

Member States and COTED can request that the CARICOM Competition Commission investigate a case (Art. 175 RTC). The CCC also has the right to start an investigation in *proprio motu*, however this right is subject to restrictions. If it has reasons to believe that there is anti-competitive conduct, the Commission can ask the national authority of a member state to examine the issue (Art. 176.1 RTC). The national authority shall then examine the matter,

and if the CCC is not satisfied with the outcome of the request, the CCC can initiate its own preliminary examination (Art. 176.2 and Art. 176.3 RTC). If either the member states or the CCCs preliminary examination shows that the findings require further investigation, the CCC and the Member State have to agree who has the jurisdiction to carry out the investigations. If they cannot agree, the matter must be referred to COTED (Art. 176.5 RTC). If however it is agreed that it is the CCCs role to investigate, and the CCC determines that there is anti-competitive conduct, it can order the enterprises to cease the anti-competitive practices and order payment of compensation as well as impose fines (Beckford, 2012).

Both procedures to start investigations ensure that CARICOM member states are always involved. This leaves room for political influence, especially in cases where CCC and NCAs disagree and COTED has to determine how to proceed. Since COTED is a political body consisting of ministers from the member states, they could stop investigations if it is in the national interest. This institutional setting has been criticised for limiting the independence of the CCC (Heimler & Jenny, 2013). A similar critique has sometimes been levelled at the EU competition regime. Here, it is argued that decisions of DG Competition can be politically influenced via the European Commission (Budzinski, 2012).

Regulated behaviour

The primary goal of the CARICOM competition policy is to ensure that anti-competitive business conduct does not undermine the benefits of market integration. Further objectives are the promotion and maintenance of competition and enhancement of economic efficiency; the prohibition of anti-competitive business conduct and the promotion of consumer welfare. As Kaczorowska (2012) notes, these objectives have to be further analysed in the light of the overall goals of the CSME and priorities. For instance, CARICOM has categorized some of its member countries into a group of less developed countries, which are treated differently. This categorisation might be taken into account in competition policy disputes. Due to these

aspects, the final objectives of the competition regime will only become clearer once a few cases have been decided upon (Kaczorowska, 2012).

The RTC prohibits the following anti-competitive business conduct: “(a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community; (b) actions by which an enterprise abuses its dominant position within the Community; or (c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME “ (RTC Article 177). The Treaty then goes on to further define these instances in the next articles.

In contrast to the competition provisions in the original Treaty of Chaguaramas, which were inspired by the EFTA agreement, the provisions in the RTC are more similar to EU competition rules. Indeed, the wording of (a) is very similar to TFEU 101. Especially, the phrasing of examples of collusion is very similar to those in TFEU 101. The section on abuse of dominance however is differently phrased and the examples are different. Part (c), prohibiting “any other like conduct by enterprises” has no equivalent in the EU treaty. Similarities with the EFTA Convention are a lot less than in the Original Treaty of Chaguaramas and stem from the fact that the RTC is based on the Original Treaty, rather than being newly inspired by the EFTA Convention.

Article 183 of the RTC stipulates that COTED can agree on exempting certain sectors from the application of competition law. 183(b) specifically mentions the possibility of excluding sectors or enterprises of public interest. Thus, the agreement includes the possibility of regulating enterprises and sectors with special and exclusive rights differently. Furthermore article 94 regulates that if public undertakings breach rules of fair competition, the aggrieved member state can notify COTED of these issues. However, in this case CCC is not involved. Article 31 established that governments have the right, for public interest reasons, to establish

monopolies, but that monopolies have to be subject to the Caricom competition rules and the government has to ensure non-discrimination between nationals of member states. RTC also includes several articles on subsidies (Article 96ff), but this is not part of the competition chapter nor is it controlled by the CCC. There is also no similarity to EU state aid wording. Mergers are not mentioned in the RTC.

The Revised Treaty of Chaguaramas was signed in 2001, yet it took some years until the relevant authorities were established and the rules could be put to use, as will be seen in the following section.

6.2.3 Developments since 2001

The Revised Treaty of Chaguaramas was signed in 2001, and the CARICOM Competition Commission was inaugurated in January 2008. On a national level, four more Cariforum countries have passed national competition legislation since 2001. Thus, as of 2016, 5 out of 15 Cariforum countries have national competition legislation and competition authorities – Jamaica, Barbados, Guyana, Trinidad & Tobago and the Dominican Republic. Yet despite this progress, enforcement on the national as well as the regional level is still lacking.

Developments on the regional level

The CARICOM Competition Commission was inaugurated in 2008. Money from the 9th EDF fund helped to set up the Commission. The Commissioners were appointed in 2008 for a period of 5 years. Some left the CCC in 2013 after their term had ended, and new Commissioners were found. According to interviews in 2015, the CCC has four technical staff, and four administrative staff. When the interviews were conducted, the position of CEO had been vacant for a few years, and the position of senior legal counsel was also vacant. The budget of the CCC was around 700.000 USD per year and was provided by CSME member

states. However, the CCC sometimes has to struggle to actually receive the funds, according to one interviewee.

Rules on handling of cases were completed in 2011, also with EU technical support. By spring 2016, several preliminary investigations had taken place, but only one case was progressed further, because the others were trade policy issues rather than competition policy issues, according to interviewed officials. The only case where an investigation was started was against Trinidad Cement Limited (TCL). TCL is a regional cement producer, and Caricom member states had complained that it abused its dominant position. As a consequence, COTED requested the CCC to take up the case. The CCC did a preliminary investigation and the investigating panel recommended an enquiry. However, before the enquiry started, TCL brought the matter to the Caribbean Court of Justice, arguing that the CCC had acted wrongly in initiating and conducting the investigation since the RTC calls for all interested parties to be informed within 30 days of initiating an investigation and TCL was not informed. TCL therefore argued that CCC's decision to hold an enquiry should be void. The CCJ dismissed TCL's claim on the basis that it was not clear who the interested parties were since this was not specified in the Treaty. However, it encouraged the CCC to review its rules, as they were not very clear ("Trinidad Cement Limited and the Competition Commission," 2012).

In the last years, the CCC has focused on competition advocacy and support to build up the regional system. The CCC attempts to raise the awareness of the importance of competition policy, e.g. by publishing information on competition in the news and presenting in seminars to private business and public authorities. The CCC has also been active helping the CSME member states setting up national competition authorities. For instance, it supported Guyana in training its competition agency staff and developing rules of procedure, and advised OECS on an action plan to set up its commission (Caricom Competition Commission, 2015).

According to interviews, for the next years, the setting up of a regional cooperation network with all CSME competition authorities is planned, similar to the European Competition Network. Furthermore, the CCC advises COTED on suggested changes to the regional competition legislation. It has reviewed the RTC and proposed changes. Moreover, since 2011 there are efforts to introduce merger regulations on regional level in CARICOM. The European Development Fund has provided project funding to pay for consultants who help to develop the merger rules. Some national competition authorities such as Barbados and Trinidad & Tobago already have merger provisions. Moreover, increased regional but also extra-regional investments make the regulations of mergers more and more important (Haraksingh, 2013; Kaczorowska-Ireland, 2015).

Developments on the national level – countries with competition regimes

As discussed before, Jamaica was the first and for a long time the only Cariforum country to have a competition law. The next countries to follow were Barbados (2003), Guyana (2006), Trinidad & Tobago (2006) and the Dominican Republic (2008). The following paragraphs introduce these competition policy regimes.

Jamaica introduced competition legislation and set up a competition authority already in 1993. Being a common law country, it looked for inspiration at UK and Commonwealth laws, specifically the New Zealand and Australian laws (Stephenson, 1999). The Fair Competition Act covers abuse of dominance and anti-competitive agreements, but not mergers (Moore, 1999). Since the early 2000s it has become clear that there is a need for changes in the competition law in Jamaica. In the decision *Jamaica Stock Exchange vs FTC*, the Court of Appeal in Jamaica identified a problem in the institutional set up of the Jamaican Fair Trading Commission: the Fair Trading Act failed to explicitly separate the investigating and the adjudicating bodies, which is a breach of the rules of natural justice. The Court ordered that

the law be revised ("Jamaica Stock Exchange vs. The Fair Trading Commission ", 2001). This finding practically paralysed the work of the FTC for a few years, since as a result the FTC could only resort to "moral suasion" rather than persecution (UNCTAD, 2005, p. 72). By 2016, the Jamaican government was still in the process of finding a solution to the problem and had debates on how to set up the new institutions, according to interviews with regional competition experts and involved officials. Additionally, the Jamaican legislation needs to be adopted in order to comply with the provisions of Chapter 8 of the Revised Treaty of Chaguaramas. The current law does not include the possibility that external entities, such as the Caricom Competition Commission, request an investigation, which makes it difficult for the FTC to cooperate with the CCC (Beckford, 2012). This could prove difficult if the CCC asked the Jamaican Fair Trading Commission to investigate anti-competitive behaviour. Therefore, the Jamaican legislation requires change in order to facilitate the cooperation with the CCC. According to interviews, these changes have been taken into account in the draft legislation that by mid-2016 was expected to be taken to parliament shortly.

In 2015, the FTC has 5 Commissioners, 16 technical staff, and 8 support staff (Fair Trading Commission Jamaica, 2015b). It can initiate investigations by itself or can be asked to investigate, and has regularly looked at a few hundred cases per year (Fair Trading Commission Jamaica, 2015a, p. 12). Of those the vast majority however fell into the category of "misleading advertising" over the past years, which is rather a consumer protection issue than competition policy per se. Anti-competitive matters were occasionally being investigated; however, due to the above-mentioned institutional issues, these could not be brought to a court and therefore rely on voluntary compliance of the enterprises. The agency has been active in competition advocacy, which included trainings given to entrepreneurs, lawyers, judges and other interested members of the public, as well as advise for the

government which ensure that competition is being taken into consideration in its activities (Fair Trading Commission Jamaica, 2015a).

The Barbados Fair Trading Commission has existed since January 2001. It was established on the basis of the already existing Public Utilities Board. Two years later, the competition laws were introduced – this way, the Commission was already set up and ready to enact the competition law, as one interviewee stressed. Barbados benefitted from Jamaica’s experience and received training from its partner organisation (Stewart, 2005). Next to competition policy, the FTC in Barbados is also responsible for consumer protection and sector regulation. The FTC can self-initiate investigations and has ample investigation powers, which it uses regularly. Between 2008 and 2014, the BFTC investigated 78 cases (WTO Secretariat, 2014). In 2014 alone, Barbados investigated 15 anti-competitive cases, including 5 mergers (Fair Trading Commission Barbados, 2014). Between 2008 and 2014, only two cases were appealed before the court (WTO Secretariat, 2014, p. 72).

Both the Barbados Fair Trading Commission and the Jamaican Fair Trading Commission cooperate regularly with the US competition agencies. This cooperation was set up in the framework of the International Network of Competition (ICN). Both the FTC in Barbados and FTC in Jamaica call on the US agencies on case by case basis if questions arise when they look at cases, according to regional experts and officials.

Guyana passed the Competition and Fair Trading Act in 2006. The Competition and Consumer Affairs Commission became operational in 2011, and has 8 staff members. However, according to several interviewees, it is not yet working on competition issues, and its activities centre on consumer affairs. No cases have been investigated and brought to court. Advocacy takes place, but is also mostly directed to consumer protection issues.

Trinidad & Tobago enacted the Fair Competition Act in 2006, after a Green Paper on the act had already been published in the late 1990s (IADB/OECD, 2004; Moore, 1999). The law regulates anti-competitive agreements, abuse of dominance and mergers. However, it does not use the term ‘abuse of dominance’, but rather ‘monopolization’ (Trinidad & Tobago, 2006), which is the term used in the United States. The law has not yet been enforced. In 2015 the commissioners and the CEO of the Fair Trading Commission of Trinidad & Tobago were appointed. Yet still some of the provisions of the competition law are not yet proclaimed, as Trinidad & Tobago first wants to establish the Commission, train the staff and the judges before proclaiming the law. Therefore, as interviews confirmed, by 2016 the FTC had not yet taken up work.

In contrast to Jamaica, Barbados, Guyana and Trinidad & Tobago, the Dominican Republic is not part of the Caricom competition regime and not bound by the obligations of the Revised Treaty of Chaguaramas. However, the Dominican Republic had considered establishing a competition authority for several years (Clarke & Evenett, 2004) before finally introducing legislation in 2008. Interestingly, the competition law of the Dominican Republic mentions the regional trade agreement with the United States (DR-CAFTA) as one of the reasons to adopt the competition law: “considering that it is necessary to create an environment that promotes competition in our local goods and services markets to enable the entry into force of DR-CAFTA to advance a reduction in prices, efficient use of productive resources, and, as a consequence, improve the lives of the Dominicans”⁵⁴ The RTA with the US was signed in 2004 and entered into force in 2007 (Organization of American States, 2015), but does not contain any competition policy provisions (Teh, 2009). The Dominican competition law does not mention the Economic Partnership Agreement, which does contain competition

⁵⁴ Own translation: „Que se necesita crear un ambiente que propicie la competencia en los mercados locales de bienes y servicios para lograr que la entrada en vigencia del DR-CAFTA promueva la reducción de precios, el uso eficiente de los recursos productivos y, en consecuencia, mejores condiciones de vida de los dominicanos“ (Congreso Nacional de la Republica Dominicana, 2008)

provisions. However, timing might have been an issue given that the EPA was only signed in 2008.

The Competition Law of the Dominican Republic, Ley No. 42-08 was approved in 2008, and the competition authority - Comisión Nacional de la Defensa de la Competencia (CNDC), or short Procompetencia - established in 2011. Anti-competitive agreements and abuse of dominance are prohibited, but there is no specific mentioning of mergers in the law (Law 42-08). An investigation of the law by the author of this thesis shows that anti-competitive regulations are similar to laws found in the EU and Latin America, but the wording is not similar to the EU competition laws or the Spanish law. Indeed, Solano and Infante (2010) argue that the procedural aspects are more similar to the US. The competition authority has a staff of 44 people. Michelle Cohen was appointed in 2012 as President of the Board of Directors, but dismissed in August 2016 and replaced with Yolanda Martínez, two years before her appointment was supposed to end. Some commentators see a connection between her dismissal and studies published earlier in the year by Procompetencia, which indicate anti-competitive behaviour by Dominican companies, including an influential beer company, and argue that this does not bode well for the functioning of the Dominican competition regime (Diario Libre, 2014; Jimenez, 2016; Local, 2016; Silvestre, 2016). As of 2016, the executive director had not yet been appointed and since this position is needed to investigate cases, none had been followed up yet, according to interviews. Procompetencia has staff and budget since 2011 and has mostly used these resources for competition advocacy (Procompetencia, 2014).

Thus, next to the long-established competition regime in Jamaica, new competition legislation and authorities have been established in Barbados, Trinidad & Tobago, Guyana and the Dominican Republic. Jamaica and Barbados are working comparatively well and despite some institutional issues, regularly investigate anti-competitive cases. The other three are mostly focusing on competition advocacy, while waiting for the appointment of important

positions (Dominican Republic) and training of staff to be able to deal with competition matters (all three of them). None of these three had prosecuted cases by 2016.

Developments on the domestic level – countries establishing competition regimes

The OECS countries, Belize, Suriname and the Bahamas are all still in the process of establishing competition regimes. They are at various levels of progress, which will be presented below.

Table 6.2: National Competition Agencies and Laws in Cariforum, 2015

Region	Country	Authority, established	Legislation
CARICOM , CSME Countries	CARICOM Regional Level	CARICOM Competition Commission (2008)	Revised Treaty of Chaguaramas (2001)
	Antigua & Barb.		Draft OECS Competition Bill under review
	Dominica		
	Grenada		
	St Kitts & Nevis		
	Saint Lucia		
	St Kitts & Nevis		
	Barbados	Barbados Fair Trading Commission (2001)	The Barbados Fair Competition Act CAP. 326C (2003)
	Belize		Draft Bill
	Guyana	Competition and Consumer Affairs Commission of Guyana (2011)	Competition and Fair Trading Act of Guyana (2006)
	Haiti		
	Jamaica	The Fair Trading Commission (1993)	The Jamaica Fair Competition Act (1993)
	Suriname		Competition Bill drafted
	Trinidad & Tobago	The Fair Trading Commission (2007)	The Trinidad and Tobago Fair Trading Act (2006)
CARICOM, non-CSME country	Bahamas	Sector regulator - The Utilities Regulation and Competition Authority (2009)	
Non-CARICOM country	Dom. Rep.	Comisión Nacional de Defensa de la Competencia (Pro-Competencia, 2011)	General Defence Competition Law No. 42-08 (2008)

Source: Singh et al. (2014, p. 51), interviews, competition acts

The seven⁵⁵ member states of the OECS decided to have a joint competition regime, however when interviews were conducted it was not yet sure how it would be institutionalised and financed. Discussions ranged from establishing an OECS regional competition authority to

⁵⁵ Including Montserrat.

using the CCC as the competition authority for the OECS and install satellite offices in the countries. However, the discussions were still ongoing and the final result was, according to interviews in 2016, not yet decided. Since OECS countries are very small, they are constraint both in terms of technical and financial resources.

Belize and Suriname were also still in the process of drafting competition bills, and were supported in this endeavour by EU EDF funded projects (Caricom Competition Commission, 2014; Singh et al., 2014).

In the Bahamas, which is not part of the Caricom competition regime, the Utilities Regulation and Competition Authority (URCA) was established as a competition authority in 2009. Yet it only regulates enterprises in the electronic communication sector, and thus does not present a full-fledged competition authority. It may regulate other sectors in the future if like laws are introduced, but there in 2016 there was no hint that it would become a proper competition authority soon or that proper competition legislation was being prepared. According to one interview, the Bahamas are the furthest behind in the region in developing a competition law. While they did have a draft law, it only “sits on the shelf”, according to one expert. In 2016 they received IADB funding to hire experts to draft a competition law.

6.2.4 Conclusion

Since 2001, the Cariforum competition regime has constantly evolved. While in the years prior to 2001 the competition regime in the region was hardly existent, the pace of change has picked up after the Revised Treaty of Chaguaramas was signed in 2001. This change has been mainly institutional, though some change in enforcement can also be observed.

Institutional change can be observed from 2001 onwards, when the Revised Treaty of Chaguaramas was signed and the competition regimes of Barbados, Guyana, Trinidad & Tobago, Dominican Republic and the CARICOM Competition Commission established.

Change in enforcement is mostly observable from 2003 onwards in the case of Barbados, which, just like Jamaica, staffed and budgeted its competition authority, introduced rules of procedure, pursued competition advocacy and actually investigated several cases. Change in enforcement based on increased competition advocacy can be observed from 2008 onwards especially from the CCC, but also from the Dominican Republic.

Table 6.3: Change at the Regional Level

Dimensions of Change	Indicators	Situation 1995	Situation 2001	Situation 2015
1 Institutional change	Competition Authority - Independence - Powers of investigation - Power to sanction	-	-	CCC establ. in 2008 - Partly independent - Limited powers of investigation (cooperation with NCAs necessary) - Power to sanction: yes
	Adoption of Competition Law, - Abuse of dominance - Agreements - Mergers	Treaty of Chaguaramas (1973)	Revised Treaty of Chaguaramas, 2001, - Abuse of dominance, agreements - NO mergers	Same as 2001; Additionally, merger provisions are being prepared
2 Enforcement	Resources	-	-	4 technical, 4 admin staff, funded by CARICOM CSME members
	Implementation procedures	-	-	Adopted (in 2011)
	Competition Advocacy	-	-	Yes, by CCC
	Cases	0	0	Against Trinidad Cement Limited
3 Approximation to European System	Wording (e.g. in legislation) State aid covered public undertakings/ undertakings with exclusive rights is covered	Wording similar to EFTA text, rather than EU State aid not covered, but public undertakings (wording as EFTA)	Wording similar to EU State aid not covered, public undertakings covered	Like 2001

Source: own elaboration

Approximation to the EU is only obvious in 2001, when the CARICOM competition legislation changes from being very similar to the provision of the EFTA to becoming more similar to the EU competition rules. The wording is in some cases taken exactly from the European Treaties. Also, Menns and Eversley (2011) note, it is to be expected that the CCC will take DG Competition as a model to follow, e.g. in the structure of adjudication. Initiatives such as the envisaged introduction of a Cariforum Competition Network also appear to have been inspired by the EU. These similarities are in line with the observation that the whole Revised Treaty of Chaguaramas follows the EU example (Beckford, 2012). Since the EU is the prime example of regional integration, many regional economic communities emulate EU rules (Lenz, 2012), and this is also the case for the Cariforum competition regime.

However, just as the CARICOM regional institutions generally have less power than EU regional institutions (Bishop et al., 2011), the CCC has more limited powers than DG Competition. And while the structure is similar in that there are both a regional and national competition authorities, the CCC, in contrast to DG Competition, cannot mandate competition authorities to investigate. Regarding regulated behaviour, the CARICOM competition rules cover anti-competitive agreements and abuse of dominance, and will most likely include merger regulations in the near future. However, state aid and public enterprises are not controlled by the CCC.

Table 6.4: Change on National Level

Dimensions of Change	Indicators	Situation 1995	Situation 2002	Situation 2015
1 Institutional change	Competition Authority	- Jamaica (1993)	Jamaica (1993) Barbados (2001)	Jamaica (1993), Barbados (2001), Guyana (2011)
	- Independence of investigation - Powers of investigation - Power to sanction			Trinidad & Tobago (2006) Dom. Republic (2011)
	Adoption of Competition Law, - Abuse of dominance - Agreements - Mergers	- Jamaica (1993)	Jamaica (1993)	Jamaica (1993) Barbados (2003) Guyana (2006) Dominican Republic (2008) Trinidad & Tobago (2006, but only partly proclaimed)
2 Enforcement	Resources			
	Implementation procedures	Jamaica	Jamaica, Barbados	Jamaica, Barbados, Guyana
	Competition Advocacy	Jamaica	Jamaica, Barbados	Jamaica, Barbados, Dominican Republic
	Cases	Jamaica	Jamaica	Jamaica, Barbados,
3 Approximation to European System	Wording (e.g. in legislation) State aid covered public undertakings/ undertakings with exclusive rights	None	None	None

Source: own elaboration

Summarising, the Cariforum competition regime has been subject to several changes in the past years. Due to the nature of the Cariforum competition regime, which is made up of several national as well as a regional system, it is difficult to pinpoint exact periods of change. A period of institutional change has started in 2001, which led to the adoption of several competition laws (RTC in 2001, Barbados in 2003, Guyana in 2006, Trinidad & Tobago in

2006 and Dominican Republic in 2008). The establishment of competition authorities picked up in 2008 and the following years (CCC 2008, Guyana 2011, Dominican Republic 2011, partly Trinidad & Tobago). However, in 2016 the rest of the Cariforum countries were in the process of setting up competition laws and institutions – therefore, the process of institutional change was still ongoing.

Periods of change in enforcement can be identified when competition policy was started to being implemented in Jamaica and Barbados (1993 and 2003) respectively, as well as in the years after 2008, when especially the CCC and the Dominican Republic became more active in promoting competition policy.

Approximation to the EU took mainly on regional level in 2001, when CARICOM closely followed the EU model to set up its competition rules. The planned establishment of a CARICOM Competition Network also shows some similarity to EU processes. However, this change has not (yet) led to a convergence of national competition rules.

6.3 Influence of the Economic Partnership Agreement with the European Union

As shown in the previous section, the Cariforum competition regime has been subject to several changes in the past years. Institutional change was important in 2001 and the following years, where competition laws for CARICOM, Barbados, Guyana, Trinidad & Tobago, and Dominican Republic were adopted, and competition agencies established. Moreover, enforcement of competition policy received a new push after 2008, less in the area of actual adjudication of cases but more in the area of competition advocacy. EU approximation is observable in 2001.

These changes in the competition regime partly coincide with the negotiation and the implementation of the regional trade agreement between the European Union and Cariforum.

Talks about the Economic Partnership Agreement started as early as 2000, negotiations in regional groupings, including on competition, picked up in 2006 and the agreement was signed in 2008. Since then, the implementation phase has started.

Did the regional trade agreement have an impact on institutional change, the change in enforcement or the approximation to the EU? If so, how did it help to bring about this change? As developed in the analytical framework, there are three main pathways of how the trade agreement could have impacted change: via the mechanism of coercion, via the mechanisms of socialisation, and via the mechanism of enablement. The following section will first give the background to the competition provisions Economic Partnership Agreement (5.3.1), and then explore how they influenced change in the Cariforum competition regime (5.3.2), before concluding (5.3.3).

6.3.1 Economic Partnership Agreement and Competition

In 2000, the Lomé Conventions, that had governed the relationship between the African, Caribbean and Pacific countries in the past decades, were replaced by the Cotonou Agreement. Next to regulation on cooperation in political aspects and on development funding, the agreement also contained the understanding that trade preference granted from EU to the ACP would be replaced by reciprocal regional trade agreements. Negotiations were to be finalized until 2007, when the current WTO waiver for the trade preferences was to run out (Bernal, 2013).

The negotiations on the Economic Partnership Agreements started in 2002 between the EU and all ACP countries. It was soon decided that the aim was not one RTA between the EU and all ACP states, but several regional trade agreements between the EU and regional ACP groupings. By 2004, the regional Cariforum-EU negotiations were launched, which culminated in the signing of the Cariforum-EU EPA in October 2008 as the first

comprehensive Economic Partnership Agreement between the European Union and a group of ACP countries (Vahl, 2011).

Next to trade liberalisation in goods, the EPA contains provisions on liberalisation of services and investment, and regulates trade-related issues such as competition, intellectual property rights, public procurement, and environmental and social standards⁵⁶. In contrast to regional trade agreements with non-developing countries, the EPA also includes a development dimension in that the EU opens markets faster and to a wider degree than Cariforum countries: whereas the EU offers full duty and quota free access after 2015, Cariforum countries only liberalise around 85% of EU imports with implementation periods of up to 25 years. In the area of services, the EU committed to open 94% of its market. For Cariforum, the level of opening depends on the economic status of the country and is around 65%, 75% and 86% for lesser-developed countries, for more-developed countries and for the Dominican Republic, respectively (Stevens et al., 2009, p. 65). Yet whereas the opening of the EU service market is a new feature of the trade agreement, the Caribbean countries already enjoyed free market access to the European market for 95% of its products under the Lomé trade preferences. The EPA also includes provisions on development cooperation provided by the EU to Cariforum, but does not contain any specific commitment to financial support (Bernal, 2013; Heron, 2014, p. 46).

The exact meaning of what the ‘development dimension’ entailed remained unclear throughout the EPA negotiations. Whereas many on the Caribbean side took it for financial aid and differentiated market access, the European Commission also deemed economic reforms spurred by trade agreements a central aspect of the development dimension of the EPAs (Girvan, 2010). As the EU Trade Commissioner at that time, Peter Mandelson put it in a speech at the ACP/EU Joint Parliamentary Assembly: “We need well designed EPAs with

⁵⁶ For a discussion on the question why the Cariforum EPA is more than a goods-only agreement, see Bernal (2013); Bishop, Heron, and Payne (2013); (Lodge, 2011).

the development dimension at their centre. This means three things: (i) clear and simple rules covering all areas key to investment and markets, such as services, movement of goods and harmonised regional legislation, (ii) linking the EPA to accompanying development support to help in the process of change and protect the vulnerable, and (iii) gradual changes in ACP market access with the greatest and fastest liberalisation on the EU side. It is all three aspects that combine to form the development dimension of an EPA” (Mandelson, 2006). One important aspect of simple rules is competition policy (Mandelson, 2007).

On Cariforum side, the main coordinator of EPA negotiations was the Caribbean Regional Negotiation Machinery (CRNM). It had been established in 1997 by CARICOM to coordinate trade negotiations in the WTO and the US initiated negotiations on the Free Trade Area of the Americas (FTAA)⁵⁷; later, it was also charged with negotiating the EPA for Cariforum. The CRNM reported directly to the Prime Ministerial Subcommittee on External Relations, which was chaired by Prime Minister P.J. Patterson from Jamaica for most of the negotiation period. Towards the end of the negotiations, the Jamaican prime ministers Portia Simpson-Miller and then Bruce Golding chaired the Subcommittee. According to Bernal (2013, p. 53), head of the CRNM during EPA negotiations, he always had direct access to them as well as Prime Minister Arthur Owen of Barbados, in charge of completing the CSME.

Technical negotiations were carried out by the College of Negotiators, which was staffed with personnel from CRNM and other technical experts, e.g. from the CARICOM Secretariat. Political supervision lay with the council of trade ministers, which consisted of COTED and a minister from the Dominican Republic (Bernal, 2013). The negotiators for legal matters, including for competition policy, were Kusha Haraksingh and Audel Cunningham, according to interviews.

⁵⁷ The Free Trade Area of the Americas was a proposed trade agreement between 34 American countries (including the US, CARICOM and the Dominican Republic) (Clarke & Evenett, 2004); negotiations started in 1999 but broke down in 2005.

The EU-Cariforum EPA contains a full chapter on competition and also features competition provisions in some sectoral sections, e.g. on tourism. The first chapter in the segment on trade-related issues specifically deals with competition (Articles 125-130).

Article 125 indicates which competition laws and authorities are addressed with the chapter. In the case of Cariforum, the competition authorities cover the CARICOM Competition Commission and the Comisión Nacional de la Defensa de Competencia, the competition authority of the Dominican Republic. There is no mentioning of a competition authority of the Bahamas. According to Cunningham (2011), the Cariforum negotiators also wanted to mention a Bahamas competition authority in the EPA text, but the EU negotiators did not agree to this, because the authority did not exist yet. However, at that point the Dominican Republic's competition authority did also not yet exist, yet was mentioned, and the EU did not object to mentioning the competition law of the Bahamas in the EPA. While it is possible that the EU preferred not to deal with too many competition authorities at the same time, it remains unclear why it is not included.

Further, Article 125 mentions the relevant competition laws, and also refers to the Revised Treaty of Chaguaramas: “for the Cariforum States, Chapter 8 of the Revised Treaty of Chaguaramas of 5 July 2001, national competition legislation complying with the Revised Treaty of Chaguaramas and the national competition legislation of The Bahamas and the Dominican Republic” (Cariforum/EU, 2008, p. Article 125). According to Article 127(1), Cariforum member states have five years to establish legislation and institutions, if not yet existent, after entry into force of the EPA.

Article 126 on principles rules as “incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Parties: (a) agreements and concerted practices between undertakings, which have the object or effect of preventing or substantially lessening competition in the territory of the EC Party or of the Cariforum States

as a whole or in a substantial part thereof: (b) abuse by one or more undertakings of market power in the territory of the EC Party or of the Cariforum States as a whole or in a substantial part thereof”. Next to concerted practices and abuse of dominance it also covers public enterprises and enterprises with special or exclusive rights, including monopolies (Article 129). Parties are allowed to assign or maintaining monopolies (129(1)) and all are subject to competition law as long as this does not affect them performing their assigned tasks (129(2)). Both parties have 5 years to eliminate discriminatory practices of commercial monopolies and ensure national treatment for the buying and selling of goods and services (129(4)). To comply with the Revised Treaty of Chaguaramas, Article 129 (3) allows Cariforum states to exempt specific sectors from the competition law if sectoral rules exist⁵⁸. Further, Article 129 (5) states that the Trade and Development Committee shall be informed about rules enacted under 129 (3) or 129(4).

In contrast to the above, provisions on information exchange and enforcement cooperation (Article 128) are all in best endeavour language, i.e. use the phrase may, rather than shall. Competition authorities may cooperate in enforcement activities, may exchange non-confidential information, and may inform the other party if they have information about un-competitive behaviour affecting the other party. According to Article 127, Article 128 shall only come into effect after national competition laws have come into force. Six years after that, the functioning of this cooperation shall be reviewed. According to Cunningham (2011), the weak provisions on information sharing and enforcement cooperation are largely due to the European Union negotiators, who did not want to enter into close cooperation with very young competition agencies. Interviews with EU officials also confirmed that DG Competition currently sees no need for enforcement cooperation with the Caribbean competition agencies.

⁵⁸ However, “sectoral rules” is not defined. As South Centre (2008) notes, it is not clear whether some dispersed rules on issues in the sector are enough to qualify as “sectoral rules”.

Table 6.5 Competition provisions in the Economic Partnership Agreement

		Economic Partnership Agreement
Chapter/ substantive article		x
Explicit requirement to establish institutions (laws and/or competition authorities)		x
Mentioning of institutions (laws and/or competition authorities)		x
Regulated behaviour	anti-competitive agreements	x
	abuse of dominance	x
	merger	
	state aid	
	public enterprises and enterprises with special and exclusive rights	x
	State monopolies	x
EU law mentioned as reference point		
Provisions on enforcement cooperation		x
Technical assistance		x
Exclusion from dispute settlement		

Source: own compilation

Lastly, the competition chapter also includes provisions on development cooperation (Article 130) in the following areas of competition policy: efficient functioning of the Cariforum competition authorities; assistance in drafting guidelines, manuals and legislation; the provision of independent experts; and the provision of training.

The competition chapter is subject to the dispute settlement process of the trade agreement. The EPA does not include provisions on mergers or on state aid. It does include provisions on antidumping and countervailing measures. Outside the competition chapter itself, the sections on tourism, the courier sector, telecommunication as well as public procurement include

provisions on the importance of competition. The first three specifically require the application of the rules set out in the competition chapter.

The competition provisions in the Economic Partnership Agreement therefore contain several obligations for Cariforum. The most important obligation is to establish competition agencies and implement competition laws in all Cariforum countries. Moreover, state monopolies of a commercial character need to be adjusted so as to not discriminate against EU nationals, and public enterprises need to be subjected to competition rules, if they are not exempted by sectoral rules.

Up to mid-2014, only 7 Caribbean and only 16 European countries had ratified the EPA. Therefore, it was not officially in force. However, with the exception of Haiti, the EPA has been applied provisionally since 2008 (Singh et al., 2014).

6.3.2 Mechanisms of EPA influence

As established in Section 5.2 above, the Cariforum competition regime underwent some changes in the last decades. A period of slow but consistent institutional change started in 2001, whereas enforcement mainly picked up in 2008, with the exception of Jamaica and Barbados, which were active before. EU approximation is limited, and can mainly be noticed in 2001.

Did the competition provisions in the Economic Partnership Agreement signed in 2008 have any impact on these changes? The following section establishes whether such a link exists and via which mechanisms this influence took place. It analyses whether the trade agreement has impacted on the above-mentioned changes via the possible mechanisms identified in the theoretical framework: conditionality, socialisation and enablement.

Conditionality

According to this mechanism, the trade agreement influences domestic reform by increasing the costs of non-reform. If the costs of non-reform become too high, the government of the Southern country reforms the domestic policy. For the trade agreement to be able to influence costs, the EU must have an interest in change, the costs must be relevant to the Southern country, and the threat of increasing the costs must be credible.

As to EU interest, it seems likely that the EU was interested in including competition policy in the Economic Partnership Agreement. First of all, the European Commission had normative interest in competition rules in the RTA. It regards reform in behind-the border rules such as competition policy as a part of the development dimension of the EPAs. Domestic reform in these rules would improve the business environment in the Caribbean and thus allow the region to make proper use of the EPA. Already in the Green Paper produced by the European Commission produced in 1996, which gave several proposals how to organise EU-ACP relations and which paved the way for the Cotonou Agreement signed in 2000, the European Commission spoke of the inclusion of competition policy as an important step to improve the investment climate in the ACP countries (European Commission, 1996). During the negotiations, the EU Trade Commissioner at the time of EU negotiations, Peter Mandelson, equally stressed the importance of rules such as competition policy (Mandelson, 2007). Equally, the promotion of regional integration was seen part of the development dimension. Yet commercial interests might also have played a role. For instance, Article 129 on the public enterprises and state monopolies opens markets to EU nationals, which is clearly a market access interest and cannot be explained by promoting the ongoing regional integration process. However, as Siles-Brügge (2014) argues, it is difficult to distinguish between development concerns in EU trade policy and own commercial interests, since these are both aimed at opening markets to competitors. Be it because of normative or because of

commercial reasons, the EU had an interest in including competition policy in the EU-Cariforum EPA.

Table 6.6: Elements of Conditionality

Hypothesis: <i>“The RTA increases the likelihood of reform by increasing the cost of non-reform”.</i>	
Elements	Indicators
High EU interest in change	<ul style="list-style-type: none"> - General interest in competition policy - Continuing following up on implementation of change (e.g. through progress reports, in meetings)
Relevance of costs	<ul style="list-style-type: none"> - Trade dependency of Southern country, relevance of market access - Aid/financial support is economically relevant
Credibility of threat of costs	<ul style="list-style-type: none"> - It is possible to increase costs - EU has already imposed costs in other fora - Clear linkage between reform and costs

Source: own elaboration

Competition policy was included in the EPA negotiation agenda despite original resistance from the ACP Group. The EU insisted that trade-related issues would contribute to structural reform of the ACP, which would be beneficial for development. The ACP Group however argued that it was not necessary to include behind-the-border issues in the negotiations, as these were not required for WTO compatibility (Meyn, 2008). Yet when the negotiations started at the regional level, Cariforum countries did not oppose the EU’s interests and the two parties rather quickly reached agreements on the Singapore issues, including competition policy (Bishop et al., 2013). Cariforum agreed to the inclusion of competition policy regulations for several reasons. Firstly, they trusted EU negotiators in establishing the scope of the negotiations, due to their experience in negotiating RTAs, and secondly, because the “inclusion of commitments in this area is becoming increasingly standard in regional trade

agreements” (Cunningham, 2011, p. 130).⁵⁹ Furthermore Cariforum negotiators felt that because they had already a regional competition regime in CARICOM it would prove more difficult to resist EU demands in this area. According to interviews, Cariforum member states tried to avoid provisions on public enterprises and state monopolies, but finally gave in as the EU insisted on including article 129. Cariforum negotiators were however interested in including provisions on competition enforcement and development cooperation in the EPA. These were included, but not in binding language, as the EU did not want binding language in this case (Cunningham, 2011; Dawar & Evenett, 2008).

Thus, the EU’s interest in including competition provisions in the trade agreement was higher than the interest of Cariforum. How could the EU push for reform and increase costs in the case of non-reform? One major incentive offered by the EU is market access. Since the regional access granted to the ACP countries under Cotonou, which gave them access to 95% of the EU market in goods, was challenged in the WTO, Cariforum countries might have lost that access to the EU market and would have to export under the less favourable General System of Preferences (GSP) rules⁶⁰. Therefore, the EU-Cariforum EPA was important to secure the Cotonou market access (Hönich, 2011). Furthermore, the EPA also helped to gain new market access. In the area of goods, the new duty and quota free access offered a slight improvement from the old Cotonou preferences. More importantly, the EPA increased the access to the EU service market. Cariforum had offensive interests especially in entertainment and cultural services, tourism, professional services, and mode 4 access, i.e. the access of service providers (Ward, 2013). While not accommodating all requests, the EU opened about

⁵⁹ According to interviews, it depended very much on the issue whether the scope was decided by Cariforum, by the EU or by both. For instance, Cariforum had a high interest in the chapter on IP and innovation, and therefore proposed the first text. For competition, both offensive and defensive interests (as Caricom already had agreed on and started setting up a regional competition regime) were lower, which probably explains less active stance.

⁶⁰ Haiti, as a least developed country, has access via the Everything but Arms (EBA) scheme, which is similar to the access granted via the EPA regarding goods. Therefore, Haiti has no market access pressure to apply the EPA (Bernal, 2013).

94% of its services sector to Cariforum countries (Stevens et al., 2009, p. 65). Thus, the agreement also offers new market opportunities.

These market access opportunities could have been used by the EU as an incentive for change. Yet in contrast to EU accession agreements, the rewards were already given prior to domestic change in the countries. As mentioned before, it is unlikely and has never occurred that the EU has taken away market access based on slow or failing regulatory change (Botta, 2013). Cunningham (2011) argues that even if competition provisions are not implemented, it is unlikely that a dispute settlement process would be initiated if no real damage to any party can be proved. Furthermore, the EPA is not yet in force, and the substantial competition provisions are all timed to be implemented 5 years after the coming into force of the agreement. Thus, since market access has already been granted, it will be practically impossible to take it back. Therefore, this is not a real possibility to increase costs.

Another possibility to increase costs however is future cooperation. The competition provisions in the EU-Cariforum RTA contain two aspects of cooperation: first, enforcement cooperation (Article 128) and second, development cooperation (Article 130). Both are only becoming effective when all competition laws and authorities are in place. Since the EPA has not come into force yet, and not all laws and authorities have been established, cooperation is still very limited despite the fact that cooperation could start with the existing competition authorities. Enforcement cooperation is not taking place (Singh et al., 2014). Some development cooperation on the other hand is being implemented. For instance, the EU helped to set up the Competition Commission with money from the 9th European Development Fund, they have supported the establishment of the Competition Authority of the Dominican Republic and they support the establishment of the Competition Authority of the OECS and in Belize (European Commission, 2011; Montserrat, 2013; Singh et al., 2014). A programme financed by the 10th EDF to promote the implementation of the competition

provisions in the EPA has started in 2015. It includes technical support for competition agencies, but extends beyond current competition agencies to all Cariforum member states and also works with government officials, line ministries and the judiciary. Thus, it is possible to argue that the EU tries to increase costs of non-reform in the Cariforum countries by only starting enforcement cooperation after the competition authorities have been established, thus offering a further incentive for reform. Development cooperation is already being implemented to advance this reform.

Does the EU request reform? The competition provisions in the EU-Cariforum EPA clearly oblige Cariforum to develop the competition regime. The EPA has established an institutional apparatus with regular meetings between the various groups to monitor and consider changes. The Joint Cariforum-EU Council is at ministerial level and monitors the implementation of the EPA; it meets every two years; the first meeting took place in 2011. The more technical work is done by the Cariforum-EU Trade and Development Committee (TDC). It looks at the implementation of provisions, cooperation arrangements, possible changes necessary, and other things. The TDC meets yearly. Next to these two there is also the Cariforum-EU Parliamentary Committee (two meetings by late 2015) and the Cariforum-EU Consultative Committee, which is a civil society forum and has met for the first time in November 2014. Especially the TDC provides the opportunity to ask and require changes agreed upon in the EPA; however, according to interviews, competition policy was not an important topic. While there is an interest from the EU side in the development of the competition regime in Cariforum, there seems to be little pressure or threat involved, but rather friendly enquiries and financial support to advance reform.

In sum, conditionality has been helpful to include competition provision in the agreement, especially on the aspect of public enterprise and monopolies. At later stages of EPA

implementation, there is not much evidence that conditionality was very relevant for change in the Cariforum competition regime.

Socialisation

If the mechanism of socialisation is at play, the trade agreement helps to create spaces where socialisation can take place. Socialisation means that actors in Cariforum learn more about competition policy and become convinced that it is important to apply competition policy in their country, to achieve economic reform and development. The EU can try to actively promote this socialisation, for instance by teaching certain policies⁶¹.

Table 6.7 Elements of Socialisation

Hypothesis: <i>“Regional trade agreements influence domestic competition reform by encouraging socialisation”.</i>	
Elements	Indicators
Spaces for exchange and dialogue are available	- Time spent in meetings, negotiations, trainings
Confrontation with new ideas and models	- Introduction to epistemic communities - EU models in trainings, information

Source: own elaboration

Socialisation might already occur during negotiations, but also during the implementation phase of the trade agreement. The regional negotiations lasted from 2004 to 2007 and negotiators from both sides met regularly in those three years. This gives room for socialisation. Indeed, especially at the end of the negotiations and shortly before signing the agreement, the Caribbean Negotiation Machinery was criticized by academics and NGOs but also by government officials of some Cariforum countries for being too close to the European Union, to have negotiated too freely and thus not having reached the best deal for Cariforum. Famously, shortly before the official signing of the agreement the Guyanese President Bharrat

⁶¹ This needs to be distinguished from mere technical learning about competition policy. E.g., while it is possible to be in a training and learn about new ways to analyse abuse of dominance, this does not require a change in the way competition policy is regarded. Pure capacity building, that merely hands the means to accelerate change to domestic actors, will be considered in the section on the next mechanism, enablement.

Jagdeo threatened to not sign at all, yet he did not find support from other Cariforum heads of states and finally conceded (e.g. Bishop et al., 2013; Girvan, 2009, 2010; Thorburn, Rapley, King, & Campbell, 2010). In 2009, CRNM was transformed into the Office of Trade Negotiations and integrated into the CARICOM Secretariat. It now has to report to COTED, rather than the Prime Ministerial Subcommittee on External Relations.

Was this closeness to the ideas of the European Commission a result of socialisation? Certainly many protagonists of the CRNM had similar ideas about development as DG Trade. They were generally pro-liberalisation (Bishop et al., 2013), belonged to the group of ‘EPA enthusiasts’, and argued, along with the European Commission, that EPAs would stimulate the necessary domestic reforms to foster economic development in the region (Bilal, Lombaerde, & Tussie, 2011). For instance, the EPA principal negotiator Bernal (2013) and technical coordinator Lodge (2011) both argue that trade liberalisation leads to economic development and the EPA help to increase competitiveness, as also repeatedly argued by the EU. Their papers were written after the conclusion of the negotiations; so could be seen as an example for successful socialisation. Furthermore, the critique that the CRNM was not critical enough was further enhanced by the fact that the CRNM was financially supported by the EU to be able to successfully negotiate the EPAs. As Burgaud et al. (2012) note between 2003 and 2009 the CRNM (and later the Office of Trade Negotiations) was supported with more than 7 million USD by several foreign donors; of those, the EU covered slightly more than 2 million USD.

However, it seems more likely that the negotiators already had a very similar view to the EU. Many, if not all of them were technically highly skilled and had benefitted from higher education in Europe or the United States. The process of joint negotiations and the appreciation received by EU negotiators might have contributed for the CRNM to feel more

part of the epistemic community of trade negotiators than their home countries, where understanding of the technical aspects were limited (Bishop et al., 2013).

Both legal negotiators had law degrees from British universities (Caricom Secretariat, 2016; Haraksingh, 2013). Moreover, the negotiation period was not very long. An agreement on competition provisions was found relatively quickly (Bishop et al., 2013). Meetings were not frequent, thus leaving little room for socialisation. The EU negotiators also did not show enthusiasm for using the competition provisions to provide further room for socialisation. They were, according to Cunningham (2011), not keen on establishing strong rules on cooperation between the competition authorities of the two parties. While the Cariforum negotiators would have preferred stronger wording on information sharing and enforcement cooperation, the EU negotiators insisted on best endeavour language only. Cunningham argues that the EU was reluctant to cooperate with such a young agency, also due to lack of resources. Interviews have supported this view. Currently, the Caribbean is not an area where DG Competition sees much need for enforcement cooperation; competition provisions were more relevant in encouraging the region to develop a functioning competition regime, especially since so many organisations still need to be established. As resources are limited also in the European Commission, it makes sense to include competition provisions in FTAs to ensure broad compatibility; however, enforcement cooperation requires more resources, which are not justified in this situation.

As such, it seems that the critique levelled at the CRNM has its origins in different policy stances that existed before EPA negotiations started, rather than being induced by too much closeness between EU and Cariforum negotiators. Whereas the CRNM saw the benefits of trade liberalisation, especially in combination with the negotiated support, those criticizing the CRNM have a sceptical view regarding the benefits of global trade integration. Indeed, the

contents of the Cariforum-EU EPA suggest that the CRNM negotiated rather successfully. Interviews also suggest that many Cariforum demands were met.

Also after the signing of the trade agreement, the EPA did not lead to more contact between the competition authorities of the two trading blocs. In the recent Cariforum-EU EPA review, it says regarding cooperation on competition matters: “Stakeholders interviewed, however, could not definitively indicate whether such cooperation [on competition matters] took place or is taking place. In fact many stakeholders involved in the process at the level of the EPA-TDC, indicated that there was a lack of mechanisms to effect these provisions. In response to specific questions to stakeholders on the latter issue, they could not specifically identify initiatives either between individual CF states or EC member States in respect of cooperation in the context of the EPA competition matters” (Thompson, 2014, p. 23). This was confirmed by interviews with officials from both parties.

Cooperation with European Union officials was, according to several interviews, also limited in international venues such as the International Network on Competition. Until recently, most of the development cooperation was focused on establishing laws and authorities; more extensive technical cooperation has just started in 2015, so it is difficult to observe whether socialisation has already taken place here.

In sum, while the competition provisions technically provided room for socialisation, this mechanism seems to have been of little importance for change in the Cariforum competition regime.

Enablement

In the mechanism of enabling environment, the trade agreement helps to provide the necessary means for reform. A reform-oriented group in the Southern region uses the trade agreement to confront obstacles that make reform difficult at present. For the enabling impact

to work, the following must be present: a reform-oriented group in the Southern country that wants change; problems in independently pursuing reform (domestic opposition, financial capacities) that could be overcome with external help; and the allocation of the necessary means with the help of the trade agreement.

Table 6.8: Elements of Enablement

Hypothesis: <i>“Regional trade agreements influence reform by providing to reform-minded groups the necessary means to reform”.</i>	
Elements	Indicators
Reform-oriented group	<ul style="list-style-type: none"> - Group works towards a competition regime - Part of the international epistemic community on competition
Problems that make change difficult	<ul style="list-style-type: none"> - Influential groups opposing the change - Lack of financial and technical capabilities
Allocation of necessary means	<ul style="list-style-type: none"> - Active use of lock-in mechanism - TA and FA

Source: own elaboration

According to this mechanism, a reform-oriented group uses the trade agreement to get access to the means that are necessary for change. Who would be a group interested in the further advancement of the regional competition regime? Due to the fact that Cariforum is a regional institution, there are many actors in the Caribbean competition arena.

On the political level, the signing of the Revised Treaty of Chaguaramas in 2001, which includes detailed provisions for a regional competition regime, is a sign of commitment to the establishment of a competition regime. Equally, the CARICOM Head of States signed off a report in 2007, “Towards a Single Development Vision and the role of the Single Economy”, which outlines further steps the CARICOM and member states have to take to implement the single market by 2015 (Girvan, 2007). In this report, competition policy is one important element and regional cooperation in competition under the leadership of the CARICOM Competition Commission is underlined. Thus, the head of states of the CARICOM have

regularly committed to supporting regional competition policy. However, the implementation of CSME provisions has been slow. For many Caribbean governments, the completion of the CSME is only a secondary issue as compared to domestic issues (Girvan, 2009; Tsikata, Pinto Moreira, & Hamilton, 2009). According to interviews, this general lack of enthusiasm for the Caricom integration also has an effect on the regional competition regime, which has lots of verbal, but less practical support by the governments. Moreover, competition policy is not seen as a priority for governments in view of other urgent socio-economic problems (Stewart, 2012). The global financial crisis of 2008 also hit the Caribbean. Officials said in interviews that this makes it easier for companies to lobby against the introduction of competition laws, by warning governments that the introduction of competition policy could lead to job losses by enterprises fined for anti-competitive behaviour. These arguments show that the norm of a competition policy as being beneficial to economic development is not widely shared. Also in the Dominican Republic the commitment of the government seems limited, as shown by the fact that the executive director still has not been appointed, despite the fact that the authority has been established for five years. The improvement of regional competition policy is not one of the most urgent priorities of governments in the Caribbean, despite political declarations.

Moreover, in the Caribbean the lack of technical and financial capacity is a major problem. Regional integration and the establishment of CSME is generally slowed down by lack of capacity (Bishop et al., 2011, p. 20), and it is a significant problem in competition policy, which is a highly technical. According to one leading competition expert in the region (Stewart, 2012), there are very few people who have knowledge of competition policy and law. This leads to a shortage of people to staff the new competition authorities⁶². Furthermore, financial resources are needed to build the system, which is difficult to stem for many of the

⁶² It should be noted that this has been addressed by the capacity building project funded by the 10th EDF, running from 2015 to 2017.

small economies. Thus, the development of the competition policy faces problems of lack of political commitment as well as capacity problems.

Some actors in Cariforum tried to use the Economic Partnership Agreement to overcome these issues. First of all, during the negotiations the Cariforum side repeatedly stressed the importance of additional development funding to be able to implement the necessary reforms and counterbalance negative impacts of the RTA, such as the loss of income via customs (Bernal, 2013; Bilal et al., 2011). While the European Union did not want to commit to financial support in the EPA, the RTA includes several sections on development cooperation. In the competition provisions, Article 130 contains commitments by the European Union on how to provide technical support to Cariforum competition matters. Thus, Cariforum used the EPA to let the EU commit to support.

However, the negotiators of the Caribbean Regional Negotiation Machinery did not only attempt to lock-in the EU promises on support. Rather, the EPA was also used as a tool to convince the Caribbean governments of the importance of competition policy and the necessity to establish the regional competition regime, according to interviews. It was hoped that the EPA would help implement the provisions from the Revised Treaty of Chaguaramas, as governments themselves did not see the urgency of competition policy, both by locking-in the commitments and by providing support in the establishment of the regional regime.

Moreover, the Caricom Secretariat probably also had a general interest in supporting regional policies. Currently, the CARICOM Secretariat still has a relatively weak position with limited power, since the CARICOM is still explicitly an integration project of nation states (Bishop et al., 2011). The more integrated the Caribbean market becomes, the more likely is it that more powers will be or will have to be transferred to the regional level. Moreover, much of the EDF funding is now distributed via the regional programmes, which are managed by CARICOM Secretariat or Cariforum Secretariat, which also strengthens the position of these institutions.

Thus, the negotiators saw the EPA as a possibility of locking in the own governments. A later use of this lock-in is also possible. Lack of (national) government interest could be confronted with references to the legally binding commitments made under EPA, thus underlining the importance of implementation. Competition provisions are already legally binding under the RTC; however, the RTC does not provide an official time plan for implementation. The EPA includes a timeframe for implementation of the rules, which could be used to put more pressure on the governments. However, as mentioned above, the timeframe is bound to the coming into force of the agreement, which has not happened yet, and thus also loses strength. Furthermore, more central issues to the trade agreement, such as tariff reduction, have until now only been partially implemented by some Cariforum states; while the EU has mentioned this in the Trade and Development Committee, it hasn't put much pressure on the countries, thus somehow further diminishing the threat and thus the opportunities for reform-oriented groups to use it to lobby governments.

Another regional institution with an interest in the promotion of competition policy, which could use the lock-in mechanism, is the CARICOM Competition Commission. Already by its mandate it is interested in promoting competition and establishing a functioning regional competition regime. The current Chairman of the CCC is Dr. Kusha Haraksingh, who was also the Cariforum lead negotiator for legal and institutional issues for the EPA. However, the CCC is still small: there are only 4 professional staff members, with two vacancies to be filled. Of these, one is the position of the Executive Director, which has been empty for more than three years. The current budget of the CCC is at around 700.000 USD yearly.

Nevertheless, the CCC is an important actor in promoting the regional competition regime. While the CCC was only created in 2008 and thus did not participate in the negotiations, it has since made use of the Economic Partnership Agreements to advance its cause. The CCC refers to the EPA in external presentations, and according to interviews, is also used by the

CCC in internal discussions to strengthen its position and promote the establishment of the regional competition regime.

The National Competition Agencies could also be part of a reform coalition. However, most countries do not have a functioning competition authority. Jamaica, Barbados and Guyana are the ones where the competition authorities are working better and which might have an interest in strengthening the competition regime of CARICOM. However, according to one interview, while they appreciate a functioning regional competition system, their main concerns are to be found on the national level.

A further institution that needs to be mentioned is in the Bahamas. The Utilities Regulation and Competition Authority (URCA) was established in 2009. Yet it only regulates enterprises in the electronic communication sector, and thus does not present a full-fledged competition authority. It may regulate other sectors in the future if like laws are introduced, but these competencies still to be assigned. Therefore, it is currently not a relevant actor in the development of the regional competition regime. The Comisión Nacional de Defensa de la Competencia Procompetencia in the Dominican Republic was created in 2011. While the director has been appointed for a few years, the executive director is still not selected; this means, that investigations cannot proceed. Procompetencia works much on competition advocacy (Pérez Bello, 2015), but it remains unclear whether it uses the EPA as a lock-in device.

Thus, the use of the EPA as a way to overcome political constraints is mostly restricted to the regional actors, Caricom Secretariat and CCC. The EU-Cariforum relations have however been of definite importance to overcome financial constraints in competition policy. Financial support has always been stressed by the Cariforum side as an important complement to trade liberalisation if the EPA were to help economic development. Therefore, cooperation is mentioned throughout the EPA; the Joint Declaration of the EPA even makes partial note of

the funds available. The Caribbean Regional Indicative Programme (CRIP) of the 10th EDF has earmarked 165 million Euro for 2008 to 2013; additionally, funds are available for the countries themselves in the National Indicative Programmes. The CRIP focuses on EPA implementation as well as completion of the CSME, both relevant for regional competition policy. Furthermore, funds from the 9th EDF (2002 – 2007) were still available after 2007 (Singh et al., 2014). For the CRIP from the 11th EDF the EU has earmarked 350 million from 2014 – 2020 (Linton, 2014).

The establishment and staffing of the CCC and the establishment of the National Competition Authorities in the Dominican Republic, OECS and Belize are all funded by the European Development Fund (Caricom Competition Commission, 2014; Singh et al., 2014). Furthermore, in early 2015 a new project was signed over 3 million Euro funded from the 10th EDF, for capacity building in the areas of competition, public procurement and customs and trade facilitation, which is being implemented currently and ends in March 2017. Since funding was one major reason for the limited advancement in the establishment of a regional competition regime, EU funds have been very relevant in advancing the regime.

EU help has been instrumental in further implementing the regional competition regime. It has to be noted though that the EPA itself did not lead to more funding for development cooperation. Indeed, the money was already agreed upon in the Cotonou Agreement, and in an interview the then EU Development Commissioner Louis Michel reiterated that the EDF funding was not dependent on countries signing the EPA and EU would not cut funding if ACP countries did not sign (Thomas, 2009).

Thus, the funding, which was important to establish competition institutions in CARICOM and several Cariforum countries and which will now be used for capacity building in the area of competition, would have also been available without signing the EPA. It was therefore not actually the RTA guaranteeing these funds. However, the EPA might have helped to use a

certain amount of the available funds for trade and regional integration and hence competition policy, rather than other development areas. Also, the increase for the CRIP to more than double the amount in the 11th EDF than the 10th EDF might have been a result of the EPA and the included commitment to regional negotiation.

Development funding is also important because despite the fact that economic reform and new trade opportunities developed from and alongside the EPA might lead to economic growth and thus a bigger government budget, this is only envisaged in the long run. In the next years, the EPA implementation and the loss of tariff revenues will put a strain on the budget of the Cariforum countries rather than opening up funds for reform.

In summary, the EPA has created an enabling environment where reform-oriented groups – specifically the CARICOM Secretariat and the CCC – were put in a better position to work on implementing reform. In particular, the financial support was instrumental in first establishing some of the necessary institutions to improve the regional competition regime. However, this has to be seen with a caveat. The funds were not officially bound to the EPA – so, they could have been used for competition policy even without the EPA. Nevertheless, the trade agreement might have made it easier to use these funds for trade and economic integration purposes.

6.3.3 Summary – Influence of the EPA on change

Because the Cariforum – EU EPA is a trade agreement between the EU and a whole region, the potential avenues of influence of the agreement on the Cariforum competition regime are more difficult to define. First of all it is made difficult by the fact that there is no such thing as the Cariforum competition regime. Rather, it is made up of the CARICOM competition regime, plus the regimes of the Bahamas and the Dominican Republic. The CARICOM regime consists, like the EU regime, of the regional and the national level. Furthermore, the

competition regimes of many Cariforum members are still being established. Moreover, several laws were passed and institutions established before the EU-Cariforum EPA was signed.

Nevertheless, the Economic Partnership Agreement influenced the development of the Cariforum competition regime in the years after it was signed. Most important was the mechanism of enablement. While conditionality supported to the inclusion of the competition provisions in the EPA, enablement was the most important influencing mechanism. First of all, the competition provisions in the RTA secured technical assistance to build up the regional and the national competition regimes. Second, it allowed domestic actors interested in change to promote the competition regime, by reminding Cariforum governments of the obligations agreed upon in the EPA and thus advancing developments in the regime.

Table: 6.9 Influence of mechanisms on specified periods of change

	Before 2001	2001		2008	
	Institutional Change, Enforcement	Institutional Change	EU approximation	Institutional change	Change in enforcement
Conditionality				x	
Socialisation					
Enablement				x	x

Source: own elaboration

6.4 Other factors leading to change

While the Cariforum-EU Economic Partnership Agreement influenced change in the Cariforum competition regime, there were several other factors that were an equally or more important influence.

For CARICOM, an important source for change came from the competition provisions included in the Revised Treaty of Chaguaramas. While the implementation was slow, the

regional integration advanced by the RTC encouraged the changes in the regional competition regime and was the basis for future changes supported by the EPA.

The design of the Treaty of Chaguaramas was influenced by the EU competition regime. For this reason the CARICOM competition regime already looked very “European” without any influence of the trade agreement. Indeed, much of the CARICOM CSME structure has taken the European Union as model (Beckford, 2012). This is mostly likely due to the fact that the European Union is seen as a prime model for regional integration (Lenz, 2012). Regional economic communities tend to emulate or learn from the EU model, also with regards to competition policy (Drexler, Bakhoun, Fox, Gal, & Gerber, 2012).

Other regional trade agreements have also influenced the development of the competition regime. Parallel to the development of the Revised Treaty of Chaguaramas, CARICOM was involved in negotiating the Free Trade Area of the Americas. This regional trade agreement, which would include 34 and thus almost all American countries, including the US, was to be a deep trade agreement (Clarke & Evenett, 2004). However, the negotiations were interrupted in 2003 and the agreement was never finalised. The draft text of the FTAA agreement included detailed provisions on competition, but several paragraphs were still bracketed, i.e. no consensus had been reached. Topics covered include anti-competitive agreements and abuse of dominance, but also public enterprises and monopolies (Lee & Morand, 2003). Despite the fact that the FTAA never came into being, the negotiations were not wasted time, but an important venue for learning about competition policy. The negotiations started in 1998, and at that point only 12 of 34 countries had legislations and institutions on competition (Clarke & Evenett, 2004). Therefore, it was less of a negotiation, but more of an “exploration” for the first three to four years, as the CARICOM negotiator pointed out in an interview. “So therefore the whole discussion was centred around [the countries with competition legislation] discussing, and the rest would listen, would ask questions, and then would come forward with

a position once they understood the issues. It was not negotiation in its true form, it was exploration. [...] We had five years of negotiation, and by the third, fourth year, then we began to really develop the whole text”, as one interviewee puts it. So despite breaking down, the FTAA had merits for CARICOM as a forum to learn more about competition policy and cooperation.

CARICOM concluded other trade agreements that included provisions on competition policy: in 1998 with the Dominican Republic, in 2000 with Cuba, and in 2004 with Costa Rica. These are all very short and non-substantial provisions, and have limited to no regulations on cooperation (Stewart, 2005). None of them have been influential for the development of the competition regime.

For the Dominican Republic, the regional trade agreement with US and Central American Countries (DR-CAFTA) seems to have been of some importance for the development of the competition regime, as it is mentioned in the preamble of the competition law of the Dominican Republic. However, next to a passage in the RTA that mention the necessity of applying competition law in the sectoral chapters, it does not include competition provisions. Thus, rather than requesting the establishment of a competition regime, the entry into force of DR-CAFTA might have contributed to a sense in the Dominican Republic that a competition regime would be useful to benefit from new markets opened by trade agreements.

International organisations and networks have also been important in the Caribbean. Close working relationships have been established between the two functioning competition authorities in Barbados and Jamaica and the US competition agencies, based on a mentoring programme organised by the ICN. For instance, the Fair Trading Commission of Barbados has asked for support when they have complicated cases (Griffith, 2015). According to one interviewee, this cooperation is very important for implementation.

Hence, while the Cariforum-EU Economic Partnership Agreement has been important for the competition regime in Cariforum, it is only one in several influential factors.

6.5 Conclusion

The EU-Cariforum Economic Partnership Agreement was initialled in the last days of 2007, and signed in October 2008. After signing the EPA, the Cariforum competition regime has changed mostly regarding institutional factors. The major change was the establishment of a number of new national competition authorities (in the Dominican Republic, Guyana, and Trinidad & Tobago), even though not all of them are functional yet. Furthermore, a number of competition laws have been or are currently being drafted (OECS, Belize, Suriname and Bahamas). Also, most importantly, the CARICOM Competition Commission was inaugurated in January 2008.

The CARICOM competition regime has not become more “European” due to the EPA. In fact, the whole system as set up in the Revised Treaty of Chaguaramas in 2001 was already very similar to the system of the European Union. This is due to the fact that CARICOM sees the EU as the prime example for regional integration and thus many provisions for the Caribbean Single Market and Economy were based on EU rules, just as the competition ones. The system is not absolutely identical however. Most importantly, the CCC has far more limited powers than DG competition. The trade agreement has not changed this situation. It is likely, that in the future the CCC will continue to use DG Competition and EU competition policy as a model (Menns & Eversley, 2011), and might then potentially become more similar to the EU regime.

Enforcement has been intensified since the CCC has been established. Despite having little staff and financial resources the CCC has written implementation rules, has been active in advocacy and has taken on one case against TCL. However, the Cariforum competition

regime is still far from being fully functional. Despite CCC winning the case against Trinidad Cement Limited, the Court of Justice asked the CCC to review its procedures. Therefore, no further case has been filed. On the national level, only Barbados and Jamaica are prosecuting cases.

When evaluating the fulfilment of the obligations resulting from the Economic Partnership Agreement, implementation has been slow. The major obligation of establishing competition regimes and competition laws have not yet been fulfilled, though the region is going in this direction. Further obligations regarding state monopolies and public enterprises only become valid once the RTA is in force, which is still not the case. Thus, implementation of the competition provisions themselves has been limited.

Yet some change has taken place. While there is potential for conditionality, the EU does not seem to use it very much in the area of competition policy. They used it as a means to include competition policy in the trade agreement in the first place, but after that there is little information on the EU stressing the implementation of competition policies or threatening to challenge the lack of progress in the establishment of competition policies. This might also be caused by the fact that the EU in this case has less offensive interests, but promotes regulatory issues such as a functioning competition regime in Cariforum largely as a tool for development.

The most relevant mechanism is enablement. While there is some evidence that the CCC uses the EPA as another point to stress the relevance of establishing the competition regime in front of other Cariforum actors, the relevance of this locking-in effect is limited due to lack of pressure from the EU. Since deadlines have passed or at least have been postponed because the agreement is still not in force, the relevance of these deadlines also becomes less significant. More important was the enabling impact with regards to finances. The establishment of the CCC, of the NCA of the Dominican Republic as well as the development

of the Belize and the OECS competition regime are all financially supported by the European Development Fund, and technical training on competition matters started in 2015. However, there is a caveat, in that the money from the European Development Funds was actually agreed upon in the Cotonou Agreement and thus independent of the EPA. Technically, hence, the enabling impact with regards to finances was not dependent on the trade agreement. Nevertheless, the EPA might have helped to ensure that most of the EDF money in the CRIP was directed towards trade and economic integration.

7 Case comparison and discussion

The previous two chapters analysed the impact of the EU regional trade agreements on the development of the competition regimes in Morocco and in Cariforum. The chapters described the development of the competition regime in both cases, and then analysed how the regional trade agreements with the European Union impacted on these changes. It was investigated whether the mechanisms of conditionality, socialisation or enablement were at play, and the relative relevance of the EU trade agreement in relation to other external influences on the domestic competition regime.

This chapter will compare the findings of two case studies. This will make it possible to analyse similarities and differences in the findings. As will be seen in section 7.1, which compares the competition provisions of the EU-Morocco Association Agreement and EU-Cariforum Economic Partnership Agreement, the competition provisions of the EU-Cariforum Economic Partnership Agreement are wider in scope. Yet in neither case have the obligations resulting from the provisions been fulfilled in the specified time, nor have they been used for cross-border investigations. The following sections compare the changes of the competition regimes over time (section 7.2), the importance of the mechanisms of (section 7.3), and the role of external factors (section 7.4). In the conclusion (section 7.5) the main findings will be underlined: the competition provisions in the EU-Morocco Association Agreement had a stronger influence on domestic change, yet this was not due to the competition provisions themselves, but rather the higher importance of conditionality in Morocco. Additionally, due to the fact that Cariforum is a regional grouping, it was more difficult for domestic actors interested in change to make use of the competition provisions. While the obligations included in the EPA are also on each Cariforum member state, the regional layer adds a further level of complexity.

7.1 Competition provisions in the regional trade agreements

The competition provisions in the EU-Morocco Association Agreement and the EU-Cariforum Economic Partnership Agreement are similar in some aspects, but also have important differences. Both contain a full chapter or substantive articles on the issue of competition. Both prohibit anti-competitive agreements and abuse of dominance that could have a negative effect on trade. Both RTAs include articles on state monopolies, to ensure that after 5 years after the agreement has entered into force no discrimination in the area of procurement exists. Furthermore, both regulate that public enterprises and enterprises with special and exclusive rights should not adopt any measures that hinder trade.

Table 7.1: Comparison of competition provisions in the trade agreement

		EU-Morocco Association Agreement (signed 1996)	EU-Cariforum Economic Partnership Agreement (signed 2008)
Chapter/ substantive article		x	x
Explicit requirement to establish institutions (laws and/or competition authorities)			x
Regulated behaviour	anti-competitive agreements	x	x
	abuse of dominance	x	x
	merger		
	state aid	x	
	public enterprises and enterprises with special and exclusive rights	x	x
	State monopolies	x	x
EU law mentioned as reference point		x	
Provisions on enforcement cooperation			x
Technical assistance			x
Exclusion from dispute settlement			

Source: own elaboration

On the other hand, the competition provisions also differ in important aspects. First of all, the competition provisions in the EU-Morocco Association Agreement contain provisions on state aid, which is not covered in the EU-Cariforum EPA. Moreover, in the EU-Morocco RTA EU rules are referred to as a reference point for determining whether anti-competitive agreements, abuse of dominance or state aid affected competition. This is not part of the EU-Cariforum EPA. In contrast, competition provisions in the EPA include rules on technical assistance, possible enforcement cooperation and also stipulate that all members to the trade agreement shall ensure that within five years of coming into force of the agreement, the respective laws are in force and institutions established. Thus, even though the competition provisions in the EU-Morocco Association Agreement include state aid, the EU-Cariforum competition provisions are wider in scope as they also include provisions on enforcement and development cooperation. However, it needs to be taken into account that Morocco and the EU agreed on an implementation agreement four years after the coming into force of the RTA, which regulates enforcement and development cooperation. While these rules are not part of the competition provisions, they are also important for the development of the competition regime.

From the competition provisions in the RTAs result some direct obligations for the Cariforum members states and the Morocco. While most provisions are formulated in such a way that the requirements also need to be met by the European Union, in practice the European Union already meets most of these aspects and thus does not need to act on most issues. For instance, the requirement on transparency in state aid included in the Association Agreement is already met by the European Union, because it regularly publishes information on state aid on the website (European Commission, 2016c).

Morocco was required to adopt the implementation rules, to provide transparency and annual reports on state aid, as well as to adjust state monopolies and public enterprises to not

discriminate against European companies after 5 years of entry into force of the agreement. Cariforum members were required to establish the relevant competition authorities and legislation, as well as to adjust state monopolies and public enterprises. Morocco and the EU agreed on the implementation rules within the required framework, but the Kingdom has not yet adjusted the rules on state monopolies and public enterprises, nor on state aid, after 20 years of signing the trade agreement and 15 years of it being in force. However, importantly, the country has adopted a competition law and established a competition authority.

Cariforum has only partially complied with the requirements regarding competition legislation and competition authorities, and not yet with the requirements on monopolies and public enterprises, 8 years after signing the trade agreement. However, it can be expected that competition authorities and competition legislation will be in place in the coming years in most if not all Cariforum countries.

Thus, the obligations resulting from the competition provisions in the EU-Cariforum EPA and the EU-Morocco Association Agreement have only partially been met by Cariforum and Morocco. Nevertheless, the competition regimes of both Cariforum and Morocco have changed in the past years, as can be seen in the following section.

7.2 Dependent variable – change in the competition regime

The first element of each case study was the examination of the changes that the competition regime of the Southern country or region had undergone over the years. This was necessary to afterwards trace the influence on these changes by the regional trade agreement. The changes in the competition regime were analysed along three dimensions of change: institutional change, enforcement, and approximation to the EU. Institutional change relates to change in the features of a competition regime as set out in Chapter 1, i.e. the features of the competition authorities and of the competition law. Enforcement relates to the question

whether the institutional features of a competition regime were actually put to use. Approximation to the EU referred to the question whether the competition regime had become more similar to the European regime.

7.2.1 Institutional change

Both the Moroccan competition regime and the Cariforum competition regime underwent institutional change in the analysed period. However, Morocco is more advanced than Cariforum and by now has the essential institutions in place that are seen as part of a competition regime: a comprehensive law, and an independent competition authority with investigation and sanction rights. Institutional change in Cariforum has not arrived at this point yet. However, change in the Cariforum competition regimes is also much more complicated. First of all, there is not one Cariforum competition regime, but several, consisting of the CARICOM CSME competition regime, the competition regime of the Bahamas and the competition regime of the Dominican Republic. Due to this structure, many more players are involved than in a single country competition regime. Yet even in the three individual regimes, institutional change takes time.

Morocco adopted the first competition law - Law 06-99 - in 2000, four years after the Association Agreement with the European Union was signed and in the same year as the agreement came into force. Law 06-99 had several flaws, and after several years of internal debate and deliberation, a new law was introduced in 2014. This law – Law 104-12 – adheres to international good practice (Asins & Thill-Tayara, 2015; World Bank, 2015). The first law was administered by two institutions: by the Directorate for Competition and Prices, and by the Competition Council. Yet while the former was not even named in Law 06-99 and, as part of a ministry, lacked institutional independence, the latter only had an advisory role with very limited responsibilities. In contrast, the new laws of 2014 appoint the Competition Council as

the main implementing agency. The Competition Council is set up as an independent institution with a specific budget, has the right to self-initiate investigations and also the right to impose sanctions.

Institutional change in Cariforum, being a regional entity, is more complex. While institutional change towards an international best practice system can be observed, this change is less pronounced than in Morocco. The Dominican Republic and the Bahamas are the two countries that are not member to the CARICOM CSME and thus not member to the regional competition system under the CARICOM Competition Commission. In the Dominican Republic, a competition law was passed in 2008 and a competition agency established in 2011; in the Bahamas, the sector regulator was proclaimed as competition agency, but no competition law has been passed. Thus, while the Dominican Republic has set up a proper competition regime, the Bahamas are still lacking behind.

In the regional CARICOM CSME competition regime, reforms also moved at various speeds. On the regional level, Chapter 8 of the Revised Treaty of Chaguaramas, i.e. the regional competition law for CARICOM CSME states, had already been adopted in 2001; several years before the Economic Partnership Agreement with the European Union was signed. The CARICOM Competition Commission was established in 2008. However, the competition rules in the RTC are currently being revised, for instance to introduce merger regulations and such as making it easier for the CARICOM Competition Commission to initiate investigations. According to the interviews it is envisaged that these revisions will be adopted, yet it is not yet known when.

On national level in the CARICOM CSME competition regime, institutional change is only partly achieved. Jamaica already had a competition law since 1993, and three further CARICOM members adopted competition laws since 2001: Barbados, Guyana and Trinidad & Tobago. The other members are all working on draft proposals. Hence, most CARICOM

member states still do not have a competition law. Moreover, Jamaica's Free Trading Act needs revision to be adapted to the requirements in the Revised Treaty of Chaguaramas. Since the Jamaican Free Trading Act also requires revision due to other issues, it is expected that the required changes to comply with RTC Article 8 will be adopted when the whole FTA is being renewed. The setting up of implementing institutions at the CARICOM CSME national level has also only partly been implemented. Jamaica, Barbados, Guyana and Trinidad & Tobago established competition authorities. The six OECS countries are still lacking competition legislation as well as competition agencies; and so do Belize, Suriname and the Bahamas

Thus, on institutional level, Morocco's convergence towards a competition regime was high. On CARICOM CSME regional level, it was middle: while a competition law and institutions exist, the independence of the competition authority still requires improvement. On Cariforum national level, institutional reform was mixed – while some countries have both competition institutions and competition laws in place, others lack both.

7.2.2 Change in enforcement

Change in enforcement relates to the question whether the new competition institutions were actually put to use. Change in enforcement is measured on four levels: the resources provided to the competition regime, the adoption of implementation procedures and the provision of guidelines, the engagement with competition advocacy and the investigation and adjudication of cases, including cross-border cases.

Change in enforcement can be observed for both Morocco and Cariforum, albeit not in all aspects of enforcement. In Morocco, there was a significant change in enforcement in 2008, when the Competition Council was reactivated. Since then, the government provided the CC with a fixed budget every year, and the Competition Council scaled up competition advocacy activities in the subsequent years, e.g. by writing and disseminating studies, organising

seminars and inviting the media to events. This competition advocacy contributed to the institutional change in 2014. Yet no cases have been brought forward, nor fines been imposed. Also, there has been no cross-border cooperation on cases with the EU. Moreover, the Competition Council was only appointed until 2013. Since then, it is waiting for the appointment of the next Council to be able to continue with its work. Thus, after a strengthening of enforcement in the years following 2008 and 2009, there was a slowdown after 2013.

Also in the Cariforum competition regime, enforcement became stronger over the years, though more so on the regional level. On the CSME Cariforum regional level, change in enforcement picked up after 2008, when the CCC was established, and included the staffing and budgeting of the CCC, the development of rules of procedure in 2011 and further guidelines in the following years, an increase in competition advocacy and even the adjudication of one case. On national level, change in enforcement increased slowly. Barbados, following Jamaica, staffed and budgeted its competition provision in 2001, produced rules of procedure and has constantly worked on cases as well as on competition advocacy. Change in enforcement in other national agencies was less pronounced, and concentrated mainly on staffing and budgeting the new authorities (Guyana, Dominican Republic, Trinidad & Tobago), and working on competition advocacy (especially the Dominican Republic). Next to the competition authority of Jamaica and Barbados, no authority has yet persecuted a case.

Hence, enforcement changed partially in Morocco and on CARICOM CSME regional level, but only little on Cariforum national level.

7.2.3 EU approximation

The dimension of change covered by EU approximation is the similarity of the competition regime to the EU regime, to then later establish whether a possible approximation has been due to the competition provisions. Similarity to the EU regime can be measured by topics covered, but also goals and objectives adopted in the interpretation of laws.

Approximation to the EU rules was more relevant in Morocco than in Cariforum. In Morocco, both the laws from 1999 and 2014 borrowed from competition laws of EU member states (mostly from France, but also partially from the laws in the UK and Germany), and is thus in line with the EU rules. Nevertheless, important parts of the European competition policy such as state aid have not been regulated in Morocco, despite being included in the competition provisions of the Association Agreement signed in 1996.

In Cariforum, the most relevant aspect of EU approximation was the adoption of the Revised Treaty of Chaguaramas in 2001. Whereas the competition provisions of the original Treaty of Chaguaramas were similar to the EFTA provisions, the RTC provisions were clearly based on the EU agreements. This also implies that in the future, the CCC will most probably often take the EU as a model (Kaczorowska-Ireland, 2015; Menns & Eversley, 2011). However, this will only become clear once the CCC takes on more cases. In contrast, on the national level, there is no evidence of EU approximation. The competition laws that have been in place for longer have not been adapted in recent years, and also newer laws do not show any specific EU similarity. Moreover, interviews confirmed that the EPA did not impact on national level competition law implementation. As can be seen in the European case however, national competition regimes converged towards the European regime over the decades (van Waarden & Drahos, 2002). Whether something similar happens in CARICOM will have to be evaluated in the future.

7.2.4 Summary of change

Both the Moroccan and the Cariforum competition regime changed over time and converged towards the elements of a competition regime as established in Chapter 1. Yet progress was stronger in Morocco than in the Cariforum member states.

Institutional change in Morocco was high – the Kingdom now features a competition law and a competition agency up to international standards. However, change in enforcement was less pronounced, as well as EU approximation. For Cariforum, there are differences in the regional system and on the national level. While the first also went through a significant period of institutional change, this was far less so on the national level. Change in enforcement is higher in the regional level, but limited on national level. EU approximation has only happened on the regional level, and only to a certain extent.

Table 7.2: Level of change

	Morocco	Cariforum	
		CARICOM CSME regional	National level
Institutional change	High	High	Middle
Change in enforcement	Middle	Middle	Low
EU approximation	Middle	Middle	None

Source: own elaboration

7.3 Independent variable - Mechanisms of influence

After having compared the differences in the changes in the competition regime, this section is concerned with whether and with what kind of mechanisms the competition provisions in the EU RTAs influenced these changes. In the analytical framework, three separate mechanisms were distinguished – conditionality, socialisation and enablement. First, if the conditionality mechanism is at work, the competition provisions in the RTA can be used to increase the cost of non-reform for the Southern country. Second, the mechanism of

socialisation describes the situation when the competition provisions in the RTA influence domestic competition reform by encouraging social learning, which changes the perspective on the necessity of competition policy. Third, if the RTA provides domestic actors with the necessary means to implement reform, the mechanism of enablement is at play. The following sections provide a comparison of the importance of these mechanisms for change in the competition regimes of Morocco and Cariforum.

7.3.1 Conditionality

In the mechanism of conditionality, the EU is the main driver of reform. With the help of competition provisions in the RTA, the EU increases the costs of non-reform for the Southern partner, up to a point where the costs of non-reform are higher than the benefits of non-reform. For the conditionality mechanism it is a necessary, though not sufficient condition that the EU has the means to increase the costs of non-reform. To have these means, the EU must have an interest in change, the costs imposed by the EU must be relevant, and the threat of imposing these costs must be credible. Once this is fulfilled, it has to be shown that the EU threatened with increasing these costs and thus encouraged reform.

In both Morocco and Cariforum, conditionality was important to include competition provisions in the regional trade agreements in the first place. The EU was the main driver of including competition provisions in both the Association Agreement with Morocco and the Economic Partnership Agreement with Cariforum. Morocco did not have any particular offensive interest in competition policy. In Cariforum, the negotiators had some offensive interests with regards to cooperation provisions – i.e. they wanted the EU to provide support with the implementation of Chapter VIII of the Revised Treaty of Chaguaramas in CARICOM. In terms of substantive provisions, the interests were neutral or even defensive, as it was the case with Article 129 on public enterprises and monopolies. However, the EU

made it clear in both cases that they saw competition provisions as an important part of the regional trade agreements; thus, not agreeing on the competition provisions would have most likely had other costs such as a worse deal in the RTA or no RTA at all. Therefore, the conditionality mechanism helped to include substantive competition provisions in the regional trade agreements. This was important for the mechanism of enablement, as will be seen later.

Apart from the inclusion of competition provisions in the EPA, conditionality played no important role for the development of the Cariforum competition regime. The EU has an interest in competition policy in the region and keeps informed on the developments in that area. Also, as interviews attest, policy makers in the area of competition are aware of the EPA requirements and keep those in mind when developing policies. Yet there is no evidence that the European Union kept pushing for reform, other than by providing funding to establish the necessary authorities (this will be discussed in further detail in the mechanism of enablement below). This is despite that fact that the competition provisions in the EU-Cariforum Economic Partnership Agreement clearly require Cariforum to initiate changes, and are subject to the dispute settlement process; i.e. technically, the EU would have means to ask for change.

On the other hand, for the development of the Moroccan competition regime conditionality continued to be important also after signing the Association Agreement. Conditionality contributed to change in 2008 and 2014. Also in the Association Agreement, competition provisions were part of the dispute settlement process and thus technically, the EU would have had a legal way of complaining about sufficient progress in lack of developments in the competition regime. Nevertheless, the EU did not use this path. Rather, the means of leverage was the prospect of a follow-up regional trade agreement. The EU-Morocco Association Agreement from 1996 is expected to be soon replaced by a Deep and Comprehensive Free Trade Area, which offers increased market access for Morocco (European Commission,

2015c). Market access is relevant, yet further integration with the EU is not only important for Morocco from an economic perspective. The country has been the first of the Mediterranean countries to gain advanced status in EU neighbourhood relations in 2008; a fact which has been very important for Morocco's politicians (Kausch, 2010). It contributes to the self-proclaimed image of a modern Mediterranean state on the pathway to a liberal economy. Losing this status would carry relevant reputational costs.

This upcoming regional trade agreement was used by the European Union to increase costs in case of non-reform in Morocco. Reforms in competition policy were repeatedly mentioned as a prerequisite for advancing to the next steps of integration. The Association Agreement was cited as the source of these requirements, e.g. in the 2005 Action Plan (EU/Morocco, 2005), yet the need for change was explained with future integration (e.g. Saad Alami, 2010, also interviews). Thus, EU pressure and the possibility of increasing the costs of non-reform by not progressing towards further integration via the DCFTA were relevant for change in Morocco, both in 2008 and especially the reforms in 2014. Conditionality also provided the ground for other actors, domestic and international, to lobby for change, as can be seen in the next mechanisms.

Table 7.3 summarises the elements of conditionality in the two case studies. The main differences are in EU interest, and importantly, in the credibility of the threat that the EU could increase costs for the partner country in case of non-reform.

Table 7.3 Elements of Conditionality compared

Elements	Indicators	Morocco	Cariforum
High EU interest in change	General interest in competition policy Continuing following up of implementation of change (e.g. through progress reports, in meetings)	Interest high (commercial, normative, ENP acquis communautaire)	Interest medium (normative, maybe commercial)
Relevance of costs	Trade dependency of Southern country, relevance of market access Aid/financial support is economically relevant	Market access to the EU important, aid important	Market access to the EU important, aid important
Credibility of threat of costs	It is possible to increase costs, e.g. by not offering market access EU has already imposed costs in other fora Clear linkage between reform and costs	Credible threat via future RTA Link between non-reform and costs less clear (possible via dispute settlement, but exact cost not clear)	Threat less credible Link between non-reform and costs less clear (possible via dispute settlement, but exact cost not clear)

Source: own elaboration

7.3.2 Socialisation

The second mechanism of influence is socialisation. In this mechanism, regional trade agreements impact on the competition regime by providing a space for learning and exchange, and thus encouraging social learning about competition policy. This leads to a change in the perception of competition policy in the Southern country, and therefore to changes in the institutions, enforcement or EU approximation.

In Cariforum, socialisation with the help of the EPA has not been relevant for change processes. As established in the analytical framework, to encourage socialisation, regional trade agreements should provide the space for exchange and dialogue. In Cariforum, this exchange was mostly provided during the negotiation phase. And even these negotiations, according to interviews, did not take very long and did not require many meetings. Hence, the negotiations did not provide much time for dialogue and exchange. Indeed, negotiations were technical, between negotiators from DG competition on one side and CRNM negotiators on

the other side, who were already experts in competition law with qualifications from Western universities. Thus, while there were debates about the content of the competition provisions, such as the inclusion of rules on public enterprises, there was no fundamental difference in the appraisal of competition policy per se.

After the negotiation phase, there was hardly any direct exchange between the European Union and Cariforum on competition policy. The EU representatives were interested in the topic and kept informed about progress in that area, but it did not present one of the main discussion points in the meetings of the EU-Cariforum Council, according to interviews. After the negotiations, there was no exchange between Cariforum officials – both on regional and national level – with DG Competition in the framework of the Economic Partnership Agreement. Thus, no additional space for dialogue and negotiation about competition had been created by the RTA, and hence no new impetus for social learning on competition policy was created.

Socialisation might become more important in the future however. While in the beginning, support via the EDF was mainly focused on providing finance, technical training on competition policy has started in 2015. This might influence the developments of the regime. While local laws are included in the training and practical exercises, the curriculum of the undergraduate course on competition at the UWI Law Faculty, is an EU competition law course. Training might therefore strengthen the use of EU as a model. However, this will have to be analysed in the future.

In Morocco, socialisation was slightly more relevant, in particular during the development phase of the first competition law of 1999. A project to support the development of the competition law, running from 1993 to 1999, implemented by the French competition agency, influenced the development of the Moroccan competition law decisively, according to interviews. The project was not directly related to the Association Agreement; yet in

combination with the requirements of the RTA it was instrumental in the design of competition law 06-99.

The next important change in the Moroccan competition regime was in 2008 and the following years, when competition advocacy intensified. This period of change coincided with the implementation of the EU Twinning project on competition policy, which was implemented by the German development cooperation from 2008 to 2010, and which was followed up by further TAIEX programmes. The training provided has been relevant for CC to implement activities; however, it seems to have had more impact in terms of enabling the competition agency to act, rather than changing their ideas about competition policy. Thus, while socialisation might have come to play since 2008, it was not in the most important aspect.

Table 7.4: Elements of Socialisation in comparison

Elements	Indicators	Morocco	Cariforum
Spaces for exchange and dialogue are available	Time spend in meetings, negotiations, trainings	Mostly long-running TA projects	Not much, TA projects just started
Confrontation with new ideas and models	Introduction to epistemic communities EU models in trainings, information	- Yes	- yes

Source: own elaboration

In sum, socialisation played a slightly more important role for the development of the competition regime in Morocco than in Cariforum. As Table 6.4 shows, which compares the elements of socialisation, the space for exchange and dialogue created by the EU-Morocco Association Agreement was also larger than in the EU-Cariforum EPA; at least up to the current point. In both cases however, socialisation was not the most relevant mechanism of influence.

7.3.3 Enablement

The third mechanism of influence is the enablement mechanism. If this mechanism is at play, the regional trade agreement provides the domestic actors with the necessary means to reform the competition regime. The domestic actor already has an idea in which direction the regime should change, but faces domestic obstacles. The RTA helps to overcome these obstacles. The mechanism of enablement can, like the other mechanisms, function on leadership level. If it works on leadership level, it corresponds with the theory that sees trade agreements as a helpful institution. Yet, as this research shows, regional trade agreements can also be used as helpful institutions not only by leaders, but by other domestic actors. Enablement was relevant both in Morocco and in Cariforum. In both cases, enablement was not important on the intergovernmental level, but on the level of domestic actors. This was important in particular for change in enforcement, but also for institutional change.

The enablement mechanism requires a domestic actor who wants to advance change. In Morocco, both the King and the governments over the years proclaimed to follow a path of economic modernisation and liberalisation. This was visible with the signing of not only Association Agreement with the EU in 1996, but also the trade agreement with the United States a decade later, which both included measures to open markets and put in place liberal market policies. Moreover, Morocco had followed a liberalisation programme in cooperation with World Bank and IMF since the 1980s. Prices were liberalised, state owned enterprises privatized (Harrigan & El-Said, 2010; Joffé, 2009). However, as shown in the Morocco chapter, actual enforcement of a competition policy has been slow. While institutional change has, albeit slowly – progressed well, enforcement of competition policy is still limited. Morocco continues to be a market with many oligopolies, and despite the fact that there is a law since 1999, no deep investigation has been implemented yet and no anti-competitive behaviour adjudicated.

Why has reform been slow? According to the enablement mechanism, two possible obstacles could be faced by Morocco: domestic opposition to reform, and lack of capacities. As to the latter, Morocco has benefited from capacity building in competition policy on a regular basis since the early 1990s. According to interviews, the main capacity that is now lacking is to use the technical skills acquired in education and trainings and apply them to actual cases. With regards to domestic opposition, there is little evidence that the Association Agreement was used by the leadership to overcome domestic opposition. Rather, the Moroccan leadership is itself widely involved in the economy of the country, many of the most powerful businesses belong to the royal family and the wider network of Moroccan leadership (Biygautane & Lahouel, 2011). Introducing more competition in the market could challenge current political arrangements. Furthermore, rather than trying to break up monopolies, there are unofficial plans to create national champions in concentrated markets, to access new markets in Africa. Against this background, there is also no evidence that the Moroccan leadership was particularly interested in using the Association Agreement to overcome opposition by business leaders.

Yet the enablement mechanism was important for other domestic actors in Morocco and thus enabled change. After its reactivation in 2008, the Moroccan Competition Council used the Association Agreement to enable it in two ways: the accompanying capacity building activities such as the Twinning project were sought to fill in technical gaps and allow the further elaboration of reports, recommendations as well as the draft law that would become the actual law in 2014. Moreover, the Association Agreement was used to underline the importance of the domestic competition regime as well as the need to reform when trying to convince the own leadership of the necessity of reform. In combination with EU insistence, own lobby efforts to change the law were much more effective. Thus, the RTA was used to overcome opposition towards competition policy reform at the leadership level and push for

reform in 2014. The enablement mechanism on non-leadership level therefore contributed to changes in enforcement in 2008, as well as institutional change in 2014.

In Cariforum, the mechanism of enablement was also important to influence change. In the Cariforum region, the governments were faced both with domestic opposition to reform as well as lack of technical and financial capacities. To overcome the first, the trade agreement was partially useful. However, it was more important to overcome capacity constraints.

According to several interviewees, technical and financial capacities for competition policy in the Caribbean are limited, also due to the small population numbers of the island states. There are few trained people that are experts in competition policy, and there are also limited financial resources, which makes it challenging to establish new competition institutions. The Economic Partnership Agreement and accompanying measures such as the EDF were important to overcome these capacity constraints and thus contributed to institutional change since 2008. EDF funds supported the establishment of the CCC prior to the signing of the EPA, and the competition agency in the Dominican Republic. Furthermore, the funds contributed to preparatory work for competition regimes in Belize and the OECS. This was most relevant for the competition regimes that were newly established and still have to be established. Yet also older competition agencies benefited from the technical training financed by EDF. The EPA thus helped to overcome domestic capacity constraints and contributed to institutional change since 2008. As mentioned before, while the funds were promised even if the EPA had not been signed, the EPA helped to channel the funds towards issues such as competition policy. The delivery of technical assistance had been an important request by Cariforum, and had also been included in the competition provisions (Article 130) on their request.

While the enablement mechanism was important to overcome capacity constraints, it was less important to overcome domestic opposition, even though domestic opposition to changes in

competition policy exists. In Cariforum countries, the small size of the markets leads to a situation where enterprises can easily obtain a position of power. Moreover, the Caribbean countries suffered from the international economic crisis in 2008. In this economically problematic situation it was even more difficult for governments to advance on the enforcement of competition policy. According to a government official, larger businesses warned that if they were subjected to stricter competition policy, more jobs might be at risk. Thus, governments faced domestic opposition. Yet there is little evidence that the requirements set out in the competition provisions in the Economic Partnership Agreement were used by governments to overcome this opposition. The interest of the Caribbean governments in implementing change in competition policy is not high.

Table 7.5 Elements of Enablement in comparison

Elements	Indicators	Morocco	Cariforum
Reform-oriented group	Group works towards a competition regime	CC, partly DCP	Especially regional entities, partly national agencies
problems that make change difficult	Influential groups opposing the change Lack of financial and technical capabilities	Government/King no drivers for change	Governments no drivers for change, lack of capacities
Allocation of necessary means	Active use of lock-in mechanism TA and financial assistance	By CC TA	By regional entities TA and financial assistance

Source: own elaboration

Other actors attempted to use the RTA to overcome opposition in their own leadership. These actors were mostly based on the regional level and included the CARICOM Secretariat, the CRNM negotiators as well as the CARICOM Competition Commission. All of these have an interest in advancing competition policy in the region. The CARICOM Secretariat guards the Revised Treaty of Chaguaramas and its implementation. It is in its own interest to strengthen regional structures, and therefore, progress in the establishment of a CARICOM competition regime is welcomed from its part. For the CARICOM Competition Commission, the

promotion of a regional competition regime is one of its main tasks. All of these actors used the trade agreement to advance their goal. The CCC regularly refers to the requirements of the EPA in its competition advocacy work, trying to stress the point that the development of a regional competition regime is important not only due to the Revised Treaty of Chaguaramas, but also the requirements agreed upon in the Economic Partnership Agreement. In this way, enforcement was slowly advanced.

Thus, the mechanism of enablement was relevant for both Morocco and Cariforum, albeit on a different level, as summarised in Table 7.5. It was very relevant in Morocco for the periods of change in 2008 and 2014. However, rather than enabling the leader to change, it enabled domestic actors interested in competition policy to lobby for change. For Cariforum, the enablement mechanism was also relevant. First of all, the Economic Partnership Agreement helped to overcome financial and technical capacity constraints, and thus contributed to the institutional change since 2008. Moreover, it helped the regional entities, in particular the CCC, to use the EPA commitments to lobby for reform, and thus increase change in enforcement.

7.3.4 Mechanisms of influence – summary

The tables below summarise the importance of the mechanisms of influence. What can be clearly seen is that the EU trade agreement overall had more impact on change in the Moroccan competition regime, than in the Cariforum regime.

Table 7.6: Importance of mechanisms of influence on domestic change (Morocco)

Morocco	2000		2008	2014	
	Institutional change	Approximation to the EU	Change in enforcement	Institutional change	Approximation to the EU
Conditionality	x		x	x	x
Socialisation		x			
Enablement			x	x	x

Source: own elaboration

Table 7.7: Role for mechanisms of influence for domestic change (Cariforum)

Cariforum	Before 2001	2001		2008	
	Institutional Change, Enforcement	Institutional Change	EU approximation	Institutional change	Change in enforcement
Conditionality				x	
Socialisation					
Enablement				x	x

Source: own elaboration

Conditionality was very important in Morocco, but less so in Cariforum. The main explanation for this is that the European Union has more leverage power in Morocco than in Cariforum. While market access to the European Union and Morocco are important for both Morocco and Cariforum, market access is granted in any case by the regional trade agreement. However, in Morocco, the Association Agreement of 1996 will be succeeded by a further RTA, granting even better access to the European market. Further reform of the Moroccan competition regime is one of the requirements for the signing of the DCFTA. Thus, the repeated trade negotiations make the conditionality mechanism in Morocco more useful.

Socialisation was the least important mechanism in both cases. The EU-Morocco trade agreement provided, via technical assistance, more room for exchange and dialogue. Nevertheless, this was not decisive in influencing change. In the case of the EU-Cariforum Economic Partnership Agreement, space for dialogue and exchange has just recently been opened via training on competition policy.

Enablement was important for change both in Morocco and the Cariforum. In Cariforum, the EPA was important to overcome capacity constraints, and thus led to institutional change. Moreover, change in enforcement in both regions was promoted by domestic actors using the regional trade agreement to lobby for competition policy. The included competition provisions were used as a further argument to demand change.

7.4 Other influences on reform

The section above compares the influence of the EU regional trade agreements on the development of the competition regimes in Morocco and Cariforum. Yet what becomes clear in the analyses of both cases is that the RTA is only one part in the puzzle. There are several other influential factors that played a role in the development of the competition regimes.

First of all, there is impact by the European Union that was not mediated by the trade agreement. The focus of this thesis was to understand the role of the regional trade agreement and the included competition provisions for changes in the competition regime. However, the European Union might as well influence reform without there being a RTA. These are some of the processes that have been described as indirect EU influences (Schimmelfennig, 2012a). As this study shows, learning the EU example has been relevant for Cariforum, or rather, CARICOM. CARICOM took much inspiration for its 2001 Revised Treaty of Chaguaramas from the European Union, and modelled its competition policy regime after the EU example. Taking the EU as a model continues to be the case, as is shown by the current attempts to build a CARICOM Competition Network. This network is created to improve cooperation between the national competition agencies of CARICOM and to further harmonize the competition laws in the region – like the European Competition Network does in the EU since 2004. While technical assistance might support these developments, it is the role of the EU as the oldest and deepest regional integration movement that makes countries turn to learn from it. Other research has delved deeper into the question on how regional integration based on the EU model is diffused to other countries (e.g. Jetschke & Murray, 2012; Lenz, 2012). Thus, the EU approximation in Cariforum was not down to the Economic Partnership Agreement, but the example of the European Union.

Second, there is the influence of the International Financial Institutions. The structural adjustment programmes of the 1980s of both World Bank and IMF put much focus on

increasing competition in the market. In the beginning, increased competition in the market was meant to be achieved by measures such as trade liberalization, privatization, and price deregulation. A few years later, these policy recommendations were complemented with competition policy itself as a way to improve competition, since the others did not always increase competition as expected. Thus, many countries introduced competition policy as a result of structural adjustment programmes they implemented under the auspices of the World Bank and the IMF (Kronthaler & Stephan, 2007). The same path was taken by Morocco, but also by Jamaica, the only Cariforum member that developed its competition regime in the 90s. In countries, competition law and competition agencies were developed as part of an economic liberalisation programme, which was accompanied by IMF and World Bank funding and policy advice. The influence of the institutions continues to the current date. In Morocco, reform in competition policy and the adoption of the new competition laws in 2014 were a requirement for the next tranche of World Bank funding. Here, conditionality by the World Bank played an important part in adopting the new, improved law. This conditionality was combined with EU inquiries and domestic pressure. Institutional change in Jamaica as well as in Morocco is thus connected to the influence of international institutions.

Thirdly, regional trade agreements with other countries were relevant. In Morocco this was less of an issue because none of the other major regional trade agreements of the country included competition provisions. However, this is different for the Cariforum countries. In The Dominican Republic, the competition law even mentions the RTA with the United States as one justification for the law. And many members of Cariforum engaged with competition policy more intensively for the first time in the framework of the negotiations for the Free Trade Area of the Americas. As negotiations for this agreement took years and included a large group of countries, it provided a very important learning environment. The group included countries at several levels of competition policy implementation. It included Canada

with the oldest competition regime as well as the United States, who has one of the most advanced regimes in the world, to some countries which had not dealt with competition policy before. Moreover, it included some countries that were just starting to set up their competition regime, and were thus still in a learning phase themselves. For the involved Cariforum officials, this provided a very important room to learn about competition policy.

Learning was also important in other international groups. Both the WTO Working Group on the Interaction Between Trade and Competition Policy as well as the International Competition Network provided spaces for learning. Both in Morocco and in Cariforum countries interviewees mentioned the relevance of these more informal settings where varying approaches to competition policy are being presented and discussed. These fora allow for a learning experience because they bring together competition experts from different countries and create an atmosphere where everybody still learns something. As one interviewee put it: “It’s like a university”. Thus, participating in the epistemic community of competition policy experts provided the essential space to learn about competition policy, according to the interviews. What also becomes clear is that this learning needs time. The negotiations in bilateral trade agreements did not allow enough time to create an environment where learning could actually take place. Rather than contributing to a specific period of change, these fora provided the education for the competition experts in the region.

Hence, the regional trade agreement was not the only influencing external factor on change in the competition regime. International financial institutions, the European Union itself, other trade agreements and international fora where the competition epistemic community was present also shaped the developments.

7.5 Conclusion

In comparing the two cases, it becomes clear that the competition provisions in the EU-Morocco Association Agreement have been more relevant for change in the competition regime than in the EU-Cariforum EPA. This is despite the fact that in direct comparison, the competition provisions in the EU-Cariforum EPA are more detailed than the competition provision in the EU-Morocco Association Agreement, and that both are not excluded from dispute settlement process and thus legally binding.

What explains this difference in the importance of the regional trade agreement for domestic change? First of all, the European Union had more leverage in Morocco than in has in the Caribbean. Both regions rely on the access to the European market. Yet what increased the leverage of the EU as compared with Cariforum was the fact that the relationship with Morocco is built on a slow process of further integration. Rather than agreeing on one RTA that is meant to rule the relationship between the two parties for the next decades, the EU is currently negotiating a further regional trade agreement with Morocco. This makes it possible to agree on certain policies in the first RTA, and then ask for reform before the second RTA is signed. Due to this mechanism, the EU had more leverage in Morocco and it was easier to apply the conditionality mechanism.

The fact that the conditionality mechanism was more relevant in Morocco led to the situation that also the enablement mechanism was more relevant in Morocco than in Cariforum. In both Morocco and Cariforum, domestic actors who were not part of the leadership were interested in further reform in the competition policy towards a competition regime. However, in Morocco these actors could join forces with the representatives of the European Union who continuously demanded change in the Moroccan competition regime, as well as other actors such as the World Bank. This cooperation strengthened the domestic efforts to promote the competition regime, and at the same time gave additional backing to the demands of the

European Union and the World Bank. This combination contributed to institutional change as well as enforcement in Morocco. In Cariforum, domestic actors interested in competition policy reform are also present, and try to use the Economic Partnership Agreement as further support to lobby for reform. However, since these efforts are not backed by strong engagement of the European Union, nor by much political interest from the Cariforum leadership, they are less effective.

A further interesting aspect that results from the comparison of the two cases is the fact that both competition regimes have similarities with the EU competition regime. While in the case of Morocco this was clearly a necessity derived from the competition provisions in the trade agreement and the further requirements need to be met to qualify for the Deep and Comprehensive Free Trade Area, the approximation to the European Union in the CARICOM case was based on CARICOM following the EU model of regional integration.

On national level in the Caribbean region influences from the US were also important. For instance, the competition authorities in Jamaica and Barbados cooperate closely with the US competition authorities. This influence is much less important in Morocco, and US financed development projects even had a hard time influencing the development of competition policy in the 1990s. Thus, the results corroborate the idea that there is a geographical zone of influence of the larger countries. Moreover, these geographical ties are facilitated by historical developments and the closeness of traditions of law – whereas the US and the Caribbean countries operate in common law systems, Moroccan and most EU countries follow the civil law. As the Treaty of Chaguaramas is highly influenced by EU law, it will be interesting to observe how this develops in the future.

In neither case have the competition regimes developed to such a state that the competition provisions in the regional trade agreements have been put to use. In neither Morocco nor Cariforum have the provisions been evoked to cooperate with DG Competition on anti-

competitive issues that cross the borders. Neither has the dispute settlement process be used in any of these two cases.

8 Conclusions

The purpose of this thesis has been to understand the consequences of including competition provisions in EU trade agreements on the competition regime of the EU's Southern partner country. This chapter summarises the main findings of the research and discusses the academic and policy implications.

The main findings are presented in the first section of the chapter. The thesis shows that competition policy chapters included in EU trade agreements affect the development of the domestic competition regime of the EU's Southern partners. However, the findings also suggest that this impact is strongly mediated by the policy environment surrounding the trade agreement, as well as the existence of reform-minded domestic actors in the Southern countries. The second section of the chapter moves on to discuss the strengths of the thesis and its contribution to the academic literature on the effects of trade agreements on domestic reform. The thesis contributes empirically to understanding the consequences of competition provisions in RTAs, and advances the literature on RTAs and domestic reform. The third section of the chapter addresses the limitations of the thesis. In particular, it discusses the analytical challenges, and proposes new lines and strategies of research, that could help to overcome these challenges in the future. Finally, the last section of the chapter discusses the policy implications of the findings and concludes.

8.1 Main Findings

The first finding of the thesis is that competition provisions in EU regional trade agreements matter to promote domestic reform in developing countries. Indeed, as the case studies analysed in the thesis evidence, competition provisions in EU RTAs had a clear impact on

changes of the competition regimes in Morocco and Cariforum, and contributed to the development of a competition regime.

In Morocco, the competition provisions were important for the development and the adoption of Moroccan competition laws. Both in 2000, when the first Moroccan competition law, Law 06-99 on Freedom of Prices and Competition, was adopted, as well as in 2014, when the new competition law, Law No. 104-12 on Freedom of Prices and Competition, and Law No. 20-13 on the Competition Council were passed, competition provisions in the agreement with the EU played a major role. A comparison of the elements enshrined in these laws also reveals a decisive progress of the Moroccan competition regime towards a competition regime, including important elements such as a comprehensive competition law, and a formally independent competition authority with far-reaching investigative and sanction powers.

The competition provisions included in the Association Agreement were also relevant for change in enforcement in the Moroccan competition regime. Especially in 2008 and the following years, enforcement increased, and especially competition advocacy was intensified. The Competition Council gave opinions on anti-competitive issues, made in depth-sector studies and made these public in the media and in seminars. It also organised several seminars and workshops on competition, inviting a variety of stakeholders in competition policy to raise the awareness for the importance of competition policy.

EU approximation was also advanced by the competition provisions. The Moroccan authorities chose to base the law on the French Ordinance, in great part to make sure that it would be compatible with EU rules. When Law 104-12 and Law 20-13 were developed, it was always checked that the law would be compatible with EU competition rules in order to comply with the requirements of the Association Agreement and Action Plans.

In Cariforum, the inclusion of the competition provisions also contributed to changes along the three dimensions of change. On the regional CARICOM CSME level, the RTA served as a tool for the CCC to underline the importance of change in the competition regime when advocating the importance of competition. On the national CARICOM level, interviews suggest that the EPA gave new impetus to the process of establishing competition laws and authorities. In the Dominican Republic, the competition policy requirements of the EU-Cariforum Economic Partnership Agreement contributed to the establishment of the competition authority. There is however little evidence that the EPA has significantly influenced EU approximation of the Cariforum region.

The competition provisions included in the regional trade agreements with the European Union have played a role in the above changes. In Morocco, the competition provisions in the Association Agreement between Morocco and the European Union were important not only for the development of the competition law, but specifically also for the design of the law. Among other, the competition provisions in the EU-Morocco trade agreement prohibit anti-competitive agreements and abuse of dominance if they affect the trade between countries. To evaluate whether trade was harmed, it was agreed in the Association Agreement to refer to EU competition rules (Article 36.2). This encouraged Morocco to develop a competition law based on the French competition law, to facilitate compatibility with the requirements of the trade agreement. In Cariforum, the requirements stipulated by Article 125, that Cariforum member countries should establish competition authorities and laws, has contributed to the establishment of Procompetencia, the competition authority of the Dominican Republic.

Yet the development of the domestic competition regime was not solely determined by the inclusion of competition provisions alone. As analysed, several of the requirements resulting from the competition provisions have not yet been met by Morocco and Cariforum. For instance, state aid is also included in the competition provisions of the EU-Morocco

Association Agreement. Yet despite requirements for transparency and rules on state aid, there is no progress in the development of regulations on state aid in Morocco, twenty years after the signing of the regional trade agreement. These examples show that the mere inclusion of competition provisions in the regional trade agreement is not enough to foster change. Rather, it was the way in which the competition provisions were embedded in a wider policy framework as well as the actions of domestic competition policy actors interested in reform, that were relevant for change.

Indeed, as the comparison between Morocco and Cariforum evidences, the way in which the regional trade agreement is embedded in a wider policy framework of the European Union and the way in which incentives are provided makes an important difference in how the competition provisions promotes domestic reform. While a trade agreement is often regarded as an incentive to reform, this thesis found that the prospect of a future trade agreement has much more influence on change.

The last point is evidenced by the Association Agreement between Morocco and the European Union, which is embedded in the European Neighbourhood Policy. This policy aims at deepening cooperation in social, political and economic matters with countries neighbouring the EU. The Association Agreement is the current basis for economic cooperation between Morocco and the EU, yet the ultimate aim is to give Morocco full access to the internal market of the European Union (European Commission, 2015c). To that end, Morocco has to adopt the European Union *acquis*, including on competition policy. Thus, the Association Agreement is not an end in itself, but only another step towards further economic integration. Since 2013 Morocco and the European Union are negotiating a follow-up trade agreement to the Association Agreement, the Deep and Comprehensive Free Trade Agreement, which will include additional rules on competition policy.

Thus, the embedding of competition policy in a broader framework and, importantly, the repeated rounds of trade negotiations has had a strong impact on the development of competition policy. The fact that Morocco and the European Union are again negotiating a free trade agreement allows the European Union to ask Morocco to implement reforms in exchange for improved market access. As the case study of Morocco shows, the mechanism of conditionality was vital for promoting institutional change in the country. However, the conditionality was not exerted through enhanced market access provided by the Association Agreement, but rather by the future market access envisaged in the DCFTA.

As the analysis suggests, the adoption by the Moroccan authorities of the competition law in 2000, and the adoption of the new competition law in 2014 are partly a result of European conditionality. The European Union repeatedly argued that change in the competition regime was necessary for Morocco in order to reach the prerequisites for the DCFTA. Without the DCFTA and the benefits that it would entail for Morocco in the future, the EU's push would have been much less effective.

The third main finding relates to the importance of domestic actors interested in change. The competition provisions in the trade agreement enable them to promote and advance domestic change. Most importantly, these actors are not to be found on the leadership level of the government, but in roles with less decisive power. Despite this, these actors have been important for advancing change in the competition regimes of Morocco and Cariforum.

In Morocco, the reactivation of the Competition Council in 2008 was an important moment of change. The Council actively used the trade agreement to support its own efforts to strengthen the competition regime in Morocco. First of all, the Council asked for support and help from the ongoing Twinning regime. According to interviewees, from the start the Council was much more active than the Directorate for Prices and Competition in promoting the competition regime in Morocco. It used the acquired skills to make sector studies, to organise

seminars and to raise the profile of competition policy in the media. This included the organisation of the high profile Annual Meeting of the ICN in Morocco. At the same time, the Competition Council worked on the development of a new law, as the old competition law 06-99 had several flaws. Furthermore, the Competition Council welcomed and encouraged international actors – in particular the EU and the World Bank – to remind the Moroccan government of its obligations in competition policy, as agreed upon both in the Association Agreement with the EU and in the conditions to obtain World Bank loans. This basis facilitated the Council’s own lobbying efforts. Thus, the active engagement of the competition authority increased the visibility of competition policy in Morocco, and thus contributed to the institutional change in 2014.

Equally, in Cariforum domestic actors sought to use the trade agreement to advance the development of a competition regime. All Caricom CSME countries – i.e. all Cariforum countries with the exception of the Bahamas and the Dominican Republic, had already subscribed to setting up of a regional competition regime in the Revised Treaty of Chaguaramas. Yet the implementation of this regional competition regime had been very slow, much slower than other processes in the already slowly progressing Caribbean integration (Clement, 2015).

Therefore, the CRNM wanted to ensure that the Economic Partnership Agreement would provide the necessary financial and technical means to support change in the areas covered by the EPA. Indeed, EDF funding was important to establish the CCC as well as the Competition Authority in the Dominican Republic. Currently, EDF funding supports the development of the competition regimes in other Cariforum countries. After the CARICOM Competition Commission had been established, the regional competition authority became the main domestic actor advancing change in the competition regime. It supported institutional change in the CSME countries, but also increased enforcement of competition policy, mainly through

competition advocacy. For this work, the staff of the CCC frequently refers to the EPA to underline the significance of reform.

Thus, domestic actors in both Cariforum and Morocco were enabled by the trade agreement to lock-in their own reform efforts. Yet the combination of the RTA conditionality and the presence of domestic actors interested in reform had a stronger effect on change. In both Morocco and Cariforum member states, the enthusiasm of the governments for reform in competition policy was relatively low. Yet while in Morocco this lack was partly made up by EU conditionality and other external influences, this was not the case in most Cariforum member states, where it was more difficult to lock-in reform in the trade agreement, as the EU pressure was weaker. Equally, while state aid was included in the competition provisions, as well as in the Action Plans of EU-Moroccan cooperation, the pressure to reform state aid policy was not as strong as in competition; furthermore, no domestic actor existed that could make use of the provisions. Thus, the lack of domestic actors interested in reforming state aid and the absence of strong EU conditionality in this policy area contributed to the fact that the competition provisions could not induce change.

Lastly, a finding that was common to both case studies was the special mention that interviewees made with regard to certain institutions as places for learning on competition policy. Next to the learning that took place via technical assistance projects implemented in the context of the trade agreements, the following three groups for learning were frequently mentioned in interviews: the International Competition Network, the Working Group on Interaction between Trade and Competition Policy and, in the case of Cariforum, also negotiations for the Free Trade Area of the Americas. What all of them have in common is that they have existed over several years, and thus meetings are frequent and repeating. Second, the membership of all of these groups included several developed and developing countries, with different experiences in competition policy. According to the interviewees,

they thus provide a perfect atmosphere for learning, because there is a large group of “learners”, and because the approaches to competition policy presented are diverse and come from countries with various backgrounds. This observation ties in with research about the importance of epistemic communities for learning (e.g. Haas, 1992) and it would be interesting to look more systematically at the importance of participation in these groups for the development of competition policy regimes.

8.2 Contribution to the literature

This thesis makes three important contributions to the development of the academic literature on the impact of trade agreements on domestic reform.

First, the thesis makes a theoretical contribution to the literature by developing the existing theories that connect international trade agreements with domestic reform. According to the literature, regional trade agreements can have an impact on the domestic competition regime of the developing country via two mechanisms. First, governments might pursue the signature of a RTA to lock-in reforms. In this regard, regional trade agreements can help governments to reform because they allow the government to credibly commit to reform and thus overcome domestic opposition. At the same time, RTAs provide governments with side payments that can help to implement reform (Baccini & Urpelainen, 2014a; Birdsall & Lawrence, 1999; Fernández & Portes, 1998; Tovias & Ugur, 2004).

Second, Northern countries might coerce the Southern country to accept reforms. According to this approach, large economic powers like the European Union and the United States coerce developing countries into accepting policy reforms in exchange for market access (Heron & Siles-Brügge, 2012; Hurt, 2012; Shadlen, 2005). Since developing countries are dependent on the larger country in several ways, e.g. because they need the regional market

access to sustain their economies or are dependent on aid, they have to accept the inclusion of certain behind-the-border issues, such as competition policy.

Notwithstanding the strengths of these approaches, they present certain limitations that raise questions on their capacity to explain domestic change.

First, the lock-in approach assumes that governments in the developing countries want reform. What happens, however in cases where reform is not a priority for the government, or where it actually opposes reform? Does the trade agreement not have any impact in this case? This question becomes even more relevant when one looks at current regional trade agreements. RTAs increasingly become deeper and wider in scope, and thus regulate a higher number of topics. Consequently it seems unrealistic to assume that Southern governments always want to undertake change in all these areas; even more so since trade agreements are results of negotiations, which leads to the necessity of compromise on both sides. Thus, it is likely that at least in some of these issues included in a RTA the Southern country has at least no high interest in reform. Can the trade agreement still be influential then?

Second, while it might be reasonable to believe that competition provisions are included on the demand of a larger and more powerful country, how does this actually influence reform and implementation of the new policies in the country? Just because the competition provisions are agreed upon in the trade agreement does not mean that they will actually be implemented or that they will have an effect.

This thesis fills this gap and explains how competition provisions can still be relevant and contribute to reform even in a situation where the government is not the driving force behind change. By borrowing from the Europeanization and the diffusion literatures, the thesis complements these two approaches and develops a more flexible and dynamic approach to

understanding the impact of RTAs, where other actors other than governments and leaders can play an important role in promoting reform.

As has been shown in this thesis, in order to understand how the competition provisions might influence change, it is necessary to look not only at the leadership level, but also at other domestic actors who are interested in competition policy. In Morocco, the reactivation of the Competition Council in 2008 created an important domestic lobbyist for competition policy. According to interviewees, the Twinning project was short of being terminated after only a few months of implementation, because work with the DCP and the ministry was inefficient. Yet the Competition Council proved a strong and interested partner, who was able to make use of the provided facilities. Without the active engagement of the Competition Council, the work of the project and EU efforts to improve the Moroccan competition system would have been much less fruitful, despite the competition rules in the Association Agreement.

In the case of Cariforum, it was the regional institutions that used the trade agreement to promote change. During negotiations, the need for EU financial support was underlined to speed up reform. After the establishment of the regional competition authority for CARICOM CSME states, the CCC, this institution took up an important role in advocating the importance of competition in media and with governments, as well as by supporting CARICOM member states in establishing their own competition regimes. Although according to interviews the interest of Cariforum governments in the regional competition regime was not strong, the CCC continues to lobby for competition policy in the region, thus driving institutional change forward. For instance, the Capacity Building project has funded the CCC to conduct one day sensitization workshops in every Caricom member state, and the competition authority of the Dominican Republic is doing the same. Further, a session will be conducted to win support at the political level.

Thus, the competition provisions also influence domestic change by strengthening domestic actors who are interested in reform and shifting the power balance in their favour. This finding adds a new dimension to the theories on the impact of trade agreements for domestic reforms. In contrast to older theories that only look at intergovernmental exchange, the findings suggest that it is necessary to also look at the various domestic actors in the Southern country to really grasp the whole importance of competition provisions in trade agreements. They can enable domestic actors interested in change to advance their policy interest, and are therefore more powerful than previously thought.

Second, the research contributes to the literature on the impact of the European Union on the development of competition laws in other countries. Since EU accession was the major driver for change in accession countries, some authors have suggested that the end of the enlargement process might have brought the EU to its limit in being able to export its competition regime (Aydin, 2012). While the EU might try to use RTAs to promote change in third countries, the conditionality in these RTAs is not valid threat, as the EU is “apparently not ready suspend trade with third countries due simply to the fact that the latter country does not have a competition law in force” (Botta, 2013). However, if there is not only trade agreement, but several successive trade agreements as was in the case of Morocco, the conditionality can be strengthened. The EU does not have to threaten to suspend trade if there is no reform. Rather, it can require the reform agreed upon in the first agreement and threaten, that the follow-up agreement will not be signed.

It has become more common that trade agreements are replaced with updated trade agreements after several years. The European Union has recently replaced neighbourhood agreements with Moldova, Georgia, and Ukraine with Deep and Comprehensive Free Trade Agreements (Van der Loo, 2015), and it is currently negotiating DCFTAs with Morocco and Tunisia (DG Trade, 2015b; European Commission, 2015b). Moreover, follow-up trade

negotiations do not only happen in EU neighbourhood countries, but also in other regions. For instance, Canada is currently working with Costa Rica on deepening their free trade agreement signed in 2001 (Government of Canada, 2015). In Morocco, the fact that a second trade agreement with the EU and further economic integration was on the horizon was an important reason for change, also because it gave domestic actors more time to use EU conditionality for own goals.

Third, the research empirically adds to the literature on the consequences of competition provisions in regional trade agreements. This thesis provides a comprehensive approach to change in the competition regime. Notably, the analysis goes further than looking at implementation only but covers change in institutions as well the enforcement.

Despite the increasing inclusion of competition provisions in preferential trade agreements, there is still little knowledge in the literature as to what the impacts of these competition provisions are on the domestic competition regime of the EU's partner (Bradford & Büthe, 2015; Dawar & Evenett, 2008). Thus, this thesis contributed to the literature by providing in depths analyses of the effects of competition provisions in the EU-Morocco Association Agreement, and the EU-Cariforum Economic Partnership Agreement in the development of the competition regimes in Morocco and Cariforum.

In both cases, the implementation of the competition provisions has only partially taken place. In Morocco, the commitments with regard to state aid are not yet fulfilled; in Cariforum the commitments to establish authorities and adopt laws are not yet achieved. Equally, no cross-country enforcement cooperation between the competition authorities of the European Union and Morocco or Cariforum has taken place. This corroborates findings by Rosenberg (2007), who claims that the competition provisions were did not lead to increased enforcement cooperation because many the Southern regimes are not yet at a level where they could initiate investigations.

Yet while the competition provisions are not fully implemented, they still impacted on the development of the competition regime. The competition provisions in the trade agreements were not the main cause for the establishment of competition regimes in Morocco and some Cariforum member states; but they accelerated the process decisively. This finding is coherent with analyses of the establishment of the Egyptian competition law (Greiss, 2011; Shahein, 2012). Moreover, in the case of Morocco, the competition provisions in the trade agreement led to an approximation of the Moroccan competition system to the EU system; again, this can be similarly observed in Egypt (Shahein, 2012). Furthermore, the inclusion of competition provisions also influences change in enforcement of the competition rules, by providing financial and technical support, and by enabling the domestic actors.

8.3 Limitations and future research

The thesis provides a detailed analysis of the developments of the competition regimes in Morocco and in Cariforum, and analyses the different mechanism of how the EU trade agreement influenced these developments. With this analysis, the thesis provides a substantive account to understand the consequences that competition provisions have on the domestic reform of competition regime in third countries. Moreover, it also makes an important contribution to the theoretical development of the academic literature on the importance of regional trade agreements for domestic reform.

Notwithstanding the theoretical and empirical contribution of the thesis, it also faces certain limitations that further research should seek to overcome in the future to have a more nuanced understanding of the role of RTAs and competition provisions on domestic reform.

First of all, even though the thesis provides great empirical evidence about why and how competition provisions promoted domestic change in Morocco and Cariforum, its conclusions cannot be generalised to other case studies where the EU signed RTAs with developing

countries. Indeed, though it is feasible that the findings can be useful to explain domestic reform in other cases where the EU has negotiated RTAs with competition provisions with third countries, the small number of cases makes it very difficult for the analytical framework to extrapolate such conclusions. Due to limited time and resources, the focus was on two selected case studies, in order to study those in depth. The cases were selected with a view to represent either the countries that are part of the European Neighbourhood Policy or the countries or regions that have selected regional trade agreements with the European Union.

Nevertheless, the findings are still relevant empirically and for the theoretical development of the literature. The thesis builds upon, expands and complements existing theories on the domestic impact of RTAs, and provides a more nuanced and accurate account of how domestic change takes place. Second, the study also provides more nuances with regard to the type of change that occurs, and therefore goes much further than existing studies that focus only on the implementation of competition provisions. Therefore, future research could build upon the research design and expand the scope of the research by increasing the number of cases.

A second limitation of this thesis relates to the temporal dimension of the study, as the selected cases are still in the process of establishing a competition regime. In neither Morocco, nor Cariforum are the competition regimes so far developed that they are being enforced in such a manner that cases are adjudicated on a regular basis. This made it difficult to track some changes; for instance goals and objectives of a competition regime only really become clear after several cases have been adjudicated (Kaczorowska, 2012). Thus, whether norms have been transferred and for instance, have become ‘European’ is something that researchers will be able to more easily judge in a few years’ time.

The case selection already considered the importance of time by not including the latest regional trade agreements signed by the EU and third countries in the selection. Rather, some

of the earlier RTAs were chosen. Indeed, the EU-Morocco Association Agreement is one of the first RTAs the EU signed with its Mediterranean partners, and the EU-Cariforum EPA is the first RTA that the EU signed with a regional partner. As a matter of fact however, the development of competition regimes takes time; according to one interviewee with a long-term experience in this area, competition regimes might take up to 25 years to be fully implemented and functional. Thus, it will be interesting to see in the future how the competition regimes have developed, and how the regional trade agreements – and the actions taken by the domestic actors interested in reform – have influenced these developments.

8.4 Policy implications

As the number of regional trade agreements increases over time and the inclusion of competition policy provisions becomes increasingly the norm (Bradford & Büthe, 2015; WTO, 2011), several issues raised in this thesis can be important for policy makers.

First of all, the findings are relevant for those who want to promote reform in competition regimes. As the findings show, the inclusion of competition provisions in trade agreements matters in promoting domestic reform. And, even though the implementation of competition provisions takes time, the provisions can nevertheless influence the development of the competition regime and contribute to change towards the establishment of competition policy.

The impact of competition policy provisions can be strengthened in several ways. First of all, the question of what type of incentive is offered in exchange for reform is relevant. Unsurprisingly, more bargaining material can be used as leverage for change. However, as important as the type of incentive that is being offered, the timing – i.e. *when* it is being offered - is at least as important. Indeed, if regional trade agreements are designed to promote reform, a sequenced deliverance of benefits can be strategically more useful. For instance, as in Morocco, the RTA envisaged increased accession to the EU internal market in the future,

and thus increased the EU's leverage to push for the full implementation of the Moroccan competition regime.

Thus, it might be more helpful for the EU to advance in its cooperation with developing countries with little steps and progressive agreements, rather than by trying to promote full reform right from the start. This is also true because domestic actors who are interested in change will also have the time to learn and advocate, and thus be much more efficient acting as domestic change entrepreneurs.

A second aspect relates to the potential that RTAs have for learning. As the case studies of the thesis have shown, officials have learned about competition policy in the trade negotiations (e.g. the negotiations to the Free Trade Area of the Americas), but also in fora such as the ICN. What was important in this regard was the existence of regular exchanges to build trust, but also the possibility to exchange views, information and lessons learned with officials from other countries that are also still in the process of learning. This might also be useful to consider when developing the technical assistance projects in this area. Jaros (2012) argues that EU Twinning Projects could benefit from being open to not only one beneficiary country, but a group of them, in order to pool resources for the institutions delivering the training, but also to facilitate the exchange between the agencies of beneficiary countries. The findings of study support this proposal.

This thesis has analysed the consequences of competition provisions in EU trade agreements with Southern countries. By investigating the competition provisions in the EU-Morocco Association Agreement and the EU-Cariforum Economic Partnership Agreement and by examining their impact on the competition regimes of Morocco and Cariforum, the thesis was able to show that competition provisions in regional trade agreements matter for domestic reform. However, the impact does not only depend on the competition provisions themselves, but importantly also on the setting of the regional trade agreement and the existence of

domestic actors who are willing to promote reform, even if they are not the government or leader of a country. These domestic actors can be important drivers for the development of a competition regime, and competition provisions in a regional trade agreement can help to foster this change.

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