



The need for a Competition Policy for developing countries

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OUTLINE

I. What is Competition Policy?

- a) What it is
- b) What it is not

II. Why competition laws in developing countries?

- a) The role of competition in market- oriented economic reforms
- b) Legislation in a globalizing world of anti-competitive practices

OUTLINE

(cont'd)

III. The need for International cooperation?

- a) Bilateral agreements
- b) Regional integration
- c) Efforts at the multilateral level

IV. A Possible Multilateral Competition Framework





I. What is Competition Policy?

Confusion between:

- Competition , Free-competition, Anti-trust, Anti- monopoly, Restrictive Business Practices (RBP), Restrictive Trade Practices on the one hand; and
- Unfair Competition
- Unfair Trade



I. What is Competition Policy? (cont'd)

a) What is it?

A policy, reinforced by a law, whose main objective is the safeguard of competition by:

- (i) Prohibition of hard-core **CARTELS** (also called Horizontal Agreements)
- (ii) Control of **VERTICAL RESTRAINTS**, especially by **DOMINANT FIRMS**
- (iii) Control of **MERGERS & ACQUISITIONS** which might lead to creation of **DOMINANT FIRMS** or of **MONOPOLIES**

I. **What is Competition Policy** (cont'd)

Types of Cartels

- Domestic Cartels
- Import Cartels
- Export Cartels
- International Cartels



I. **What is Competition Policy?** (cont'd)

Vertical Restraints

- Resale Price Maintenance
- Refusals to deal
- Exclusive dealing
- Tied Selling, ...full-line-forcing
- Predatory Pricing



I. What is Competition Policy? (cont'd)

b) What it is not:

- UNFAIR COMPETITION

(Concurrence déloyale, in French)

includes

infringements to IPRs, metrology,
and sometimes Trade Rules

- TRADE RULES, including Anti-dumping & countervail.



II. Why Competition Laws in Developing countries?

a) The role of competition in Market-Oriented economic reforms:

- Price liberalisation
- Deregulation
- Privatization
- Trade liberalisation
- FDI liberalisation





Why Competition Laws in Developing countries? (cont'd)

b) National legislation in a globalising world

Asia and Pacific

- China (1993)
- Fiji (1993)
- India (1969)
- Indonesia (1999)
- Pakistan (1970)
- Republic of Korea (1980)
- Sri Lanka (1987)
- Thailand (1979 rev. 1999)

Asia and Pacific

- Taiwan Province of China (1992)
- Jordan*
- Malaysia*
- Philippines*
- Viet Nam*

* *Competition Law in Preparation*



Why Competition Laws in Developing countries? (cont'd)

b) National legislation in a globalising world

Latin America and Caribbean

- Argentina (1980)
- Brazil (1960)
- Chile (1973, rev. 1980)
- Colombia (1992)
- Costa Rica (1992)
- Jamaica (1993)
- Panama (1990)
- Peru (1990)
- Venezuela (1991)
- Bolivia*
- Dominican Republic*
- El Salvador*
- Guatemala*
- Honduras*
- Nicaragua*
- Paraguay*
- Trinidad and Tobago*

b) National legislation in a globalising world

Africa

- Algeria (1995)
- Burkina Faso (1991)
- Cote d'Ivoire (1978)
- Gabon (1989)
- Guinée (1994)
- Kenya (1988)
- Malawi (1998)
- Mali (1998)
- Morocco (1998)
- Republic of South Africa (1955, rev 1990)
- Senegal (1994)
- Tanzania (1994)
- Tunisia (1991)
- Zambia (1994)
- Zimbabwe (1997)
- Benin *
- Botswana *
- Cameroon *
- Egypt
- Ethiopia *

* *Laws in Preparation or revision*



b) National legislation in a globalising world (con't)

- *Africa*

- Ghana *
- Madagascar *
- Mauritania *
- Mauritius
- Niger *
- Sudan *
- Swaziland *
- Tchad *
- Togo *
- Tchad *

** Laws in preparation or revision*



III. The Need for International Cooperation

A - National Law enforcement stops at the borders while

B - Anti-competitive practices are increasingly cross- border:

- International cartels
- Vertical restraints by dominant firms
- Mega M & A's



Types of cooperation agreements:

a) **Bilateral Agreements**

- Arrange Comparable economies
- Imbalance of interest if large with small economy
- Risk of inconsistencies and heavy burden in case of proliferation of BA's.

b) **Regional Integration**

FTA negotiations in many regions; some involve common competition rules as a longer-term objective.



The Need for International Cooperation (cont'd)

c) Efforts at the Multilateral Level

Past efforts:

- Havana (1946)
- U.N. Code on TNCs (1970's)
- UNCTAD Code on TOT (1970's)
- UNCTAD Set of Principles & Rules on RBP's (*adopted in 1980 by UN G.A.*)



IV EFFORTS AT THE MULTILATERAL LEVEL

The UN Set, adopted as a Recommendation to States in GA Resolution 35/63, (1980)

- Is non-binding
- the Fourth UN Review Conference (2000)
Reaffirmed its validity
- It contains the **DEVELOPMENT DIMENSION** in particular “special & preferential treatment”
- Its elements can serve as a **MODEL** for a MCF





V. A Possible Multilateral Competition Framework

- a) Objectives of a possible MCF**
- b) Promoting efficiency and equity in the globalization process**
- c) In search of a development-friendly MCF**
- d) What kind of Special and Differential Treatment for developing countries?**
- e) Elements of a possible development-friendly MCF**



OBJECTIVES OF A POSSIBLE MCF

- (1) To ensure that anti-competitive practices do not replace tariffs and Non-Tariff Barriers affecting international trade. (Objective No.1 of the UN Set and Chapter V of Havana Charter 1947)**
- (2) To make globalization more efficient, but also more equitable, thanks to implementation of competition rules. (*UNCTAD X*)**
- (3) To promote consumer interests and social welfare in general (UN Set and UN Consumer Guidelines)**



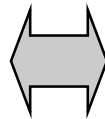
A rules-based Multilateral Competition Framework (MCF)

Efficiency

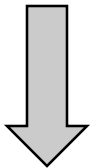
Static efficiency

- Price
- Quality
- Choice

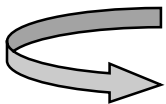
Dynamic Efficiency



Balance between
Competition and
Intellectual Property



Keys to Competitiveness



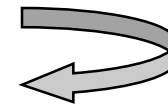
Accelerated Developments

Equity

- Keep markets open to new Entrants
- Promote Consumers and user industries (downstream).
- Control undue concentration of markets in a few hands



Enhanced Competitiveness



A Development-friendly MCF

Level-playing
field



Equal rules for
All, large or small,
developed or LDC



Special or differential
treatment?



A Rules based
system?
- Voluntary?
- Obligation?



What kind of SDT in a MCF?

- Technical assistance + capacity-building to apply « equal rules for unequals »?
- Transition periods?
 - Flexibility
 - Graduality
- Possibility of sectoral exemption
 - With deadlines?
 - Without deadlines?





ELEMENTS OF A POSSIBLE DEVELOPMENT-FRIENDLY MCF

- **International Trade Rules**
- **Competition Rules**
- **Cooperation and dispute
settlement**

● **International Trade Rules**

- MFN Treatment
- Non discrimination
- National Treatment
- Reciprocity
- Transparency and Due Process
- Special and Differential Treatment



● **Competition Rules**

- Prohibition of hard-core cartels
- Control of vertical restraints
- Prohibition of abuses of dominant position
- Control of concentrations



● **Cooperation and dispute settlement**

- Technical cooperation and peer reviews
- Exchanges of information and cooperation in case of proceedings
- Consultations and dispute settlement mechanism





Competition Law and Policy

Multilateral Competition
Consultations

DSM
Peer reviews
...

Framework
Conciliations

Competition Principles

Hard core
cartels

Vertical
restraints

Abuse of
dominant position

Merger
control

Cooperation Agr.
positive comity

Principles of International Trade

M.F.N.
principles

Non-
discrimination

National
treatment

Transparency

Special & differential
treatment



UNCTAD

Competition Law and Policy

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DISPUTE MEDIATION MECHANISMS

- **Bilateral, Regional or Multilateral Cooperation Agreements**
 - Notification of case proceedings
 - Exchange of information
 - Consultations



DISPUTE MEDIATION MECHANISMS

cont/..

- **Peer Reviews**

- Voluntary periodic review process
- Promotes convergence
- Relatively slow, long-term action



DISPUTE MEDIATION MECHANISMS

cont/..

- **WTO-type DSM for a MCF?**
 - Mandatory decisions
 - Would be limited in scope of application: no “second-guessing” of case proceedings decided at national level

