

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**COMPETITION POLICY FOR DEVELOPMENT:
A REPORT ON UNCTAD'S CAPACITY BUILDING AND TECHNICAL
ASSISTANCE PROGRAMME**



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Executive Summary

1. For the past two decades UNCTAD secretariat has conducted a capacity building programme and technical assistance activities funded principally by donor countries and agencies for the benefit of developing and least developed countries and their competition agencies when they exist. The capacity building and technical assistance activities have so far concerned 42 developing countries in Africa, Asia, Latin America and the Caribbean. There have been four main features of the programmes: Advisory services in the drafting of competition law and related legislation, strengthening of institutional capacity and upgrading of skills of case handlers for effective enforcement, workshops and seminars to strengthen regional and International cooperation on competition policy and preparation of technical papers and studies on substantive legal and economic issues relating to the interface between competition and development.

2. Depending on the level of development of the requesting country, UNCTAD has assisted in explaining the role of competition Policy in maximising the benefits from liberalisation and integration into the world economy, advised, on the basis of the Model Law on Competition, in preparing competition laws and setting up regulatory frameworks for enforcement of competition law, promoted the creation of "Competition culture" among the supporting institutions (government agencies, academia, business groups, consumer associations, and the press) and provided a training of trainers programme, including through the use of distance learning for sustaining capacity building at the national level and promoting South-South cooperation.

3. Over the last two decades and with the accumulation of experience UNCTAD has learned a great deal about the evolution of developing countries' needs in this area as well as how to formulate and deliver an effective capacity building and technical assistance programme at relatively low cost. Several lessons flow from this experience:

(i) Although most developing countries have liberalised their economies and have adopted a market base strategy for their growth and development, their level of development and the extent of poverty levels constrain their ability to introduce and apply the most modern standards in competition policy. UNCTAD's strength is in its ability to provide tailor made studies and policy advice based on a thorough analysis of the economic situation of interested countries in a way that supports the development and functioning of markets, while addressing development and poverty issues.

(ii) The most effective form of capacity building and technical assistance activities are those which are integrated in the recipient country development strategy and that can be sustainable in the long-run. There must be a commitment from the beneficiary agency or institutions to provide human and technical resources for using effectively the acquired skills and knowledge and to replicate their use as widely as possible including sharing expertise with other developing countries and competition agencies.

(iii) Capacity building and technical assistance can be provided in a variety of ways and there is no general rule that one method of delivery is superior or more useful than another. The method of delivery should be based on a needs assessment of the beneficiary country as well as its cost effectiveness. Resident advisors can be extremely effective if the assignment is long enough, the advisor has the appropriate skills and knowledge, including an understanding of local conditions as well as how the beneficiary agency uses the advisor. Seminars and workshops provide less in-depth training but are most likely to benefit policy makers, business executives and consumer representatives about the role and benefits of adopting competition policy. Technical workshops on topics such as investigation methods, definitions of relevant markets and mergers review analysis may have a limited target population but can be very effective for case handlers and the success of competition law enforcement. The use of training of

trainers programme, including through distance learning may have limited application for day to day matters in the short run, but it ensures sustainability, transfer of skills and knowledge and overcome some of the problems created by “brain-drain” of limited available human resources.

(iv) Limited resources and the expanding demand from developing countries have led UNCTAD to make use of information technology that is relatively cheap to deliver some of its technical assistance, develop manuals and case study material which can be adopted to suit individual country needs, and network and cooperate with other institutions that provide technical assistance activities in the area of competition policy.

(v) Developing countries believe that

competition policy is needed for the success of market-oriented reforms and for generating growth and development, but their conviction vary. Some still doubt whether reliance on market forces alone can generate income and employment for the poor or whether globalisation and liberalisation can benefit the least developed among them. The strength of UNCTAD's programme is its ability to provide policy advice and technical assistance in the two areas, namely of formulation and enforcement of competition law advocacy for market-oriented reforms. As a development agency, UNCTAD stature with developing countries provides an additional credibility to the policy recommendations and advice, which it dispense to interested countries on the formulation of competition policy and development issues.

Chapter I. UNCTAD Capacity building mandate and objectives In the area of Competition law and Policy

1) UNCTAD mandate

4. UNCTAD is the focal point on all work related to Competition Policy and Consumer Protection within the United Nations system. The mandate, which dates from the adoption of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980,¹ has as objective number one: "to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from liberalisation of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries". The UN Set also recognises that the basic norms of competition law, which have long been in use in developed countries, should extend to the operations of enterprises, including TNCs, in developing countries. Thus, the Objectives Section of the UN Set emphasizes that the interests of developing countries in particular, should be taken into account in the elimination of anti-competitive practices that may cause prejudice to international trade and development. Furthermore, the Objectives Section sees the UN Set as an international contribution to a wider process of encouraging the adoption and strengthening of laws and policies in this area at the national and regional levels.

5. These objectives should be seen alongside UNCTAD's work on the formulation of a Model Law on competition. The draft Model Law and the regular commentaries received from member states embodies the principles laid down in the Set and couples these with a scheme for national competition authority. It is aimed at developing countries that do not, have a domestic competition law. Section C (iii) (7) of the Set further lays down a principle of preferential treatment for

developing countries as an aspect of the equitable application of the principles contained in the UN Set. Thus, States, in particular developed countries, are to take into account in the application of their competition law the, "development, financial and trade needs of developing countries, in particular of the least developed countries, for the purposes especially of developing countries in: (a) promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and (b) encouraging their economic development through regional or global arrangements among developing countries." (Box 1.)

6. In the last two UNCTAD Ministerial Conferences, Midrand (UNCTAD IX) and Bangkok (UNCTAD X), Ministers further reiterated that:

"the globalisation of production and the liberalisation of trade offer opportunities for all countries and enable developing countries to play a more active role in the world economy." "...Participating fully and effectively in international trade, investment and production requires capacity-building, improving the transparency, soundness and certainty of domestic economic environment, and securing access to markets..."

In this respect, globalisation has in many cases highlighted differences in regulatory regimes in various policy areas of which competition policy is an important one.

2) UNCTAD missions in Competition Policy

7. The objective of UNCTAD capacity building programme on competition policy is to implement the mandate of UNCTAD as stipulated in the UN Set, the Bangkok Plan of Action adopted in February 2000, and the 4th UN Review Conference², according to which UNCTAD is to serve as a forum for policy

¹ The United Nations Set of Principles and Rules on Competition – The Set of Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, Resolution 35/63 adopted by consensus by the General Assembly on 5 December 1980.

² See Fourth UN Conference to Review All Aspects of the Set of Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 24-29 September 2000

analysis and consensus-building, inter-alia, in the area of competition law and policy and development. In particular, paragraph 91 (iii) of the Bangkok Declaration stipulates that UNCTAD:

"Should continue and expand its help to interested countries in developing their national regulatory and institutional framework in the area of competition law and policy.

To continue to examine issues related to competition law and policy of particular relevance to development. It should prepare periodical reports on restraints in strategic sectors and their impacts on developing countries and countries in transition, particularly on their competitiveness. UNCTAD should study in depth developmental impact of possible international agreements on competition.

UNCTAD should further study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition.

*The work in this area should, in cooperation with UNDP, the World Bank and other relevant organizations, strengthen the capacity of public institutions for competition and consumer protection in developing countries and help them to educate the public and representatives of the private sector in this field."*³

8. In line with the direction given by Ministers, UNCTAD capacity building programme has been developed in the context of UNCTAD's cooperation with WTO, OECD and the World Bank on matters related to competition policy. It has been conceptualised on the basis of the complementarity of functions and capacities between UNCTAD and other organizations and takes into account, inter-alia, the encouragement the WTO Singapore and Doha Ministerial Conferences, have given to cooperation between the two organizations. Paragraph 20 of the Singapore Declaration says:

"As regards UNCTAD, we welcome the work under way as provided for in the

Midrand Declaration and the contribution it makes to the understanding of issues. In the conduct of the work of the working groups, we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account". World Trade Organization. WT/min (96)/DEC, 18 December 1996."

In paragraph 24 of the Doha Declaration it says:

"We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs." World Trade Organization, WT/min (14 November 2001, Doha, Qatar)"

9. Over the last eight years, UNCTAD has implemented the relevant parts of the Midrand and Bangkok mandates and will continue to implement the relevant mandate to emerge from UNCTAD XI conference at Sao Paulo, in June 2004, including cooperation with the WTO, the World Bank, OECD, regional organizations and the ICN in matters related to competition law and policy and development. The components of the Capacity building programme are designed as a coherent strategy aimed at maximising synergies between its elements, building on earlier work of UNCTAD work in this area including, Investment, trade and development issues.

³ United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Geneva 29th September 2000. TD/RBP/Conf.5/L

During the annual consultations held by UNCTAD Intergovernmental Group of Experts on Competition Policy many developing countries have expressed the views that at the national and regional levels, there is a further need for the fashioning of appropriate policies and development and that would include competition policy and legislation that can make markets work better for the poor. They have also indicated that at the international level, countries with more experience in the application of competition laws and policies and international organizations should provide sustained support to poorer countries through Capacity building, technical co-operation and the exchange of experiences and expertise.

10. The overall objective of the mandated capacity building programme should be (i) to assist countries in designing appropriate competition laws and policy and enforce them effectively. To this end, the activities should seek to upgrade the skills of experts dealing with competition laws and policy, institution

building, including support in the establishment of competition authorities and in the initial stages of enforcement activities; and (ii) Strengthen their negotiating skills with respect to regional and multilateral negotiations, including through exchange of information and experiences.

11. With these objectives in mind, and while formulating capacity building activities, UNCTAD has cooperated with development planners and with experts from national, regional and international organizations including the WTO and the OECD secretariats, the IBRD, the Regional Development Banks, the secretariats of regional integration groupings and the International Competition Network (ICN) to mobilize expertise as well as human and financial resources. These cooperation activities are discussed in Section IV (6) below.

Box 1: The Objectives of the UN Set of Principles on Competition:

The UN *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Anticompetitive Practice* contains the following objectives:

- to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;
- to attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through (i) the creation, encouragement and protection of competition; (ii) control of the concentration of capital and/or economic power; (iii) encouragement of innovation;
- To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;
- To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;
- To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

In addition, the UNCTAD Model Law on Competition states that the main objectives of national competition law and policy are 'to control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.

Chapter II. The need for formulating a sustainable Competition Policy Framework for Development

1) A case for Competition Policy

12. Present concerns with competition policy issues reflect the evolution of development thinking and the lessons derived from experiences in the developing world. There is a growing consensus that the countries which have experienced high and sustained economic growth and prosperity, are those which have relied on the working of a dynamic enterprise sector well regulated and operating within a stable and predictable environment. Competition policy, and the need to promote vigorous domestic competition as part of the foundation on which to build international competitiveness is in fact more important today for developing countries than it did for the first group of NICs. Globalisation and liberalisation has rendered this issue inescapable for the latecomers in their request to promote long-term growth and development. In this respect, most developing countries and The Least developed, even though with notable differences in scope, are increasingly adopting deregulation, trade and FDI liberalisation as their new policy objectives, building upon the substantial empirical evidence existing in both developed and developing countries pointing to the fundamental role played by vigorous firm's rivalry in the enhancement of domestic industry competitiveness. The challenge facing policy makers is how to ensure that liberalisation and reliance on market forces do not lead to further marginalisation and impoverishment of the poor.

13. The liberalisation of international trade, including the reduction of tariff barriers, the elimination of most quantitative restrictions on imports and exports allows producers to expand their horizons to world markets, rather than relying exclusively on small domestic markets. By taking up the new export opportunities they are able to increase output and lower costs through economies of scale. Moreover, because strong competition is usually encountered in export markets, these firms are generally under pressure to devise more efficient methods of production, better marketing techniques and quality

improvements in their products. This often results in lower prices and better quality goods, not only for foreign customers, but also for domestic consumers. The lowering of trade barriers also increases competition from imports for those local producers of tradable goods and services mainly dependent on the domestic market. The additional competitive pressure obliges these firms also, to improve their productivity and keep down prices to consumers.

14. Competition policy comes into this picture because some major players, fearful of the consequences of trade liberalisation and stronger competition may be inclined to protect their interests and market shares by introducing cross-border anticompetitive practices, such as international cartels, abuse of dominance, and abuse of intellectual property rights (IPRs)⁴. In some circumstances, such practices can limit international trade even more severely than the former high tariffs and just as severely as the non-tariff barriers. Domestic suppliers may enter into exclusive arrangements with their local distributors, which effectively deny importers access to some markets. Large retail chains may refuse to distribute traded goods. An international cartel may be established to fix prices, so that traded goods cannot be sold more cheaply than the equivalent domestically produced items. If an effective competition law is in place, such anticompetitive practices can be challenged. However, in countries where there is no competition law, the benefits of trade liberalisation could be lost through such anticompetitive conduct in the domestic market.

15. The growing importance of the relationship between competition and trade policy has been brought to the forefront by the liberalisation of trade and investment. The interface between trade and competition has also been the subject of consultation between member states in WTO, OECD and UNCTAD

⁴ See "The objectives of Competition Law and Policy: Towards a Coherent Strategy for promoting Competition and Development", note by UNCTAD Secretariat, 16 February 2003, Geneva.

at the High-Level Segment of 44th session of the Trade and Development Board, UNCTAD's IGE on Competition Law and Policy and the WTO's Working Group on the Interaction between Trade and Competition Policy and the OECD joint group on trade and competition, UNCTAD work has focused on regional and sub-regional agreements among countries in Africa, Asia, and Latin America, that support the implementation of regional trade and investment policies by taking measures against anti-competitive business practices impairing market integration and trade flows.

16. It is increasingly clear that anti-competitive practices, both domestic and transnational, impair the process of trade expansion of developing countries more significantly than has previously been thought. This is true for at least three reasons:

Firstly, given their narrow domestic industrial base, developing countries have to rely on imports of intermediate goods. To the extent that such imports are subject to anti-competitive practices either by domestic firms (for example, an import cartel) or by foreign suppliers of these imports (for example, an export or international cartel), the importing country will be penalized by higher than

necessary import prices. The first practice clearly falls within the objectives of a national competition authority. Prosecuting cartels among foreign suppliers is a more daunting task for developing countries, which in many cases will need international remedy.

Secondly, to achieve their developmental goals, developing countries need to rely on export-oriented strategies. However the gains expected to arise from recently eased market access conditions at a multilateral level or through preferential schemes will be severely limited if private anti-competitive practices are still in place.

Thirdly, foreign firms feel freer to engage in across-the-border anti-competitive behaviour when the countries to which they export do not have a domestic competition law and can neither individually nor through cooperation with foreign competition authorities challenge the firms' market behaviour. Thus, countries that do not have a domestic competition law will be the prime victims of international anti-competitive practices. Ensuring that measures are in place to deal appropriately with such arrangements should be one of the major objectives of any national and regional competition framework.

Box 2: Zimbabwe: Anti-competitive practices in the health care sector

The Competition and Tariff Commission (CTC) of Zimbabwe has charged the Zisco Medical Benefit Society (ZMBS), a domestic company, with restrictive practices in the retail pharmaceutical services sector over the past three years. The CTC said it had reached a conclusion based on its own investigations, that ZMBS had engaged in anti-competitive practices in the course of conducting business in the Kwekwe and Redcliff areas. The Commission concluded that ZMBS abused its dominant position in the health delivery sector in the Kwekwe/Redcliff area through the highly exclusionary conduct of arbitrarily closing its accounts with most community pharmacies in the area and directing its members to use pharmacies owned by a company called Jenita Pharmaceuticals (Pvt) Limited when purchasing prescribed medicines. Evidence gathered during the investigation showed that ZMBS entered into anti-competitive agreements, in addition to violating merger control regulations.

In light of the law infringements by ZMBS, the Commission ordered ZMBS not to direct its members to use community pharmacies owned by Jenita Pharmaceuticals, or any other particular or specific pharmacies as a condition for membership. ZMBS was also ordered to amend its rules by deleting the restrictive provisions that made it compulsory for all employees of the Zimbabwe Iron and Steel Company and its associate companies to join the society. To enhance competition and ensure that competition law in the health delivery services sector would not be violated in future, the Commission also recommended that the Medical Control Authority of Zimbabwe and the Ministry of Health and Child Welfare, ensure the full enforcement of the regulations.

This case may also be of interest to developing countries seeking to take action to benefit consumers of pharmaceuticals. Illustrative is also the need for cooperation between the competition authority and sectoral regulators, the Medical Control Authority of Zimbabwe and the Ministry of Health and Child Welfare. It is also important to emphasize that the CTC also identified other competition concerns, such as the practice of certain medical aid societies that owned and operated retail pharmacies, and the general practice in the retail pharmaceutical services sector of recommending drug resale mark-ups. Such practices may be of relevance for other developing countries.

Source: "Recent Competition Cases", UNCTAD Secretariat, TD/B/COM.2/CLP/38

2) Promoting effective competition in the Enterprise Sector

17. Monopolistic or collusive markets may emerge and thrive also in an economy characterized by a high degree of trade liberalization and potential openness to foreign competition. For example, enterprises might take advantage of liberalization of the market to impose their own restraints, such as price-fixing cartels and other restrictive business practices. Thus, the adoption of competition laws and their implementation by competition policy enforcement agencies will allow countries to fully benefit from increased liberalization.

18. The role, which can be played in the privatisation process by competition authorities in these countries charged with enforcing the competition law, once established, will also be crucial. It will involve the provision of guidance and technical support to government authorities with regard to the identification of firms and sectors requiring structural intervention prior to privatisation, in order to ensure the maximisation of economic and social welfare. Competition authorities should also be charged with a competition-advocacy function, pointing out to the government at large all existing or planned laws or regulations which might unnecessarily restrict competition.

19. Moreover, the capacity of Governments to implement successful anti-trust or competition policies has come under increasing scrutiny, with attention to achieving consensus being focused on both the optimum structure for a competition regime and what role and status the competition authority should have within the government. For example, the independence of the competition authority is increasingly considered an important component in establishing credibility but it is not always an easy task to achieve at the political level. Thus, achieving consensus for competition law requires the careful education and condition of the business community in addition to persuading politicians and obtaining the support of consumer groups.

20. Ideally competition law should apply to

all sectors of the economy and to all economic agents, including government enterprises, which are engaged in commercial activities. However, there are areas where co-operation may be preferable to competition, especially in small less developed markets. Moreover, competition policy - particularly in countries engaged in structural reforms - is not merely a matter of reducing or overcoming the costs of uncompetitive inefficiencies, but more importantly of promoting dynamic efficiency and firm rivalry, which are essential for development. It is worth recalling that competition policy should not be viewed in isolation from other economic policies, but rather as an integral part of them. Indeed, the interaction between competition policy and other economic policies such as industrial policy, trade liberalisation, deregulation and privatisation forms the basis for a sound development strategy. If the marginalisation of the structurally weak countries is to be reversed, then institutional gaps, economic reforms and reducing risks for investors should be viewed as interrelated priorities, which must be addressed at the outset.

21. The enactment of competition laws and their enforcement will represent a fundamental step forward in the modernisation of country's economic and legal framework. In addition to its complementary role to the other economic policy reforms mentioned (trade liberalisation, price liberalisation and privatisation) the adoption and implementation of a sound competition policy carries the potential of greatly contributing to the overall upgrading and modernisation of developing countries economies.

3) Maximising the benefits from Foreign Direct Investment and Trade

22. The need for competition law is also evident when foreign direct investment is being liberalised, as the impact of FDI is not always pro-competitive. It is often the case, in fact, that foreign direct investment takes the form of a foreign corporation acquiring a domestic enterprise or establishing a joint venture with one. By making such an acquisition the foreign investor may gain a

dominant position in the relevant market, enabling it to enjoy a high profit margin, and charge prices well above a competitive level. Alternatively, the affiliates of two separate multinational companies (MNCs) have been established in competition with one another in a particular market, following the liberalisation of foreign direct investment in that country. Subsequently, the parent companies overseas decide to merge. With the affiliates no longer independent of one another, competition in the host country may be virtually eliminated and the prices of the product increased.

23. These adverse consequences of mergers and acquisitions by MNCs can be avoided if an effective competition law is in place in the host country. As mentioned earlier, one element typically found in competition law is a prohibition of any merger, acquisition or takeover likely to substantially lessen competition or prevent access to a market.

24. It is also argued that an economy that has implemented an effective competition law is in a better position to attract foreign direct investment than one that has not. This is because most multinational corporations are

accustomed to the operation of such a law in their home countries and know how to deal with any concerns that the competition authority may raise. Moreover multinational corporations expect competition authorities to ensure a level playing field between domestic and foreign firms, including among MNCs.

25. However, when considering the prospect of investing abroad in a developing economy without a well-established competition law, foreign investors face the uncertainty of not knowing if, and when, competition legislation will be introduced and, perhaps more importantly, how it will be implemented. There are, of course, other areas of uncertainty that may tend to discourage foreign direct investment, notably political uncertainties, the slow pace of economic development, exchange rate movements, obstacles to international trade and government regulations and of course, any discriminatory application of competition laws. Nevertheless, when a foreign investor has to make a choice between two or three alternative locations for a particular investment and these are of approximately equal merit, the country that has an effective competition law may be favoured.

Box 3: Argentina: Horizontal merger in the brewing industry

The Argentinean competition body has investigated the merger between local beer maker Cervecería y Maltería Quilmes SA (Quilmes) and Brazilian brewing company Cia de Bebidas das Americas SA (Ambev), against the background of a legal debate initiated by a rival company, Cervecería Argentina SA Isenbeck, which requested a more active role in the competition approval process. The Federal Court of Appeals for Civil and Commercial Matters in Buenos Aires rejected Isenbeck's complaint, allowing the process to resume. Under the terms of the deal, Ambev obtains control of various subsidiaries in Argentina, Bolivia, Paraguay and Uruguay. The merger approval is subject to a few conditions since, according to press reports, it was shown that the companies' brands would together command about 80 per cent of the market. The merger approval is pending, as the companies are undertaking a series of divestitures, as instructed by the competition authority. It is reported that, among the conditions imposed, companies have to divest the license for production of the Heineken brand, and for the Bieckert, Palermo and Norte brands and recipes. The companies were also asked to give the buyer access to their distribution network for the brands for seven years.

Conditional approval of mergers and takeovers has become an important aspect of merger analysis, and such provisions have increasingly been incorporated in competition laws of developing countries. The importance of this case lies primarily in its international dimension and in the way the competition authority seemed to have taken into account the portfolio effect of the merger and the distributional aspects, in addition to the tradition market share analysis. The importance of alleged anti-competitive practices in this sector and a proliferation of mergers and acquisition are also highlighted by the existence of similar cases in other developing countries. For example, in the brewing industry, the compilation of extensive portfolios of brewing and other drinks products has been motivated in part by a need to satisfy customers demands for a one-stop shop and to obtain economies of scope in distribution. Often, one of the main competition concerns in the brewing industry is that a merger would lead to not only to an oligopolistic market structure, but also to a concentration of the portfolio of leading brands in the hands of few (often one or two) players, competing against a number of weaker non-portfolio operators.

Source: "Recent Competition Cases", UNCTAD Secretariat, TD/B/COM.2/CLP/38

26. In order to ensure that a developing country gains the full benefit of foreign direct investment, government policy in that area must be consistent with the objectives of competition law. Sometimes, in order to attract a large-scale foreign investment by a MNCs, a national or local government may offer that corporation exclusive rights to supply its goods and services to the public

authorities. It may even agree that no other firm will be given approval to enter the market in question. Such inducements are evidently anti-competitive, and the crucial question is whether competition policy objectives should be outweighed in certain circumstances by the benefits that the foreign direct investment can bring..

Box 4: Republic of Senegal: Abuse of dominance position by Air France

During 2001, Air France decided to reduce the commission paid to travel agents in Senegal from 9% to 7%. The *Syndicat des agences de voyages et de tourisme* of Senegal (SAVTS) filed a complaint with the National Competition Commission about the alleged anticompetitive practices and abuse of dominant position by Air France. The Commission considered that although since December 2000, resolution 814 removed the principle of fixed commission within the agreements between air lines and travel agents, Air France used its dominant position in the relevant market (passenger tickets from Senegal to France) and took advantage of the economic dependence of travel agents on Air France (between 54.79 and 86.98 per cent of the total sales of travel agents members of SAVTS were realized on Air France tickets) when it decided to reduce the commission. Under these conditions, the unilateral decision of Air France to reduce the commission paid to travel agents for the sale of its passenger tickets was found by the National Competition Commission to be in violation of article 27 of the Law no. 94-63 of 1994. The Commission ordered that unless Air France terminated the incriminated illegal practice during a delay of one month, Air France would be liable to pay a fine of twenty million francs CFA (approximately US\$ 36,000).

The reduction of ticket commissions for travel agents by airlines has been a global trend, with such cases occurring in a number of other countries. In several cases (in particular in the US) the commission has been eliminated and travel agents have been forced to diversify their portfolio of activities. In the US travel agents associations have submitted numerous petitions to the Department of Transport, signaling alleged anti-competitive practices by airlines and the negative impact of 'zero commission' on the consumers. A number of similar cases between travel agents and airlines have been already investigated by other competition authorities (for instance the UK's Office of Fair Trading) or national courts (e.g. the Ryanair case in Ireland). In both cases the decision favored the airlines. However, unlike the Ryanair case, the OFT decision suggested that travel agents are free to replace the reduction or elimination of the percentage commission with a flat fee per ticket. An interesting path that unfortunately did not seem to be fully investigated by the National Competition Commission was the fact that the reduction in commission by Air France has been soon followed by similar reductions announced by Iberia and Alitalia. Even though, in the case under consideration, the National Competition Commission has implicitly argued that the relevant product market was passenger tickets to France, there might still be a degree of imperfect substitution between 'seamless' tickets to France sold by Air France and non-direct flights to France via Spain or Italy. Based on this imperfect substitution, one could reasonably argue that the three companies were competitors and the timing of the commission reduction for travel agents might be a sufficient reason to investigate the existence of collusion between air lines.

Source: "Recent Competition Cases", UNCTAD Secretariat, TD/B/COM.2/CLP/38

Competition Policy and Consumer Protection Issues

27. There is a broad consensus that consumers should welcome competition – in a competitive environment, firms are compelled not only to produce desirable goods and services in the most efficient manner, but also to allocate them at the right quality and price if they are to survive. Competition policy is therefore of benefit to consumers in promoting competitive and “fair” markets, rather than promoting the interests of individual firms. Consumers want their markets to offer them the best possible range of goods and services at the best possible prices and to appropriate standards. Competitive markets can help because in a competitive environment businesses have to be efficient, innovative and offer better quality products at lower prices if they are to attract customers. Unfortunately, the evidence suggests that left to their own devices, businesses may collude to increase their profits and distort markets, or use other unfair business practices to drive away competitors. This means that consumers need both information and appropriate laws and public policies to ensure that businesses are prohibited from undertaking unfair business practices, based on undue market dominance or forming cartel agreement.

28. As businesses spread their operations throughout the world, promoting competition within national economies becomes even more complex. There is a widely acknowledged need to further curb restrictive business practices, particularly cross-boarder anti-competitive practices, that affect those countries with lax competition law and enforcement regimes. Yet international co-operation to act against such anti-competitive practices has not developed at the same pace as cross-border business operations (Box 2 and 3 above). UNCTAD Capacity building activities include support to interested developing countries to formulate and enforce consumer Protection Legislation that are in line with the UN Guidelines for consumer protection⁵.

⁵ See United Nations Guidelines for Consumer Protection (as expanded in 1999), New York and

4) Special concern of the least developed countries

29. One important issue is whether competition policy is really necessary for small, less developed economies. It has been argued that if a country pursues trade and FDI liberalisation and deregulation then these alone will guarantee a competitive outcome without the need for an explicit competition policy. However, competition policy is still essential for sectors not exposed to international competition (for example services) and can act as a counterbalance to the possible capture by special interest groups of government authorities. One challenging issue for many least developed countries is whether, in order to meet international competition, it is necessary for public policy to encourage small and emerging industries.

30. With respect to the timing of competition policy, what is important is not so much that a specific model of competition policy should be introduced but that government policy and business conditions should be directed towards ensuring the maintenance of conditions of rivalry between firms. In this context, it may be appropriate for some countries to introduce laws, which contain a clear prohibition of cartel conduct (price fixing, market sharing) and of other abuses of market damaging to their economies. For other practices, those should be reviewed on a case-by-case basis analysing their impact on competition and market efficiency. Such an approach would target the most harmful conduct while avoiding introducing excessive administrative supervision. Although there is no blueprint for competition law, reference to the revised UN Model Law could represent a useful guide for countries that are planning to introduce competition policy and adopt legislation. The revised Model Law has been reviewed by the 4th UN Review Conference on the Set of Principles on RBPs, which, reconfirmed the validity of the guiding principles of the Set and expanded the work programme of the secretariat in this area.

Geneva 2001 UNCTAD and Geneva 2001, UNCTAD/DITC/CLP/Misc.21

Chapter III. Review of UNCTAD's Capacity Building Activities:

The Main Categories and Their Rationale

1) UNCTAD approaches for increasing and sustaining capacity

31. The previous chapter discussed some of the key challenges that developing countries are likely to face during the process of liberalising their economies including, monopolisation abuse of dominance and cartels. This chapter, in turn, consider how to formulate and implement technical assistance programme that can support the working of markets and effective enforcement of competition policy.

32. Much of the analytical work carried out by UNCTAD in the area of competition policy aims at the dynamics of competition policy and its relation to development as well as reviewing national experiences in dealing with competition issues. UNCTAD has a comparative advantage in its analytical work on issues relating to competition policy, which arise from decades of the application of the UN set of RBPs, UNCTAD's model law, Training of Trainers programme, multilateral trade negotiations and, investment and technology issues. Many of these activities are supported by the regular budget and by extra-budgetary funding from donor countries and bilateral sources.

33. For the purpose of this report, it is worth making a distinction between capacity building and technical assistance activities. This distinction is useful for the implementation of technical assistance activities and the assessment of their effectiveness. Activities that seek to provide specific expertise and that are non recurrent would qualify as technical assistance, whereas Capacity building activities relate to long-term assistance that seeks to create sustainable technical and institutional capacity for the effective formulation and enforcement of competition law and Policy. These distinguishing features: short-term vs. Long-term; sustainability vs. non-recurrent

assistance as well as the transfer of skills and knowledge set out the framework for delivering the appropriate assistance and assessing its effectiveness and sustainability.

34. UNCTAD Capacity building and Technical Assistance activities are delivered to government department and agencies, national institutions, public and private enterprise and consumer representatives and associations. The capacity building activities comprise (i) Policy advise, (ii) institutional building and (iii) advocating a competition culture among public and private institutions. These activities are integrated within the government development strategy and recipient countries must agree to use the assistance as a basis for subsequent Capacity building and sustainability. UNCTAD assistance formulation and enforcement of Competition Policy is based on a thorough diagnostics of constraints and opportunities at the regulatory, legal, institutional, and administrative levels (Box 6). Emphasis is placed on the establishment of a national dialogue and consultations between the stakeholders and the government in the formulation of the competition policy, and regulatory frameworks for enforcement.

2) The scope and coverage of UNCTAD's assistance

35. The main areas of UNCTAD Capacity building and technical assistance, which are reviewed below, include:

I. Building institutional capacities:

- Assistance in drafting competition law and related implementation guidelines and legislation (Box 6 and 7);
- Upgrading of skills of Competition Officers and institutional building;
- Enhancing developing countries to strengthen regulatory framework for enforcement (Box 11).

II. Training Packages and Training of trainers:

- Developing and adapting training manuals and courses for the use of interested competition agencies of developing countries;
- Training of trainers courses;
- Distance learning programme (Table 2);
- Regional workshops and seminars for judges and adjudicators (Box 13);
- Tailor made national workshops and seminars on technical competition enforcement issues; for example investigation methods course for case handlers, and advocacy seminars (Box 8 and 9).
- Strengthening consumer protection institutions and advocacy workshops.

III. Policy research and analysis:

- Preparing studies and reports on the opportunities and constraints which Competition Policy pose for Policy makers in promoting Competitive markets while seeking to reduce poverty.
- Preparing technical papers that seek to clarify and document the impacts of anti-competitive practices on development e.g. cartels, monopolisation and abuse of dominance in Trade, Investment and the exercise of intellectual property rights;
- Preparing reports on studies that seek to clarify areas for regional and international cooperation on the enforcement of competition law (Annex II).

36. The substantive content of capacity building activities raised above are examined particularly in the wider development context and in term of their incidence on development and poverty reduction. Interested developing countries participating in UNCTAD capacity building have the opportunity not only to acquire new skills, share their experiences and best practices on competition law and policy and legislation but also to seek information and expertise on the practical

modalities for establishing competition authorities and enforcing national laws and legislation in order to make markets work effectively over the last four years, UNCTAD; capacity building programme has reached 42 developing countries over the period 2000-2004 (Table 1).

37. In addition, capacity building and technical assistance activities are targeted at exploring a range of issues that need to be considered at the multilateral level, with a view towards consensus building on international cooperation (see below).

3) Targeted programmes and beneficiary countries

a. Beneficiary countries:

38. The direct beneficiaries of UNCTAD assistance include:

- 1) Government officials responsible for drafting competition legislation as well as officials responsible for running competition agencies and enforcing competition law.
- 2) Government officials carrying responsibilities related to broader competition policy matters, and regulating bodies;
- 3) Government officials and diplomats in charge of regional and multilateral negotiations;
- 4) The business community;
- 5) Consumer associations;
- 6) Researchers and academics,

39. Most importantly, the indirect beneficiaries are the citizens at large and the poor in particular, both as consumers and producers. They benefit from the implementation of competition policy that inject dynamism and efficiency in the use of resources, lower prices and create employment opportunities by breaking up cartels and monopolies.

40. Each year some 400 trainees from relevant institutions in interested countries gain an enhanced awareness of practical approaches to effective competition laws and policies (Annex II). Conclusions and recommendations arising from the workshops are published regularly, so as to maximise the

follow-up on recommendation. In addition, numerous other policy-makers in member countries also benefit through the preparation and dissemination of technical and policy papers. These outputs contribute, indirectly, to an increased awareness and capacity among policy-makers from developing countries to deal with issues related to

domestic and international competition law and policies that enable them to participate, as effectively as possible, in the formulation of national and regional competition policy and in the discussions of competition issues within the WTO, the OECD Global Forum, others international organisations and the ICN.

Table 1. Summary of Technical assistance and capacity building activities: 2000-2004						
Beneficiaries	Workshops on competition, competitiveness, and poverty reduction (including country studies)	Seminars for Stakeholders on draft competition law, regulatory framework	Investigation courses and training of the judges workshops	Assistance drafting Competition law	Training of trainers intensive courses	Regional cooperation on competition
Argentina		2002				2002
Bangladesh					2001,2002	
Benin						
Burkina Faso		2000			2002	2001
Botswana		2000,2001		2002,2003,2004		
Bhutan						
Chad						
Dominican Republic						
Brazil					2002,2003	
Colombia						2000,2001
China people Rep. of		2001				
Costa Rica						2000
Cuba	2001					
Ecuador	2001					
Egypt		2000,2001				2001,2002
Gabon					2002,2003	2002
Ghana	2004					2001
Islamic Rep. Of Iran		2003				
India						2001,2002
Kenya		2002			2001	2003
Laos						
Lesotho						
Madagascar		2001,		2000,2002		
Malaysia				2002,2003	2002	
Mali						
Malawi		2000,2001		2003,2004		
Mauritania		2002				
Morocco						2002
Mauritius		2000				2000,2002
Namibia		2001				
Panama						2002
Peru						
Senegal	2004	2003				2002
Sudan		2004				2004
St Lucia						
Swaziland		2001				2004
Tanzania						
Tunisia		2002			2003	2002,2003
Vietnam		2000,2002		2003,2004		
UAE						2002
Zambia			2002	2001, 2002	2003	2000, 2001
Zimbabwe					2002	

Box 5: Main types of capacity building Activities

The main types of UNCTAD capacity building activities extended to developing countries can be described as follows:

- Provision of information about anti-competitive practices, their existence and possible adverse effects on the economy. This may involve a study of the anti-competitive practices on a specific country;
- Introductory seminars directed at a wide audience including government officials and academics, as well as business and consumer-oriented circles;
- Assistance to States that are in the process of drafting competition legislation in the form of provision of information on such legislation in other countries or advice as to drafting their competition legislation;
- Advisory services for the setting-up of a competition authority; this usually includes training of officials responsible for the enforcement of the competition law and may involve training workshops and/or on-the-job training with competition authorities in countries having experience in the field of competition;
- Organization of seminars for States which have already adopted competition legislation, have experience in the implementation of competition law and wish to consult each other on specific cases and exchange information;

Assistance to States that wish to revise their competition legislation and seek expert advice from competition

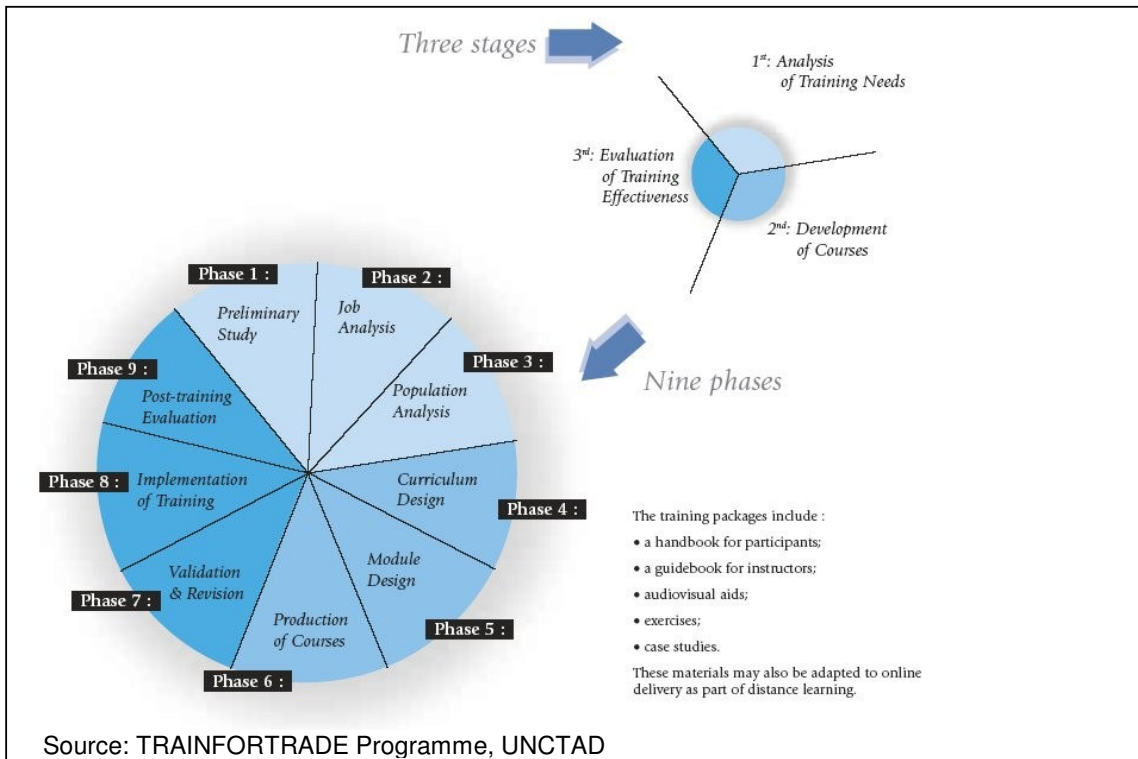
4) Needs Assessment and Formulation of Technical Assistance Activities

41. In order to address the problem raised in requests for technical assistance from developing countries, UNCTAD has developed in cooperation with TRAINFORTRADE Programme an analysis of needs methodology, which consist of three stages (See figure below). The three phases are: (i) Analysis of training needs, (ii) Development of training courses, and (iii)

Evaluation of capacity building and training effectiveness (www.unctad.org/trainfortrade)

This three-phases cycle is further developed into a nine sub-phases described below. Each of the phases deals with the practical and work-oriented aspects of competition policy and handling of competition cases. The activities are developed and implemented for developing countries and aim at formulating technical assistance activities based on needs assessments and ensuring long-term sustainability.

Figure 1. Training of Trainers Programme Cycle



b. Assistance in drafting and enforcing competitive law:

42. UNCTAD provides comments on draft laws and related rules for the enforcement of competition legislation to requesting member states. UNCTAD's approach to assisting developing countries wishing to introduce competition legislation is based on the UN Set of Principles and Rules on competition and the Model Law, and consists of assisting countries to formulate tailor-made competition law. The approach has three common features (Box 6).

(i) Preparation of an "economic mapping" of the various sectors and industries of the country concerned;

(ii) A legal inventory which assess the various laws and regulation having a bearing on competition law so as to identify possible areas of tension and recommend coherence, and finally

(iii) Preparation of a policy framework, which sets the terms of reference for a suitable competition law, that can draw on existing best and appropriate practices in other countries.

Box 6: Steps in the Formulation of Competition Law

UNCTAD undertakes the process of assisting developing countries in the design of competition legislation in three steps.

The first step is to produce an *economic mapping* report and a *legal inventor*. The economic mapping is aimed at identifying the parameters that would be applied in the national competition policy and law. The report maps out the structure of the domestic economy highlighting market concentration and identifying the main constraints on competition key sectors of the economy. The report also identifies relevant concerns related to market conduct as well as pertinent issues related to intellectual property rights, privatisation, sector regulation and vulnerable groups such as the poor. The legal inventory, which is a compilation of all domestic laws (including relevant international agreements) that may have provisions addressing competition issues or ones which may create tension with competition policy are reviewed in order to facilitate their harmonization with competition principles and if relevant, their consolidation within a domestic competition law.

The second step is to formulate a competition policy framework that takes account of the government overall development objectives, the regulatory framework for enforcement as well as public interest issues.

The third step is the drafting of the competition legislation.

In addition, activities aimed at awareness and consensus-building amongst all stakeholders in the domestic economy are built-in throughout these three stages of the formulation and design of competition legislation.

Box 7: Assistance to Vietnam in the preparation of the competition law

In Vietnam, UNCTAD assisted the Competition Law Drafting Committee, chaired by the Vice Minister of Trade in preparing several draft competition bill since 2001. Five stakeholders consultative meetings were held in Hanoi and Ho Chi Min city over the period 2001-2004. The objectives of the meeting were to seek the views of relevant Ministries, state organisations, enterprises and the civil society on the draft competition law with a view to ensuring that the scope, principles and the envisaged regulatory framework are inline with the local legal, economic and institutional environment as well as incorporate international standards and best practices. The assistance provided an opportunity for international experts from Australia, Canada, France, Germany, Japan, Korea, Taiwan province of China, United Kingdom, Thailand and UNCTAD in Competition Policy and Law to share their expertise and experiences with Vietnam. In order to focus the discussions on the transition phases of the economy, the workshops were organized around discussions of sector studies on sugar; fertilizers, cement and telecommunications which were prepared by UNCTAD and UNDP for the meeting. This approach provided a unique opportunity to identify anti-competitive practices, which may be prevalent in the various sectors reviewed, and to explore how the draft law would tackle them and review the necessary institutional framework for enforcement. The final Draft competition bill was submitted to parliament on 7th of March 2004 after taking into consideration the comments and suggestions provided in both the Hanoi and the Ho Chi Minh City Workshops.

Box 9: Interactive Training Tools:**a) Investigation course for case handlers**

This investigation course requires a thorough knowledge of economic and legal analysis of competition cases. These courses are given a prerequisite and under the TRAINFORTRADE intensive training on competition principles. The objective of the investigation courses is to introduce the case handlers to law enforcement and in particular how (i) to identify an offence and its elements (identity time, and jurisdiction); (ii) to conduct an investigation; (iii) to take witness and potential defendant statements; (iv) interview techniques; and (v) to handle evidence.

An investigation course for the Competition Commission of Thailand, Department of Internal Trade, Thailand was organized in September 2003. The investigation training material was prepared by the Australian Competition and Consumer Protection (ACCC), which also provided experts to conduct the five days workshop. UNCTAD provided the TRAINFORTRADE course material in Thai. Two investigation courses are planned for 2004. One for Southern African countries to be held in Zambia and one for Arab countries to be hosted by Tunisia.

b) training of Judges Course:

The principal objective of the Seminar was to familiarise participants from a legal background (Judges, adjudicators, attorney Generals and case handlers) with the economics underpinning competition laws and regulations in Kenya, South Africa, Zambia and Zimbabwe with the legal approach to enforcing competition law. Resource persons were drawn from a judicial, academic and competition enforcement background, from UK, Australia, South Africa and King College, University of London. The Experts guided the sessions and participants to present specific problems encountered in the enforcement of national competition law and regulations and discuss specific competition cases. In order to focus the discussions on practical issues, four main issues were selected for discussion at the Seminar. They were:

- (i) *The Role of Economics in Competition Cases.*
- (ii) *Multiple Criteria in Competition Cases.*
- (iii) *Standards of Proof in Competition Cases. And*
- (iv) *Sanctions and Remedies and the Judicial Review of Competition Cases.*

The participants were divided into small groups, which reviewed real-life and theoretical competition cases from their jurisdiction to illustrate and clarify issues under each of the four topics mentioned above. Twenty-seven judges and adjudicators took part in the course

a. Advisory services and training activities that target poverty reduction

43. National workshops which clarify the role and benefits of competition policy normally last three days and deal with both competitive and regulatory issues. More specifically, the workshops begin with an in-depth examination of the economics of competition and its implication for development; how can markets work better for the poor? And review existing national approaches and identify issues of interest to countries with a view to drawing lessons from a development and poverty reduction perspective. As regards issues likely to figure in negotiations within regional and

international fora, the focus of seminars and workshops is usually on facilitating effective participation of developing countries in these consultations and negotiations as well as building consensus. While the principal participants are policy-makers from capitals, delegates from Geneva-based missions to the UN and the WTO, academics and representatives of the private sector and consumer groups are also invited to workshops and seminars. To allow an in depth of exchange of views, the number of participants is normally limited to 20-24 in each seminar/workshop. The WTO, the OECD and the World Bank as well the civil society are also invited to participate in, and to contribute to, these workshops and seminars.

Box 8: Challenge facing developing countries during structural reforms, Liberalisation and the introduction of Competition Policy.

An example: Assistance to the Islamic Rep. Of Iran:

At the request of the Ministry of Commerce and in cooperation with the Privatisation organization, Ministry of Economic Affairs and Finance, UNCTAD organized a National Seminar to review the challenges, which the government of Iran, Islamic Republic, faces in introducing structural reforms and review the 1st draft competition law. Both, the Deputy Minister of Commerce for International Affairs H.E. A Vehaji and the Deputy Minister of Economic Affairs and Finance, H.E. Mir Motahara, addressed the meeting and outlined the government objectives, policy challenges and the country's needs for technical assistance and capacity building in preparing the competition policy.

The seminar is an example of the technical assistance which UNCTAD extend to developing countries wishing to formulate a development strategy that promote economic reforms, competition policy, competitiveness and development. Some of the macroeconomic issues discussed at the workshop included the role of the government as recipient and dispenser of large oil revenues, the consequences for private sector and the emergence of special groups, activities and rent seeking sectors. The dependence of the private sector on state guidance, credit, protection and subsidies were also reviewed during the seminar. The disappointment with the performance of State-owned enterprises has prompted the government to undertake an evaluation of existing policies and review possible alternative options, including the introduction of a competition Policy that would take into account the consequences of war, revolution and international trade sanctions. A follow up seminar for reviewing the revised draft competition law is planned by UNCTAD during 2004.

Box 11: Malawi: Assistance for the establishment of the Malawi Competition and Fair trade Commission

The Malawi Competition and Fair Trading Act was enacted on 31 December 1998, and brought into legal force on 1 February 2000. The Act provides for the creation of a Competition and Fair Trading Commission as Malawi's competition authority. However, because of the lack of financial and technical resources, the government could not immediately set up the regulatory institution for the enforcement of the Act. In spring 2003, the Ministry of trade and Industry approached UNCTAD for assistance in establishing the Competition Commission.

1. Based on the powers and provisions of the Competition and Fair Trading Act, Within ten months, and with the support of the Norwegian competition authority, the Norwegian consumer Ombudsman, the UK, OFT, and the UK Competition Commission UNCTAD completed an institutional framework for the Competition and Fair Trading Commission, including recommendations for an appropriate structure and institutional set-up for the Commission to discharge its functions;
2. Prepared a plan outlining the necessary manpower and financial requirements of the Commission, based on 1) above and;
3. Prepared an appropriate training plan for the staff of the commission, in particular for the staff members to be recruited by the competition secretariat; and Held two national stakeholders meetings for the private sector, state enterprises, regulatory bodies and the consumer representatives to review the proposed regulatory framework and clarify the importance of enforcing the competition Act(Blantyre, March 2004).

b. An example of The Training of Trainers course on Competition Law and Policy

Using distance learning: Benin, Burkina Faso and Mali. November 2001 and October 2002.

44. The Training course using Distance learning was conducted over 3 months for three countries simultaneously: Benin, Burkina Faso, and Mali, using national training centres. UNCTAD worked with pedagogical and distance learning experts to adopt UNCTAD training manual on Competition law and policy, group exercises and case studies to adapt them to the needs of the technical and human resource capacities in the three countries. National coordinators (funded by recipient countries) were appointed to facilitate and organize national training activities.

45. The distance learning material consisted of a trainee's manual, a trainer's guide, a CD Rom with multimedia presentations, videos and case studies adapted to local conditions, as well as questions and exercises. This material was prepared and delivered in close cooperation with UNCTAD TRAINFORTRADE Programme⁶. The training course consisted of 3hours each session over a 3 months period. The selection of participants was based on applications from a large number of candidates from ministries, state enterprises, regulatory bodies, consumer representatives and law societies. Each participant received a schedule of modules to be studied using CD Rom, group exercises individual homework and an on-line chat sessions. National coordinators provided logistical support, and encouraged participants, as well as liaised with UNCTAD support team in Geneva. The national coordinator also consolidated questions and answers and made them available on the Distance learning discussion forum. Questions and group exercises, which required extended comments, were sent by emails.

46. As result of the training, the 3

countries have now created a roaster of competition experts who assist ministries, consumer associations and participants in other training seminars organized by UNCTAD in the countries and the sub region.

5) Support for regional cooperation on competition policy:

47. Capacity-building activities at the national level that aims at supporting regional integration efforts involve policy makers in the different ministries, including trade, finance and planning and specialised agencies such as privatisation units, investment promotion agencies. The assistance is usually extended through policy advice, seminars and workshops for the implementation of regional competition policy and consumer protection legislation as developed at community level. It consists of preparing country policy reviews in close collaboration with concerned governments and secretariats of integration groupings;

48. The activities supporting these interrelated objectives, aim at increasing the awareness of the problems and difficulties involved in addressing anti-competitive practices and enhancing the understanding of how to cope with them. The formulation of how to deliver the assistance focuses on ways of ensuring replicability of appropriate approaches and policies to individual competition agencies and countries' needs. The Technical Assistance also draws on work being carried out by national, regional and international institutions including WTO, the World Bank and the OECD secretariat, UNCTAD's, TRAINFORTRADE and academic institutions.

⁶ See www.unctad.org/trainfortrade

Box 10: An Example of Support to Regional Integration Groups. Workshop to prepare a framework for an annex agreement on restrictive business practices for the SACU agreement 1994, article 40 and 41

The Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho and Ministry of Finance in Swaziland requested, UNCTAD, on behalf of the SACU members, to organize a consultative workshop to review the modalities for preparing an annex agreement on Restrictive Business Practices (RBPs). The aim of the workshop was to identify the main cross-boarder trade and investment anti-competitive practices affecting the SACU intra-trade and evaluate approaches that could be adopted by SACU in addressing them in an annex agreement on RBPs to the main SACU Agreement 1994.

The Workshop was held in Mbabane, Swaziland 11-12 March 2004 back to back with the first round of SACU Technical Liaison committee meetings. It provided an opportunity for the SACU member states to exchange ideas and views with the resource persons from the region and international organisations to formulate a coherent approach that would redress RBPs and deepen integration among SACU members. The meeting also reviewed UNCTAD support to Swaziland and Lesotho in preparing national competition laws and formulating a detailed terms of reference for the objectives, scope and principles of a study that could form the basis for the annex agreement on RBPs as well as a work plan for its implementation. UNCTAD was requested to prepare the first draft of the report by August 2004 for consideration by SACU Technical Liaison committee meetings to be held in Lesotho and Namibia in summer 2004.

Box 12: Assistance to Central American Countries

UNCTAD Project, "Technical assistance to Central America", which is funded by the Swiss government, aims to strengthen Competition and Consumer protection policies in a selected number of Latin American beneficiary countries (Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru). A major objective of this project is to ensure its sustainability after the project's completion. This would involve establishment strategic alliances with local, regional and International institutions for the benefit of the civil society (CS). Some partnerships have already been discussed with other institutions. During the initial phase of the project, UNCTAD established a solid methodological foundation for the need assessment missions carried out in beneficiary countries. This phase included the preparation, in coordination with UNCTAD, of national reports on the situation of Competition Policy and Consumer Protection in each beneficiary country. In addition, UNCTAD prepared two sub regional reports for Central American countries and for Bolivia and Peru. These reports were respectively presented in the sub regional seminars held in Costa Rica (8-10 December 2003) and Lima (22-24 March 2004). It is worth noting that beneficiary countries have shown strong commitment to project

49. UNCTAD assistance to regional institutions includes international and regional consumer associations. In this connection UNCTAD has cooperated with consumer international regional offices in Africa, Asia and Latin America as well as worked with

national consumer associations and government departments dealing with consumer Affairs to promote consumer welfare, publicise consumer rights and to advocate the benefits of competition policy for consumers.

Box 14: Highlights: Consumer Policy Activities

The United Nations Guidelines for Consumer Protection (UNGCP) constitute the framework for consumer protection laws of many countries. Today's consumer operates in an enlarged international and increasingly deregulated environment and in conjunction with its work on competition law and policy UNCTAD promotes consumer policies to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers. In line with the stated objective of the UNGCP to further international cooperation in the field of consumer protection, UNCTAD cooperates closely with other international organizations that are active in the area of consumer protection.

TRAINING

UNCTAD has designed a training manual for policy makers and consumer policy enforcers which is a comprehensive handbook on all the pertinent issues to consumer protection in developing countries, including issues related to the privatisation of public utilities, health and sustainable consumption. Training programmes using the new hard book are to be launched in 2004.

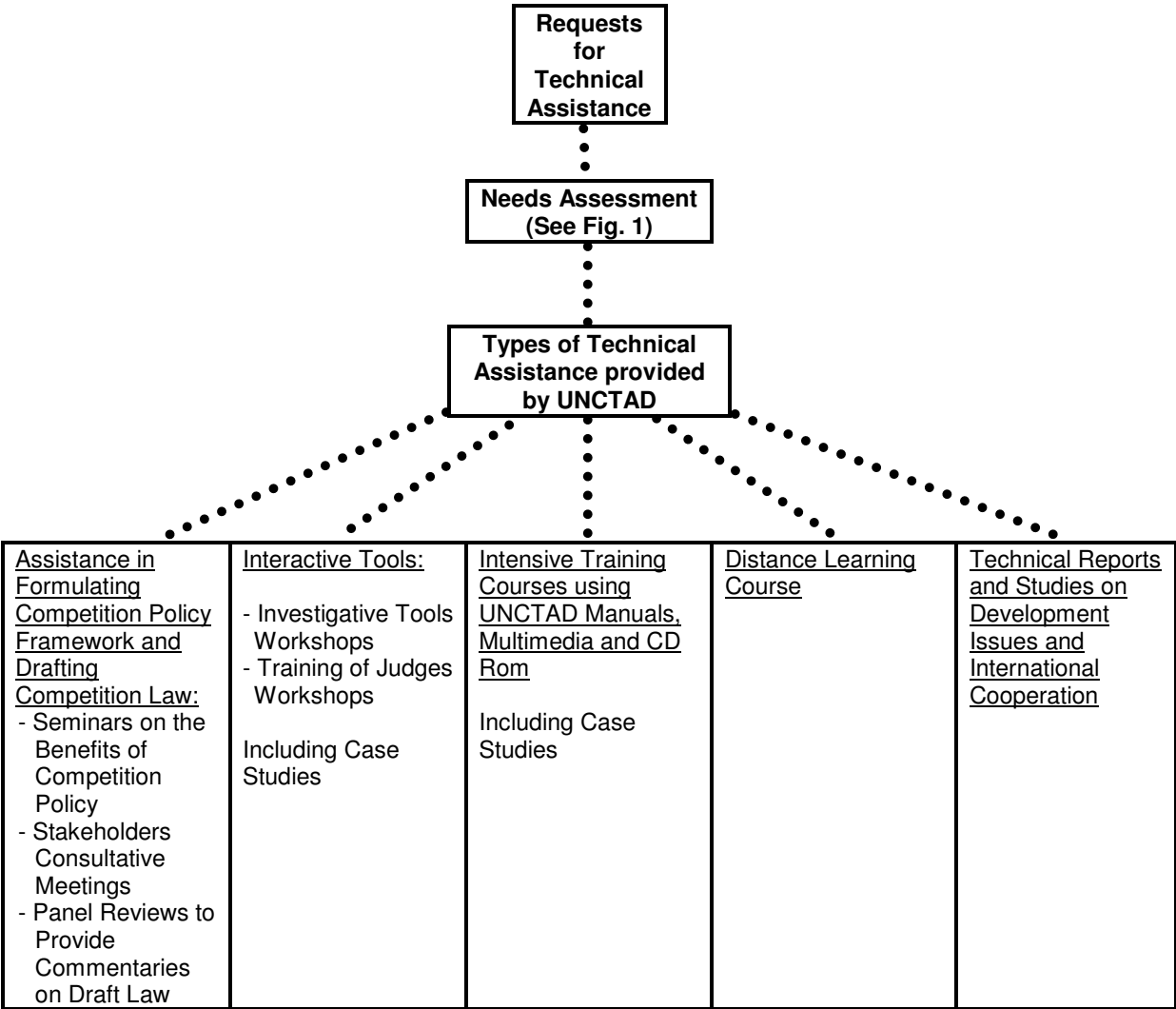
NETWORKING

Caribbean: UNCTAD sponsored The Fifth Caribbean Consumer Conference held in Castries, St. Lucia on 25-27 June 2003. Topics discussed at the Conference included globalisation and its impact on consumers and the opportunities and challenges for consumers in the context of liberalization and deregulation. A key focus of the Conference was the interaction between competition law and consumer law as well as other issues related to the strengthening of the regional consumer movement. Over 40 participants representing government departments and consumer organizations from 12 Caribbean countries attended the Conference.

Africa: UNCTAD, in collaboration with Consumers International's Regional Office for Africa (CI-ROAF), organized the Regional Seminar on the Interaction Between Consumer Policy, Competition Policy, Competitiveness and Development, in Accra, Ghana on 21-22 August 2001. Participants included some 50 experts representing consumer organizations, competition authorities, government departments, and the private sector from 18 countries. The Seminar comprised three discussion blocks, namely, (i) making globalisation favourable to developing countries; (ii) convergence between consumer protection, competition policy and development; and (iii) review of experiences.

The participants exchanged concrete experiences and practical approaches to addressing the issue of consumer protection in developing countries. The participation of the private sector, including a multinational corporation, resulted in a constructive melding of perspectives.

Figure 2. UNCTAD Existing Types of Technical Assistance



6) Capacity building for multilateral cooperation on competition Policy

a) Cooperation with the WTO

50. In line with the requests addressed to UNCTAD in para 24 of the Doha Declaration, UNCTAD contributed, in cooperation with WTO and other relevant intergovernmental organisations such as OECD and the World Bank, to respond to the needs of developing and least-developed countries "for enhanced support for Technical Assistance and Capacity-Building in this all, including policy analysis and development, so that they may better evaluate the implications of closer multilateral cooperation for these development policies and objectives, and launch an institutional development."

51. The international cooperation dimension of the capacity building involved a two-pronged process that included:

- (i) The preparation of technical and policy studies on key issues/concepts related to competition policy and its nexus with the development dimension; (See Annex II) and
- (ii) Informal consensus-building activities in the form of regional and sub-regional seminars and workshops, including simulation and negotiation techniques on international cooperation in this area.

52. The first round of capacity building activities was launched in 2002. UNCTAD organised a series of four regional conferences and seminars in Panama City, for Latin American and Caribbean, Tunis, for Africa and Arab countries, Hong Kong, for Asia and Odessa for East European and Community of Independent States (CIS). These meetings focused the discussions and consultations on the relevant decisions on competition Policy in the Doha mandate. The outcomes and conclusions of these meetings were published in a Consolidated Report on Closer Multilateral Co-operation on Competition Policies.⁷ and was made available to the member states of the WTO Working Group on the Interaction of Trade

and Competition Policy, June 2002 and the OECD Committee on Competition Policy, October 2002, as well as the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (Geneva, 3-5 July 2002). One of the outcomes of this work was the call for UNCTAD to prepare four policy studies on the issues relating to Multilateral cooperation on competition, including:

- Core trade principles
- Effects of hard-core cartels on developing countries
- Effects of exclusionary practices on developing countries
- Dispute mediation mechanisms

53. The reports were completed in early 2003 and disseminated through national and regional workshops and seminars. They were also distributed to Geneva based delegates, Officials in capitals of developing countries and the civil society at large.

54. UNCTAD actively participated in the WTO Working Groups, the OECD CLP and the OECD Joint Working Group on Competition and Trade as well as and regional workshops and seminars dealing with the Doha mandate on Competition. Among these meetings, four were held in Africa: Libreville (Gabon), Mauritius, Cairo (Egypt), and Nairobi (Kenya) and three in Latin America: Buenos Aires (Argentina) Guatemala City, and Kingston (Jamaica). UNCTAD also cooperated with the WTO and the World Bank in organizing three symposiums on competition policy and multilateral system which was held in Geneva and dealt with the issues of Singapore and DOHA mandate on competition policy.

55. The Doha mandate called, inter-alia, on international organisations, including UNCTAD to help developing and least-developed countries to "better evaluate the implications of closer multilateral co-operation" in their field.

56. In 2003, and as a follow up to the direction given by the UNCTAD IGE and the WTO Doha mandates on competition, a second round of regional meetings on multilateral cooperation were held on the

⁷ UNCTAD/DITC/CLP/Misc.23, May 2002, see Annex II for a synopsis.

Singapore issues. These included four regional meetings, namely: the Regional Asian Conference in Kuala Lumpur (Malaysia) on 26-27 February 2003; the Conference on Post-Doha Competition Issues, in Nairobi (Kenya) on 9-10 April 2003; the Regional Post-Doha seminar for Latin America and the Caribbean in Sao Paulo (Brazil) on 23-25 April 2003 and the Regional conference for East Europe and CIS member countries in Tashkent (Uzbekistan) on 5-7 June 2003. These meetings brought together not only competition experts from capitals and officials from Ministries of Trade and foreign Affairs but also Geneva Ambassadors to the WTO. The objective was to facilitate a dialogue and exchange of views between competition experts from capitals, trade official and Geneva based negotiators.

57. A final Consolidated Report which contains a compendium of all views expressed during these meetings and seminars was prepared in a user-friendly format and a simplified presentation, divided as "pros" and "cons" for developing country Ministers to easily browse through the main concerns expressed by the developing countries, as well as arguments put forward by the proponents of different proposals so as to facilitate the task of the Ministers.

58. Studies and technical studies that provide policy-makers and negotiators of member countries with concise technical and policy papers on key concepts and issues were part of background documentation for these meetings. They sought to facilitate discussions on regional multilateral cooperation in the area of competition law and policy. Each technical paper addressed specific issues of relevance to the development needs of developing countries for sub-regional, regional or international cooperation. The technical and policy papers were widely disseminated through the United Nations channels, universities and the civil society. In addition, the papers were also used as background documentation for the regional and sub-regional seminars and workshops organized in the framework of UNCTAD capacity building activities.

b) Cooperation with the OECD and ICN

59. UNCTAD has a cooperation agreement with the OECD, which covers, in-
alia, work on competition law and policy, including technical assistance and capacity building activities. Both organizations attend each others each intergovernmental meetings in Geneva and Paris, and invite experts from both organizations to participate in national and regional seminars and workshops. UNCTAD has actively participated in the OECD Global Forum as well as the regional Japan sponsored APEC training on competition policy and OECD-KFTC International Conference.

60. According to its website⁸, the International Competition Network (ICN) seeks to provide competition authorities with a specialized yet informal venue maintaining regular contacts and addressing practical competition concerns. It is focused on improving worldwide cooperation and enhancing convergence through dialogue. Membership is voluntary and open to any national or multinational competition authority entrusted with the enforcement of antitrust laws. The ICN does not exercise any rule-making function. Its initiatives are project-oriented, flexibly organized around working groups, the members of which work together largely by Internet, telephone, fax machine and videoconference. Annual conferences and meetings provide opportunities to discuss these projects and their implication for enforcement. UNCTAD has actively participated in all ICN Conferences and some of its working groups, including. Those dealing with: (i) The merger review process in the multi-jurisdictional context, and (ii) the advocacy role and activities of competition authorities. UNCTAD has also participated in the ICN third project on capacity building and competition policy.

⁸ See www.internationalcompetitionnetwork.org

Chapter IV. Conclusions: Areas for further work

61. The main lessons which flow from the experience gained by UNCTAD over the last two decades in the formulation and delivery of technical assistance programmes were reviewed in this report and listed in the executive summary. This section of the report points to the area for further work on capacity building by UNCTAD.

1) Improving Communications between Competition Authorities, Sector Regulators and Others Stakeholders

62. One of the major challenges facing the emerging competition authorities in developing countries, which emerges from the various workshops held in developing countries is how to enhance the stature of competition authorities with key stakeholders (government department, sector regulator, business groups, consumer associations and the press) particularly through advocacy initiatives. UNCTAD envisages developing a handbook on best practices for use by competition agencies and holding conferences and seminars for targeted groups of stakeholders and on specific issues that enhance the stature of competition authorities and provide expertise for political debate on competition-oriented reforms.

2) Improving the effectiveness for the judiciary to support an agency's enforcement through training courses

63. The benefits that may be expected from Competition depend to a large extent on the Competence of the judiciary and the quality of the legal environment of competition enforcement. For example, it has been recognised that one among several reasons for which the introduction of competition law did not lead to a reduction of anti-competitive practices in some developing countries, was the absence of a proper functioning competition courts. In such situation the training of the judiciary could contribute towards creating a credible competition law administrative and sustain the process of

competition. UNCTAD plans to extend the organisation of workshop for judges and adjudicators to interested countries.

3) Upgrading of skills of case handlers for effective enforcement

64. Useful components of technical assistance for emerging competition agencies in developing countries include investigative tools workshops. An example is given in Box 6. It consists of role playing by participants in small groups working on hypothetical cases or competition cases from undeveloped countries jurisdiction. The training is conducted by experts from developing countries competition agencies and academia. The experts guide participants through the process of defining an offence, its elements investigative plans, witness intervening and collecting of evidence. UNCTAD plans to organise more investigative tools workshops in cooperation with developed countries competition authorities.

4) Support for Regional Cooperation on Competition Policy

65. One of the major challenges facing small, island and land locked countries is that the introduction and enforcement of competition law at the national level would require substantial human and financial resources and therefore would be costly in relation to the size of domestic market and the volume of trade and investment generated by the enterprise sector. It has been recognised that for many smaller economies, it would be more appropriate to develop and enforce a competition policy on sub regional and regional levels. UNCTAD has assisted several regional integration groupings in formulating common competition policy that supports regional trade and investment, including COMESA, UEMOA, SACU and CARICOM. UNCTAD has several outstanding request from regional integration grouping which it intend to implement over the next two to three years.

Annexes

Annex I: Summary of Selected UNCTAD Technical papers and studies on the interface between Competition and Development

"Can developing countries benefit from WTO negotiations on binding disciplines for hard core cartels"?

(UNCTAD/CLP/2003/3)

One of the issues discussed at Cancun, was the desirability of an international ban on hardcore cartels. The reason for this is that such hardcore cartel can cause great harm to the economies of developing countries. A domestic competition law usually forms a good first line of defence. Yet problems persist due to the existence of safe havens, in the form of countries that have not enforced such laws. This paper will take a closer look at the adequacy of international initiatives, after which it will try lay out the terms for cooperation on binding disciplines for hardcore cartels that could best be conducted to also advance the interests of developing countries.

"WTO core principles and prohibition: Obligations relating to private practices, national competition laws and implications for a competition policy framework"

(UNCTAD/CLP/2003/2)

This paper looks at the WTO core principles as a basis for cooperation. The EC has been quite vocal in its attempts to construct a multilateral framework on competition policy which would include a ban on hard core cartels and most discussions on this subject have taken the WTO core principles as its starting point. The EC regards these principles, in particular the national treatment principle, as the most effective legal basis for a ban on hard-core cartels. But for such a ban to be effective international cooperation is essential. A multilateral framework based on the WTO principles and limited to trade-related aspects might prove to be the best basis for effective results.

"Application of Competition Law: Exemptions and exception"

(UNCTAD/DITC/CLP/Misc.25)

Exemptions and Exceptions are sometimes granted to industries and for certain business practices under the competition law of a country. These exemptions and exceptions are often made for social, economical or political reasons and are sometimes necessary to realize the objectives of a competition policy. This paper looks at these exemptions and exceptions and discusses firstly the desirability of exemptions and exceptions. After this, it examines the competition laws of a few selected countries. Thirdly it will look at the different types of exemptions and exceptions and the rationale behind them. And finally it will give some conclusions and general policy recommendations on the issue.

"Recent developments in trade and competition issues in the services sector: A review of practices in travel and tourism"

(UNCTAD Series on Issues in Competition Law and Policy New York and Geneva, 1999)

The purpose of this study is to examine the market structure and the private anticompetitive practices in the travel and tourism markets. It will do this, by looking at macro-economic issues in the air travel and tourist market and by looking at consumer behaviour in that market.

"The role of Competition in globalising world markets"

(Geneva 2000)

Through several discussions at UNCTAD X, the conclusion was reached that the integration of developing countries into the world economy they would have to be able to challenge anti-competitive conduct in the market. A multilateral framework for the enforcement of competition could be an important development for these countries, but further studies will be

needed to allow the developing countries to form their own opinions of such a network. These subjects and other related matters are further discussed in this paper.

"Merger Control in developing countries: Lessons from the Brazilian experience"

(UNCTAD/DITC/CLP/Misc.24)

Proper enforcement of competition law is far from easy. Quite often complex analytical studies will have to be performed to predict the precise impact of a certain type of behaviour on competition in the market. In developing countries this process is further hindered by a lack of expertise and human capital. Mistakes are most often made in relation to merger control cases; they are particularly difficult as they affect both the market structure and firm behaviour. This paper analyses four cases in Brazil and uses these Brazilian experiences to help create a further understanding for the difficulties of implementing merger control in developing countries.

"Competition Policy – Trade and Development in the Common Market for Eastern and Southern Africa (COMESA)"

(Geneva 2000)

Many African countries have engaged in massive liberalization efforts in order to improve competitiveness in their markets. But liberalization alone does not necessarily entail increased competitiveness. These governments should improve market forces through regulatory reform instead of direct interventions whilst at the same time remaining a neutral referee able to ensure a properly functioning market. This paper will look at competition policies and laws in the African countries and will try to assist African countries in the adoption of competition laws and policies.

"The Development Dimension of Competition Law and Policy"

(UNCTAD Series on Issues in Competition Law and Policy New York and Geneva, 1999)

This study looks at the developmental side of competition law and policy. Having a properly working marketplace is important to be able to gain competitive advantages. In developing countries in particular however conducting an optimal competition policy has proven to be quite difficult. International coordination on competition matters built upon the UN Set of Principles might be necessary to achieve results.

"Competition Policy in Countries in Transition-Legal Basis and Practical Experience"

(New York and Geneva, 2000)

In the CIS countries there has been a recent shift towards demonopolisation and increased competition. This paper examines the practical measures and legal aspects of this shift and will also look at the experiences these countries have gained in implementation and enforcement of these laws and regulations.

"Roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy"

(TD/B/COM.2/CLP/37)

Do to the consensus on the inappropriateness of a binding dispute settlement system within any possible multilateral framework on competition. This study will therefore examine other ways to resolve or prevent disputes within the context of international cooperation on competition policy. It found that Peer Review was not merely suited as a compliance mechanism, but also as a good tool for policy advice.

"Experiences gained so far on international cooperation on competition policy issues and the mechanisms used"

(TD/B/COM.2/CLP/21/Rev.2)

This report focuses on three specific types of international instruments that deal with competition law and policy. They have many common elements, and have helped to minimize conflicts and facilitate enforcement. Developing countries have so far not been taking part in these agreements. For this to happen the agreements will need to evolve and further exchange

of experiences will be necessary. A closer analysis of the modalities of voluntary cooperation may be a great help to the governments of developing countries when entering into such agreements.

"Recent competition cases"

(TD/B/COM.2/CLP/38)

This report reviews several important competition cases involving other countries or foreign firms. From these cases we may conclude that enforcement in developing countries is improving, as is cooperation on competition with other countries. But further national and international improvements will have to be made to protect international trade.

"Final consolidated report of capacity building meetings organized by UNCTAD on competition issues within the framework of the Doha mandate"

(UNCTAD/DITC/CLP/2003/1)

After the Doha round the UNCTAD has given support to developing countries in accordance with paragraph 24 of the Doha Declaration. Together with several other organizations UNCTAD has engaged in a whole range of activities aimed at assisting developing countries with their competition policies, allowing for a diverse exchange of views on the subject. This report contains a compendium of all these views and has divided them into "Pros" and "Cons" for each separate issue.

"The relationship between competition, competitiveness and development"

(TD/B/COM.2/CLP/30)

The connection between competitiveness and development has received increased attention, leading more and more policy maker in developing countries to wonder how best to increase competitiveness. This note identifies the implications of achieving and sustaining competitiveness, and identifies some of the issues with which governments of developing nations are now faced.

"Consumer protection, competition, competitiveness and development"

(TD/B/COM.1/EM.17/3)

This note discusses issues connected to consumer protection, competition and competitiveness from a national and international perspective, thereby looking at the influence both globalisation and liberalization have had on these same issues.

"Competition policy and the exercise of intellectual property rights"

(TD/B/COM.2/CLP/22/Rev.1)

This paper discusses the tensions between Intellectual Property Rights (IPRs) and competition. Although most developed nations regard IPRs in a favourable manner differences remain and in the future a more pragmatic approach may be needed where IPRs are found to restrain competition in markets. The implementation of TRIPS will mean that even more countries will now have to deal with IPRs including lesser developed countries that are not as experienced in handling such problems. This will greatly increase the need for consultations and forms of support in relation to this subject

**Annex II: Distance Learning, Programme, Structure,
Components and Delivery:**

	Contribution of distance learning	Competition and Consumer Policies Branch	Train for Trade Programme
Administration (Registration and Tracking of Students)	Providing registered trainees with unique ID, database automatically generating information	Evaluating trainees profile for selection or course participants	Registering and updating trainee databases
Course design	Providing a feasibility analysis of the appropriateness of different aspects of DL	Developing projects, activities, training objectives in each area and capacity building technical cooperation activities	Pedagogical expertise, network of national experts in the field, application of training methodology
Development of materials	Using instructional design methods to make sure that information is structured and presented using multimedia	Preparing manuals, course material, and exercises work-in progress such as PowerPoint presentations, lecture notes with DL team so as to tailor them to distance learning	Pedagogical expertise, application of training methodology
Course delivery	Structured online and interactive training materials, use of chat and electronic communication	Availability to take part in chat sessions, answer e-mails. Use of DL materials in face-to-face sessions Building distance learning elements into face-to-face training seminars event	Pedagogical expertise, application of training methodology
Trainee's Support	Forum, scheduled chat sessions	Provide written model answer comments and references to enquiries and participate in chat Sessions about substantive matters via email	
Assessment	Careful structured online tests providing feedback to students	Sharing learning objectives and assessment criteria with TrainForTrade so as to design effective assessment tools. Being available to mark test and give feedback students	
Evaluation	Use of database to track student progress Online questionnaires into the effectiveness of training	Undertake questionnaire and other evaluations into the effectiveness of the training and develop follow up substantive support and quality control of future trainers	

Source: Strategy for Implementing a Distance Learning programme in UNCTAD, Geneva, January 2004

Annex III: Formulating and Evaluating Capacity building and Technical Assistance Activities

Project description	Key indicators	Means of verification	Assumptions/risks
<p>Goal <u>How can the planned activities:</u> Contribute to the success of economic reform and create more effective and well functioning markets? Make markets work better for the poor and promote economic growth and development? create a competition culture and promote consumer welfare?</p>	<p><u>Key elements could include:</u> - Demonopolisation and removal of cartels; - Convergence of domestic consumer prices towards the world market prices; - Emergence of competitive enterprises.</p>	<p><u>Those must produce:</u> - Progress evaluation reports; - Country reports on impact of the working of markets on the poor to be prepared by beneficiary countries in cooperation with UNCTAD and other relevant organizations</p>	<p><u>They could include:</u> - Economic reforms and liberalization policies are maintained over a sustained period; - Policy makers use enhanced capacity to effectively formulate and implement competition law and policies.</p>
<p>Objectives <u>Should clearly seek to:</u> - Increase awareness, technical and institutional capacity of policy makers to deal with issues related to domestic and international competition law and policy; - Enable policy makers to participate effectively in the formulation of national and regional competition policy; - Enhance capacity of governments to participate in negotiations on competition issues within UNCTAD, OECD and WTO Working groups on competition; - Enable policy makers to identify the nexus between competitive markets, competitiveness and poverty alleviation.</p>	<ul style="list-style-type: none"> - Number of countries that have taken steps to introduce competition legislation; - Number of countries which have set up competition agencies for enforcement; - Number of countries taking part in international fora on competition policy; - Quality of proposals and submissions to regional and international negotiations; - Consensus building. 	<ul style="list-style-type: none"> - Terminal reports by UNCTAD and feedback from beneficiary countries and institutions; - Number and degree of participation in international fora on competition policy by beneficiary countries; - Progress made in establishing regional competition policy. 	<ul style="list-style-type: none"> - Policy makers and officials are willing to undertake training and follow-up activities; - Policy makers and other officials have the resources and commitment to implement project objectives; - Trained officials remain in their posts and use acquired skills.

<p><u>Outputs Should be, whenever possible, quantifiables: e.g:</u></p> <ol style="list-style-type: none"> 1. Capacity building in drafting and enforcing competition law and policy; 2. Advisory and training services for enforcement of competition policy to ensure that markets work for the poor; 3. Capacity-building at regional level through training of trainers and cooperation Activities; 4. Within regional integration groupings, provide country institutional and capacity building in support of integration efforts and multilateral cooperation; 5. Advisory and training services for enforcement of competition law and policy to ensure that markets work better for the poor. 	<p>- The number of technical and policy studies to be prepared; National and Regional training workshops; Up to 100 officials trained during a cycle; Number of draft legislation and application rules completed; Number of advisory missions to beneficiary countries</p>	<p>Lists of policy and technical studies, laws and regulations on competition policy; Reports of workshops and meetings; Assessments and feedback from beneficiary countries; Quarterly and progress reports prepared by UNCTAD; Questionnaires and final evaluation reports.</p>	<p>Issues addressed in studies should be relevant to the development needs of beneficiary countries; Training modules should be adapted to local and regional needs of policy makers; Case studies for the training material should be provided by competition agencies; Commitment by recipient countries for implementation is essential and is prerequisite for the assistance</p>
<p><u>Activities must be integrated and designed to facilitate evaluation e.g:</u></p> <ul style="list-style-type: none"> • Advise and give comments on draft competition laws and application rules on competition law; • Prepare and disseminate policy and technical papers; • Organize sub-regional and regional workshops and seminars; • Assist individual countries to implement regional competition legislation by adopting application rules and harmonizing national laws with community legislation; • Develop and deliver Training of trainers course; • Establish regional relay centres for training of trainers, distance learning facilities and networks to exchange expertise and experiences. 	<p>Technical & policy studies to be prepared; Number of papers used as background documentation to draft competition law; Number of national and regional training workshops; number of officials trained per cycle, Number of draft legislation and application rules completed; Progress in establishment of regional relay centres.</p>	<p>Report on advisory services provided by UNCTAD; Questionnaires on the evaluation of workshop and seminars; Feedback and evaluation of the skill used acquired through the Training Manual activities; Review of on-line use of distance learning.</p>	<p>Ensure that case studies used in the Training Manual are relevant to local and regional needs of policy makers; Beneficiary countries will collect and present case studies dealing with anti-competitive practices for the use in the training workshops; Commitment by recipient countries for implementation is essential. Availability of appropriate and well functioning telecommunication facilities are critical for distance learning</p>

**Annex IV List of UNCTAD Technical Assistance and Capacity Building
Activities 2000-2004**

UNCTAD Technical Assistance Activities

Place	Subject	Dates
Colombia	Regional meeting on Consumer Policies, Competition, Competitiveness and Development	23-25 July 2000
Costa Rica	Regional Seminal for Latin America and the Caribbean on Competition Law and Policy	30 Aug.-1 Sept. 2000
Vietnam	Competition Seminar organized by DSE and UNCTAD	10-13 Oct. 2000
Russia	10 th Anniversary of the Russian Anti-Monopoly Committee	19-20 Oct. 2000
Burkina Faso	Meeting of the Advisory committee on the implementation of the UEMOA Community competition policy	27-29 Oct. 2000
Mali	Training for trainers	30 Oct.-4 Nov.
India	Advisory Workshop on Competition	Mid Nov.
Botswana	National seminar for Botswana on the draft Competition Policy	4-6 Dec. 2000
Mauritius	Advisory Mission and Seminar on Competition Policy and Law	4-6 Dec. 2000
Namibia	National workshop on the Institutional arrangements for the implementation of the Competition law	11-12 Dec. 2000
Cuba	Seminar on Competition Law and Policy	5-7 Feb. 2001
Kenya	Regional Seminar Competition Policy	26-30 March 2001
Ecuador	Beneficios de una política de Competencia para la Economía Ecuatoriana	18-20 Apr. 2001
Vietnam	Workshop on Draft Competition Law in Vietnam	28-29 May 2001
Vietnam	Workshop on Draft Competition Law in Vietnam	4-5 June 2001
Colombia	Regional Consumer Seminar for Latin America	24-25 July 2001
Ghana	Regional Consumer Seminar for Africa	20-21 Aug. 2001
India	Regional Consumer Seminar for Asia/Pacific	11-12 Sept. 2001
Japan	Japan International Cooperation Agency International Course on Antimonopoly and Competition Policy	26-27 Sept. 2001
Kirguizistan	International Conference on Competition	1-2 Oct. 2001
Botswana	Workshop to review the final draft of the study on economic structure and legal framework in preparation of the draft competition law.	30-31 Oct. 2001
Swaziland	National stake holders workshop to review the draft Competition Law	1-2 Nov. 2001
Vietnam	National stake holders workshop to review the draft Competition Law	8-9 Nov. 2001
Benin, Mali and Burkina Faso	Distance learning course on Basic Competition Principles for French speaking Countries in West Africa	Nov. 2001
India	Training course on International Investment and Competition Issues	19-30 Nov. 2001
Madagascar	National Competition Seminar	10-12 Dec. 2001
China	National workshop on Competition policy and Investment: the treatment of mergers and acquisitions.	18-19 Dec. 2001
Botswana	Second Workshop to review the final draft of the study on economic structure and legal framework in preparation of the draft competition law.	14-15 Jan. 2002
Swaziland	Second National stake Holders workshop to review the draft Competition Law	17-18 Jan. 2002
Mauritania	National Workshop on Competition Policy	20-22 Jan. 2002

United Arab Emirates	UNCTAD/ESCWA Expert Meeting on "Identification of Common Grounds on Competition Law and Policies in the ESCWA Region"	28-29 Jan. 2002
Panama	Regional Seminar on Competition Law and Policy	21-23 March 2002
Tunisia	Regional Seminar on Competition Policy and Multilateral Negotiations	27-29 March 2002
Hong Kong	Regional Seminar on Competition Policy and Multilateral Negotiations	16-18 April 2002
Ukraine	International Seminar on Competition Policy for Black Sea and CIS Countries	23-25 April 2002
Malaysia	National Workshop on Draft Competition Law	7-8 May 2002
Bahrain	National Workshop on Competition in Post-Doha	13 May 2002
Egypt	Regional Seminar on Investment and Competition for Francophone Countries	1-2 June 2002
Egypt	National Workshop on Competition on Singapore Issues	22-23 June 2002
Vietnam	Finalization of National Competition Law	24-26 July 2002
Tunisia	League of Arab States – Seminar on Competition Law and Policy	29-31 July 2002
Uruguay	Regional Meeting on the Role of Competition Policy in Consumer Protection and Enhancing Competitiveness of SMEs	9-10 Sept. 2002
Argentina	Regional meeting on the role of Competition Policy in Consumer Protection and enhancing the Competitiveness of Small and Medium Enterprises	12-14 Sept. 2002
Gabon	Intensive National Training Course on Competition Policy	7-11 Oct. 2002
Chad	Finalization of Draft Consumer Protection Law	4 Nov. 2002
Thailand	Thai Institute Training Seminar on Competition	11-12 Nov. 2002
Laos	National Seminar on Consumer Protection and Competition Policy	14-15 Nov. 2002
Zimbabwe	National Training Workshop on Competition Law and Policy	25-27 Nov. 2002
Korea	KFTC/UNCTAD/OECD Seoul Forum	6-8 Nov. 2002
Zambia	National Seminar on Competition Law and Policy	28-29 Nov. 2002
Zambia	Regional Seminar on Competition Law and Policy	2-3 Dec. 2002
Lesotho	National Seminar on Competition	17-19 Dec. 2002
Nicaragua, El Salvador and Dominican Republic	Mission to prepare needs assessment and discusses possible technical cooperation activities.	Jan. 2003
Senegal	UEMOA Regional Post-Doha Seminar	6-8 Feb. 2003
Malaysia	Asian Conference on the Post-Doha Competition Issues	26-27 Feb. 2003
Malaysia	Asian Conference on Consumer Protection, Competition Law and Policy	28 Feb.-1 March 2003
Kenya	African Regional Conference on the Post Doha WTO Competition Issues	8-9 Apr. 2003
Brazil	Regional Seminar for Latin America and Caribbean Countries on the Post-Doha WTO Competition Issues	23-25 Apr. 2003
Bolivia and Peru	Mission to prepare a needs assessment and discuss possible technical cooperation activities	April/May 2003
Zambia	Judicial Training Seminar	30-31 May 2003
Tashkent	International Conference on Competition for Countries in Transition	5-6 June 2003
St Lucia	Fifth Caribbean Consumer Conference on Globalisation and its Impact on Consumerism	25-27 June 2003
Brazil	Preparatory of the Training for Trainers Course on the Implementation of Competition Legislation	21-23 July 2003

Poland	Tri-Lateral Cooperation between the Polish Competition Office, UNCTAD and Vietnam	31-Jul.-2 Aug. 2003
Vietnam	Finalisation of the National Competition Law	5-7 Aug. 2003
Thailand	Course on Investigation Methods for Enforcement of the Competition Law, UNCTAD, ACCC, TDI	1-3 Sept. 2003
Laos	Panel Review on the Draft Fair Trade Competition Decree	17-18 Sept. 2003
Iran	National Seminar on Competition Law and Policy for Oil-Exporting Countries	20-22 Sept. 2003
Tunisia	Training of trainers Course on the Implementation of a Competition Law	1-7 Oct. 2003
Brazil	Training of Trainers Course on Competition	29 Oct.-3 Nov. 2003
Malawi	Advisory mission for the establishment of an Institutional framework for the implementation of Competition Law and Policy	8-10 Oct. 2003
Brazil	Training Course for Judges	8-9 Dec. 2003
Costa Rica	Sub. Regional Workshop on Competition and Consumer Protection Policies for Latin American Countries	8-10 Dec. 2003
Vietnam	National Consultations on the draft of Competition Law	19-24 Feb. 2004
Bhutan	National Workshop on Consumer Protection Issues and Unfair Trade Practices	25-27 Feb. 2004
Portugal	Pre-UNCTAD XI High level International Meeting of Experts on Sustainable Tourism on for Development	8-11 March 2004.
Swaziland	Preparation of an annex agreement on restrictive business practices to the SACU Agreement 1994, Article 40 & 41: First Meeting	11-12 March 2004
Malawi	National Stakeholders meeting to review the institutional FRAMEWORK OF THE Competition Agency	15 March 2004
Peru	Sub-regional Workshop on Competition and Consumer Protection Policies for Peru and Bolivia	22-24 March 2004
Ecuador	Mission to prepare a needs assessment and assist the country in raising awareness on the Draft Law on Competition	25-27 March 2004
Sudan	Regional Arab meeting on Competition and Development Policy	27-28 April 2004
Tanzania	World Bank, UNCTAD, EC Conference on Competition, Competitiveness, and Investment.	10-12 May 2004
Lesotho	National Panel Review on the Economic Mapping and Legal Inventory Studies in preparation of the Lesotho Competition Law	13-14 May 2004
Ukraine	International Conference on Competition for Countries in Transition	18-19 May 2004

Co-operation with other agencies:

Place	Organizer	Subject	Dates
India	CUTS	Launch Meeting 7-up Project	20-21 Dec. 2000
U.K.	Fair Trading Commission	International Cartel Workshop	20-22 Nov. 2000
Republic of South Africa	WTO/DFID/RSA	Competition Seminar for Africa	8-9 Feb. 2001
Thailand	Japan/Thailand	The fifth APEC/PFP course on Competition Policy	13-15 March 2001
Germany	FCO, Germany	Cartel Conference	21-23 May 2001
France	OECD	Competition Conference	28-31 May 2001

Thailand	OECD	Seminar on Competition for ASEAN countries	26-27 Nov. 2001
Uganda	COMESA	Regional Conference on Competition Law and Policy	26-30 Nov. 2001
Switzerland	UNCTAD/AITIC	Workshop on Antidumping: Practical and Legal Aspects	28 Feb.-1 March 2002
Republic of South Africa	International Bar Association/South African Competition Authorities	Competition Law and Policy Conference	17-18 March 2002
Bangladesh	APEC	Competition meeting	6-8 August 2002
Brazil	Brazilian Competition Authorities	International Cartels Workshop	18-20 Sept. 2002
Japan	Japan Competition Authority	UNCTAD participation in Training Course on Competition	24-25 Sept. 2002
Italy	Italian Competition Authority	First ICN Meeting	28-29 Sept. 2002
Malaysia	F. Neuman Foundation	Competition Seminar	8-9 Oct. 2002
Gabon	WTO	Regional Workshop for Southern and Eastern Africa on Competition in Post-Doha	14-15 October 2002
Mauritius	WTO	Regional Workshop for Southern and Eastern Africa on Competition in Post-Doha	12-14 Nov. 2002
Senegal	CIROA	First experts meeting on the Survey on the Status of Consumer Protection and Quality of Life in Africa	15-17 March 2004
Morocco	WTO	Intensive Training Course on Competition	3-8 May 2004
Austria	European Commission	Training Seminar for Trainers on Competition	3-7 May 2004

Annex V: Useful Websites:

Competition, Competitiveness websites:

<http://r0.unctad.org/en/subsites/cpolicy/>
http://www2.jftc.go.jp/eacpf/01_00.html
<http://www.accc.gov.au/content/index.phtml/itemId/142>
http://www.oecd.org/document/62/0,2340,en_2649_37463_28753214_1_1_1_37463,00.html
<http://www.globalcompetitionforum.org/africa.htm>
<http://repositories.cdlib.org/iber/cpc/>
http://www.euractiv.com/cgi-bin/cgint.exe/3766118-570?target=5&714&1015=9&1014=ld_vertical_restraints&-tt=COVRLD
http://www.europa.eu.int/pol/comp/index_en.htm
<http://www.internationalcompetitionnetwork.org/>

Sector Regulators/ Competition:

<http://www.worldbank.org/>
<http://rru.worldbank.org/>
http://www.ksg.harvard.edu/hepg/Competitive_Models.htm
<http://groups.haas.berkeley.edu/iber/cpc/pubs/Publications.html>
<http://www.ccr.uea.ac.uk/default.shtml>
<http://idpm.man.ac.uk/crc/index.html>
<http://repositories.cdlib.org/iber/cpc/>
http://www.gtap.agecon.purdue.edu/resources/res_display.asp?RecordID=317

Competition and Development Issues:

<http://r0.unctad.org/en/subsites/cpolicy/>
<http://rru.worldbank.org/>
<http://www.worldbank.org/>
<http://www.fias.net/>
<http://www.southcentre.org/publications/competition/competition-04.htm>
<http://www.cid.harvard.edu/cidtrade/issues/competitionpaper.html>
<http://www.eldis.org/static/DOC13127.htm>
<http://idpm.man.ac.uk/crc/compresflowtext.html>
http://www.oecd.org/document/62/0,2340,en_2649_37463_28753214_1_1_1_37463,00.html
<http://ideas.repec.org/JEL/L10.html>
<http://www.ciudadanosaldia.org/ci/demo.htm>
<http://www.globalcompetitionforum.org/africa.htm>
<http://groups.haas.berkeley.edu/iber/cpc/pubs/Publications.html>
<http://idpm.man.ac.uk/crc/index.html>
<http://repositories.cdlib.org/iber/cpc/>
http://www.euractiv.com/cgi-bin/cgint.exe/3766118-570?target=5&714&1015=9&1014=ld_vertical_restraints&-tt=COVRLD
http://www.gtap.agecon.purdue.edu/resources/res_display.asp?RecordID=317
http://www.europa.eu.int/pol/comp/index_en.htm

Others related links:

<http://www.cuts-india.org/> (consumer protection/ Competition/ Development)
<http://www.consumersinternational.org/HomePage.asp?regionid=152&langid=1>

Argentina:

<http://www.mecon.gov.ar/cndc/home.htm>

Australia:

<http://www.accc.gov.au/content/index.phtml/itemId/142>

Brazil:

<http://www.mj.gov.br/>

Canada:

<http://strategis.ic.gc.ca/SSG/ct01250e.html>

Colombia:

<http://www.sic.gov.co/>

European Commission:

http://europa.eu.int/comm/competition/index_en.html

Costa Rica:

<http://www.meic.go.cr/index2.html>

France:

<http://www.finances.gouv.fr/conseilconcurrence/>

Germany:

<http://www.bundeskartellamt.de/>

Japan:

http://www.jftc.admix.go.jp/e-page/f_home.htm

Korea:

<http://www.ftc.go.kr/>

Mexico:

<http://www.cfc.gob.mx/>

The Netherlands:

<http://www.nmanet.nl/nl/>

Norway:

<http://www.kt.no/>

Panama:

<http://www.clicac.gob.pa/>

Portugal:

<http://www.dgcc.pt/>

Spain:

<http://www.mineco.es/dgdc/sdc/default.htm>

Switzerland:

<http://www.weko.admin.ch/index.html?lang=en&PHPSESSID=def0e174cfd4054ca0f0cf1be3c75c01>

Taiwan:

<http://www.ftc.gov.tw/>

United Kingdom:

<http://www.competition-commission.org.uk/index.htm>

<http://www.ofc.gov.uk/default.htm>

U.S.A.:

<http://www.usdoj.gov/atr/>

<http://www.ftc.gov/>

Venezuela:

<http://www.procompetencia.gov.ve/>