

**United Nations Conference on Trade and Development**

**Capacity-building on competition law and  
policy for development**

*A consolidated report*



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## Introduction

For the more than two decades, the UNCTAD secretariat has conducted a capacity-building programme and technical assistance activities. These are funded principally by donor countries and agencies for the benefit of developing and least developed countries (LDCs) and their competition agencies, when they exist. Only during the last four years (2004–2007) have the capacity-building and technical assistance activities concerned the 54 developing countries in Africa, Asia, Latin America and the Caribbean, as well as economies in transition. There have been six main features of the programmes: (a) competition advocacy activities; (b) preparation of competition legislation; (c) training of case handlers; (d) institution-building; (e) consumer protection; and (f) peer reviews and follow-up. In addition, many countries benefited from activities provided within the framework of regional cooperation.

Depending on the level of development of the requesting country, UNCTAD has (a) assisted in explaining the role of competition policy in maximizing the benefits of liberalization and integration into the world economy; (b) advised, on the basis of the Model Law on Competition, in preparing competition laws and setting up regulatory and institutional frameworks for enforcement of competition law; (c) promoted the creation of “competition culture” among the supporting institutions (government agencies, academia, business groups, consumer associations and the press); and (d) provided activities for the training of trainers and promoted South–South cooperation.

For more than 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:

- (a) Although most developing countries have liberalized their economies and have adopted a market-based 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 provides 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.
- (b) The most effective form of capacity-building and technical assistance activities are those which are integrated in the recipient country’s 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.
- (c) 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 the cost-effectiveness of the plan. 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 policymakers, 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 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 overcomes some of the problems created by “brain drain” of limited available human resources.

(d) Limited resources and expanding demand from developing countries have

led UNCTAD to make use of information technology that makes it relatively cheap to deliver some of its technical assistance, and 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.

(e) Developing countries believe that competition policy is needed for the success of market-oriented reforms and for generating growth and development, but their conviction varies. Some still doubt whether reliance on market forces alone can generate income and employment for the poor or whether globalization and liberalization can benefit the least developed among them. UNCTAD’s programme can provide policy advice and technical assistance as well as give additional credibility to interested countries’ policy recommendations in the two areas – formulation and enforcement of competition law advocacy for market-oriented reforms.

## **I. UNCTAD's capacity-building objectives in the area of competition law and policy**

### **A. UNCTAD's mandate**

UNCTAD is the focal point on all work related to competition policy and consumer protection within the United Nations system which, in turn, is part of its work on trade and development. The art of its work on trade and development – the mandate for which dates to the adoption of the United Nations Set of Multilaterally-Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980 – represents an acceptance of the view that the basic norms of competition law, which have long been in use in developed countries, should extend to the operations of enterprises, including transnational corporations (TNCs), in developing countries. Thus, the Objectives section of the United Nations Set emphasizes that the interests of developing countries in particular should be taken into account in the elimination of anticompetitive practices that may cause prejudice to international trade and development. Furthermore, the Objectives section sees the United Nations 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.

This objective should be seen alongside UNCTAD's work on the formulation of a model law on competition. The draft model law and commentaries embody the principles laid down in the United Nations Set and couple these with a scheme for national competition authorities. The draft model law is aimed at developing countries that do not have a domestic competition regulation. Section C (iii) (7) of the United Nations 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 United Nations 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.” Therefore, the United Nations Set envisages “infant industry” and regional economic integration exceptions to the application of competition controls to enterprises and other organizations from developing countries. This provision was balanced by the agreement to the principle that, “States, while bearing in mind the need to ensure the comprehensive application of the Set of Principles and Rules, should take due account of the extent to which the conduct of enterprises, whether or not created or controlled by States, is accepted under applicable legislation or regulations”.

The São Paulo Consensus at UNCTAD IX further reiterated that “Globalization offers new perspectives for the integration of developing countries into the world economy, and it can improve the overall performance of developing countries' economies by opening up market opportunities for their exports, by promoting the transfer of information, skills and technology, and by increasing the financial resources available for investment in physical and intangible assets. But globalization has also brought new challenges for growth and sustainable

development, and developing countries have been facing special difficulties in responding to them”.

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

## **B. UNCTAD mission**

The objective of the UNCTAD capacity-building programme is to implement the mandate of UNCTAD in the area of competition law and policy, as stipulated in the United Nations Set, the São Paulo Consensus adopted in June 2004, and the Fifth United Nations Review Conference held in November 2005 in Antalya (Turkey). In particular, paragraph 89 of the São Paulo Consensus stipulates that: “Efforts should be made to prevent and dismantle anticompetitive structures and practices and promote responsibility and accountability of corporate actors at both the national and the international level, thereby enabling developing countries’ producers, enterprises and consumers to take advantage of trade liberalization. This should be supplemented by the promotion of a culture of competition and improved cooperation between competition authorities. Developing countries are encouraged to consider, as a matter of importance, establishing competition laws and frameworks best suited to their development needs, complemented by technical and financial assistance for capacity-building, taking fully into account national policy objectives and capacity constraints.” The resolution adopted by the Fifth United Nations Review Conference recommends, among other things, “the continuation and strengthening of the important and useful work programme within UNCTAD’s secretariat and intergovernmental machinery that addresses competition law and policy issues and proceeds with the active support and

participation of competition law and policy authorities of member States”.

UNCTAD’s capacity-building programme has been developed in line the decisions of the Fifth United Nations Review Conference (2005) as well as of the seventh and eighth sessions of the International Group of Experts (IGE) on Competition Law and Policy, held in Geneva in 2006 and 2007. It has been conceptualized on the basis of the complementarity of functions and capacities between UNCTAD and other organizations. Over the last four years, UNCTAD has implemented the relevant parts of the São Paulo mandate, and will carry out over the next four years the relevant mandate that emerges from UNCTAD XII in Accra in April 2008, including cooperation with international and regional organizations in matters related to competition law and policy and development. The components of the capacity-building programme are designed as a coherent strategy intended to generate maximum synergies between its elements, building on earlier work of UNCTAD in the areas of Restrictive Business Practices, and investment, trade and development issues.

During the annual consultations held by the UNCTAD intergovernmental Group of Experts on Competition Law and Policy, many developing countries have expressed the views that, at the national and regional levels, there is further need for the fashioning of appropriate policies and development, which would include competition policy and legislation that can make markets work better for the poor. 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 cooperation and the voluntary peer reviews on competition law and policy.



The overall objective of this capacity-building would be to:

- (a) Assist countries in designing appropriate competition laws and policies and enforcing them effectively. To this end, the activities should seek to upgrade the skills of experts dealing with competition laws and policies, institution-building (including support in the establishment of competition authorities), and in the initial stages of enforcement activities;
- (b) Strengthen their negotiating skills with respect to regional and multilateral negotiations, including through exchange of information and

experiences with the formulation of competition policies. With these objectives in mind, and while formulating capacity-building activities, UNCTAD interacts with officials working in the field, with development planners and with experts from national, regional and international organizations to mobilize expertise as well as human and financial resources.

- (c) Organize voluntary peer reviews on competition law and policy, which would assist concerned countries to review the implementation of their competition laws and formulate technical assistance projects based on objective needs assessments.

#### **Box 1. The objectives of the United Nations set of principles on competition**

The United Nations 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 in developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through (a) the creation, encouragement and protection of competition; (b) control of the concentration of capital and/or economic power; and (c) 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 for 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; and
- 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”.



## **II. The need for formulating a durable competition policy framework for development**

### **A. A case for competition policy**

Present concerns with competition policy issues reflect the progression 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 are in fact more important today for developing countries than for the first group of newly industrialized countries. Globalization and liberalization have made this issue inescapable for the latecomers in their request to promote long-term growth and development. In this respect, most developing countries and LDCs, even with notable differences in scope, are increasingly adopting deregulation, trade and foreign direct investment (FDI) liberalization as their new policy objectives. This builds upon the substantial empirical evidence existing in both developed and developing countries pointing to the fundamental role played by the vigorous rivalry among firms in the enhancement of domestic industry competitiveness. The challenge facing policymakers is how to ensure that liberalization and reliance on market forces do not lead to further marginalization and impoverishment of the poor.

The liberalization of international trade – including the reduction of tariff barriers and 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 also obliges these firms to improve their productivity and keep down prices.

Competition policy comes into this picture because some major players, fearful of the consequences of trade liberalization 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. 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, who 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 liberalization could be lost through such anticompetitive conduct in the domestic market.

The growing importance of the relationship between competition and trade policy has been brought to the forefront by the liberalization of trade and investment. The capacity-building activities have also focused on the regional and subregional agreements among countries in Africa, Asia and Latin America to facilitate the implementation of regional trade and investment policies.

It is increasingly clear that anti-competitive practices, both domestic and transnational, impair the process of development in 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 anticompetitive 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 remedies.

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 anticompetitive practices are still in place.

Thirdly, foreign firms feel freer to engage in across-the-border anticompetitive behaviour when the countries to which they export do not have domestic competition laws 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 anticompetitive practices. Ensuring that measures are in place to deal appropriately with such arrangements should be one of the major objectives of any national competition framework.

## **B. Maximizing the benefits from FDI and trade**

The need for competition law is also evident when FDI is being liberalized, as the impact of FDI does not always favour competition. It is often the case, for example, that FDI 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 temporarily enjoy a high profit margin and charge prices well above a competitive level. However, with no barriers to entry, new firms may enter the market and – through innovation, better products and lower prices – eliminate monopoly pricing. Another scenario often encountered in developing and transition economies, is where the affiliates of two separate TNCs have been established in competition with one another in a particular market, following the liberalization of FDI 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.

These adverse consequences of mergers and acquisitions by TNCs 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.

It is also argued that an economy that has implemented an effective competition law is in a better position to attract FDI than one that has not. This is because most TNCs 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, TNCs expect competition authorities to ensure a level playing field between domestic and foreign firms, including among TNCs.

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 FDI, notably political uncertainties, the slow pace of economic development, exchange rate movements, obstacles to international trade, 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.

In order to ensure that a developing country gains the full benefit of FDI, 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 TNC, 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 anticompetitive, and the crucial question is whether competition policy objectives should be outweighed in certain circumstances by the economic benefits that the FDI can bring.

### **C. Promoting effective competition in the enterprise sector**

Monopolistic or collusive markets may also emerge and thrive 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.

The role that can be played in the privatization 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 privatization, in order to ensure the maximization 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.

Moreover, the capacity of Governments to implement successful antitrust 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.

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 cooperation 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 liberalization, deregulation and privatization – forms the basis for a sound development strategy. If the marginalization 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.

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

#### **D. Competition policy and consumer protection issues**

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 the best possible range of goods and services at the best possible prices, meeting 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 agreements.

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 anticompetitive practices that affect those countries with lax competition law and enforcement regimes. Yet international cooperation to act against such anticompetitive practices has not developed at the same pace as cross-border business operations. UNCTAD capacity-building activities include support to interested developing countries to formulate and enforce consumer protection legislation that are in line with the United Nations guidelines for consumer protection.<sup>1</sup>

#### **E. Special concern of the LDCs**

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 liberalization 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 LDCs is whether, in order to meet international competition, it is necessary for Governments to encourage or at least to overlook a degree of concentration in domestic industries.

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 that contain a clear prohibition of cartel conduct (price fixing, market sharing) and of other abuses of market power which could restrict or eliminate competition. Other practices 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 model law developed by UNCTAD could represent a useful guide for countries that are planning to introduce competition policy and adopt legislation. The UNCTAD model law has been further reviewed by the eighth session of the International Group of Experts on Competition Law and Policy which took place in Geneva 17–19 July 2007.

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<sup>1</sup> See United Nations Guidelines for Consumer Protection (as expanded in 1999), New York and Geneva 2001 UNCTAD and Geneva 2001, UNCTAD/DITC/CLP/Misc.21.





### **III. Review of UNCTAD's capacity-building activities**

#### **A. UNCTAD approaches for increasing and sustaining capacity**

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 arises from decades of the application of the United Nations Set on Principles and Rules on Competition, UNCTAD's model law, training and technical assistance programmes, multi-lateral trade negotiations, and investment and technology issues. Many of these activities are supported not only by the regular budget, but also by extrabudgetary funding from donor countries and bilateral sources.

At the outset, it is worth making a distinction between capacity-building and technical assistance activities. This distinction is useful for the implementation of related 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.

The issues 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 and 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 better for the poor.

As a result of the capacity-building and technical assistance activities, a deeper understanding of the issues involved in the formulation and enforcement of competition policy is gained by participating officials and experts from developing countries. Developing countries are able to benefit from international expertise for the drafting of competition laws and related enforcement guidelines. Moreover, assistance in institutional building and in the training of officials responsible for implementing national competition policy increase the ability of case handlers to carry out successful antitrust policy, investigate cases and carry out economic analysis necessary for effective enforcement. 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.

#### **B. Scope and coverage of UNCTAD's assistance**

UNCTAD technical cooperation activities aim to help developing countries, including both LDCs and countries with economies in transition, to formulate and review competition policies and legislation, and to implement competition laws by

(a) building national institutional capacity; (b) promoting the creation of a competition culture among government officials, the private sector, consumers and academics; (c) supporting regional cooperation on competition policy; and (d) helping countries and regional groups to better formulate the modalities and forms of regional cooperation on competition issues that are supportive to trade, investment and development.

Assistance is granted in accordance with requests received, the needs of countries concerned and resources available. (See box 2).

### **C. Beneficiaries of targeted programmes**

The direct beneficiaries of UNCTAD assistance include:

- (a) Government officials responsible for drafting competition legislation, as well as officials responsible for directing competition agencies and enforcing competition laws;
- (b) Government officials carrying out responsibilities related to broader competition policy matters, and regulating bodies;
- (c) The judiciary;
- (d) Government officials and diplomats in charge of regional and multilateral negotiations;
- (e) The business community;
- (f) Consumer associations; and
- (g) Researchers and academics.

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 policies that inject dynamism and efficiency in the use of resources through lower prices and the creation of employment opportunities brought about by breaking up cartels and monopolies.

Each year, numerous officials from relevant institutions in interested countries gain an enhanced awareness of practical approaches to effective competition laws and policies. Conclusions and recommendations arising from the workshops are published regularly, so as to maximize the follow-up on recommendations. In addition, numerous other policymakers 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 policymakers 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 international organizations and the International Competition Network. More importantly, UNCTAD's advocacy activities aim at promoting an enabling environment for the promotion of the enterprise sector and the reduction of the administrative burden of doing business.

**Box 2. Main types of capacity-building activities**

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

- (a) Provision of information about anticompetitive practices, their existence and possible adverse effects on the economy. This may involve a study on these practices in a specific country;
- (b) Introductory seminars and workshops on the role of competition in promoting development directed at a wide audience, including government officials and academics, as well as business and consumer-oriented circles;
- (c) Assistance to countries or regional organizations which are in the process of drafting competition legislation in the form of provision of information on such legislation in other countries or advice on drafting competition law and related legislation;
- (d) Advisory services for the setting-up or strengthening of competition authorities, which usually includes preparation of institutional framework reports, training of officials responsible for the actual control of anticompetitive practices, including the judiciary, which may involve training workshops and/or on-the-job training with competition authorities in countries having experience in the field of competition;
- (e) Seminars and workshops for countries which have already adopted competition legislation, have experience in the control of anticompetitive practices, and wish to better enforce competition legislation or consult each other on specific cases and exchange information;
- (f) Assistance to countries or regional organizations which wish to revise their competition legislation and seek expert advice from UNCTAD and competition authorities in other States, so as to amend their laws in the most effective manner possible;
- (g) Conducting voluntary peer reviews of competition law and policies of interested countries;
- (h) Assistance to developing countries, including the LDCs and economies in transition, with a view to helping them better evaluate the implications of regional and bilateral cooperation on competition issues;
- (i) Assistance to countries and regional organizations in identifying the role of competition policy in the promotion of competitiveness and development; and
- (j) Assistance in formulating appropriate sector regulations and competition policies.

The main capacity-building and technical cooperation activities of the

UNCTAD secretariat in 2004–2007 are summarized in table 1 below:

Table 1. Summary of countries' requests met with UNCTAD technical assistance in 2004–2007

| Requestor/<br>beneficiary | Activities related to drafting or<br>reviewing of laws and policies | Peer reviews and<br>follow-up | Institutional-<br>building | Advocacy<br>activities | Consumer<br>protection | Training of local<br>officials | Regional and subregional<br>cooperation activities |
|---------------------------|---|-------------------------------|----------------------------|------------------------|------------------------|--------------------------------|--|
| Afghanistan               | 2006  |                               |                            |                        |                        |                                |  |
| Angola                    | 2006  |                               |                            | 2005                   |                        | 2004, 2006                     |  |
| Azerbaijan                |   |                               |                            | 2005                   |                        |                                | 2005   |
| Benin                     |   | 2007                          |                            |                        |                        | 2006                           | 2006, 2007   |
| Bhutan                    | 2006  |                               |                            |                        | 2006, 2007             |                                |  |
| Bolivia                   | 2007  |                               |                            | 2007                   | 2007                   |                                | 2004, 2007   |
| Botswana                  | 2006, 2007  |                               |                            |                        | 2007                   | 2004, 2007                     | 2006   |
| Brazil                    |   |                               |                            | 2004, 2005,<br>2006    |                        | 2006                           | 2004, 2005, 2006                                   |
| Burkina Faso              |   | 2007                          |                            |                        |                        | 2006                           |  |
| Cambodia                  | 2006, 2007  |                               |                            | 2004                   |                        |                                |  |
| Cape Verde                |   |                               |                            |                        |                        | 2006                           |  |
| Chad                      |   |                               |                            | 2006                   |                        |                                |  |
| Colombia                  |   |                               |                            |                        |                        |                                | 2006   |
| Costa Rica                | 2006, 2007  |                               |                            | 2007                   | 2006, 2007             |                                | 2006, 2007   |
| Côte d'Ivoire             |   | 2007                          |                            |                        |                        | 2006, 2007                     | 2006   |
| Egypt                     | 2004–2005   |                               | 2006                       |                        |                        |                                |  |
| El Salvador               | 2007  |                               |                            | 2006                   | 2006, 2007             |                                | 2006, 2007   |
| Guinea-Bissau             |   | 2007                          |                            |                        |                        | 2006                           | 2006   |
| Indonesia                 |   |                               |                            |                        | 2006                   | 2004, 2006, 2007               |  |
| Jamaica                   |   | 2005                          |                            |                        |                        |                                |  |
| Jordan                    |   |                               |                            | 2006                   |                        | 2006                           |  |
| Kenya                     | 2005  | 2005, 2006                    | 2006                       |                        |                        | 2004, 2005, 2006               | 2004, 2006   |
| Korea,<br>Republic of     |   |                               |                            | 2006                   |                        |                                | 2006   |
| Laos                      |   |                               |                            | 2004, 2006             | 2006                   |                                |  |
| Lesotho                   | 2004  |                               |                            |                        |                        |                                | 2004, 2006   |
| Malawi                    |   |                               | 2005                       |                        |                        | 2004, 2005, 2006               | 2004   |
| Malaysia                  | 2006  |                               |                            |                        | 2005                   |                                | 2005   |
| Mali                      |   | 2007                          |                            |                        |                        | 2006                           | 2006   |
| Mozambique                | 2006  |                               |                            | 2005                   |                        | 2005, 2006                     |  |
| Namibia                   |   |                               |                            | 2006                   |                        |                                | 2004, 2006   |
| Nicaragua                 | 2006, 2007  |                               |                            |                        | 2007                   | 2006                           | 2006, 2007   |
| Niger                     |   | 2007                          |                            |                        |                        | 2006                           |  |
| Oman                      | 2006  |                               |                            | 2006                   | 2006                   |                                |  |
| Peru                      | 2007  |                               |                            | 2004, 2006             | 2004, 2006,<br>2007    |                                | 2004, 2007   |
| Romania                   |   |                               |                            | 2005                   |                        |                                |  |

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**Table 1. Summary of countries' requests met with UNCTAD technical assistance in 2004–2007**

| Requestor/<br>beneficiary       | Activities related to drafting or<br>reviewing of laws and policies | Peer reviews and<br>follow-up | Institutional-<br>building | Advocacy<br>activities | Consumer<br>protection | Training of local<br>officials | Regional and subregional<br>cooperation activities |
|---------------------------------|---|-------------------------------|----------------------------|------------------------|------------------------|--------------------------------|--|
| Sao Tome and<br>Principe        |   |                               |                            |                        |                        | 2006                           |  |
| Saudi Arabia                    | 2006  |                               | 2006, 2007                 |                        |                        | 2007                           |  |
| Senegal                         |   | 2007                          |                            |                        |                        | 2006                           | 2007   |
| South Africa                    | 2007  | 2007                          |                            | 2006                   |                        | 2004                           | 2004, 2006   |
| Saint Lucia                     |   |                               |                            | 2005                   | 2005, 2006             |                                | 2006   |
| Sudan                           | 2006  |                               |                            | 2004                   |                        |                                | 2004   |
| Swaziland                       | 2006  |                               |                            |                        |                        |                                | 2007   |
| Timor-Leste                     |   |                               |                            |                        |                        | 2006                           |  |
| Tanzania, United<br>Republic of |   |                               |                            | 2004                   |                        | 2004                           | 2004   |
| Togo                            |   | 2007                          |                            | 2007                   |                        | 2006, 2007                     | 2006   |
| Trinidad and Tobago             | 2007  |                               | 2006                       | 2007                   |                        |                                |  |
| Tunisia                         |   | 2006                          |                            |                        |                        |                                |  |
| Turkey                          |   |                               |                            | 2006                   |                        |                                | 2006   |
| Uganda                          | 2006  |                               |                            |                        |                        | 2005                           |  |
| Ukraine                         |   |                               |                            | 2004                   |                        |                                | 2004   |
| Viet Nam                        | 2004  |                               |                            |                        |                        |                                |  |
| Zambia                          |   |                               |                            |                        |                        | 2004                           | 2004   |
| Zimbabwe                        |   |                               |                            |                        |                        | 2004                           | 2004   |
| CARICOM*                        | 2006  |                               |                            |                        | 2005, 2006             | 2005                           | 2005, 2006   |
| COMESA**                        | 2004, 2005  |                               |                            |                        |                        |                                | 2004, 2005   |
| OECS***                         | 2006  |                               |                            |                        |                        |                                | 2006   |
| SACU****                        | 2004–2007   |                               |                            |                        |                        |                                | 2004–2007  |
| WAEMU*****                      |   |                               |                            |                        |                        | 2006, 2007                     | 2006, 2007   |

\* Caribbean Community.

\*\* Common Market for Eastern and Southern Africa.

\*\*\* Organization of Eastern Caribbean States.

\*\*\*\* Southern African Customs Union.

\*\*\*\*\* West African Economic and Monetary Union.

## **D. Activities extended to individual countries**

During 2004–2007, UNCTAD continued its demand-driven efforts to assist interested countries in preparing and adopting competition law and policies. It provided technical assistance related to the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation, as well as in areas contributing to a better understanding of the issues involved, and building national institutional capacity to enforce effective competition legislation. UNCTAD also assisted Governments in identifying the role of competition policy in development, enforcement implications at the national, regional and international levels, as well as strategies for international cooperation in this field. The main areas of UNCTAD's technical assistance were as follows:

### ***1. Competition advocacy***

UNCTAD's various advisory and training activities were combined with or provided through different seminars, workshops, consultative meetings and activities directed at stakeholders, including government officials, academics and regulators, as well as business and consumer representatives. These activities contribute to raising awareness about the role of competition and promoting a competition culture. Thus, an intensive course on competition law and policy for development and a national workshop on the role of competition law and policy in development were held by UNCTAD in cooperation with the Ministries of Commerce of Cambodia and Laos, in Phnom Penh 21–23 July and Vientiane 26–28 July 2004. UNCTAD organized a national seminar on competition law and policy in Romania, together with the Romanian Competition Council and the Chamber of Commerce and Industry of Romania 16–17 March 2005 in Bucharest. A National Competition Seminar was co-hosted by UNCTAD and the Ministry of

Commerce from 24 to 26 January 2006 in Ndjamena (Chad). Consultations were held with government officials on the benefits of adopting a competition law, and UNCTAD provided comments on a draft competition bill, drawing on the model law and its commentaries. In Peru, UNCTAD held a seminar on status of competition in selected sectors (financial services, insurance, health and energy) in cooperation with the Peruvian competition authorities from 8 to 9 February 2006 in Lima. In Jordan, the Second National Competition Conference was organized jointly with the Jordanian Competition Directorate and the (Republic of) Korea International Cooperation Agency (11–12 December 2006), while the workshop “Abuse of dominance and anti-competitive agreements” was co-hosted with the Jordanian Competition Directorate from 13 to 14 December 2006 in Amman. Within the framework of the Competition and Consumer Protection Policies for Latin America) COMPAL programme, advocacy seminars on competition were run in 2006 in El Salvador.

A Competition Law and Policy Workshop and Meeting was co-organized by UNCTAD and the Ministry of Trade and Industry 12–14 June 2007 in Port of Spain, Trinidad and Tobago. In the course of the meeting, consultations were held with government officials on the content of and the compliance with the Fair Trading Act 2006, as well as on the benefits of establishing a Competition Commission. Basic concepts and principles of handling competition cases were discussed with representatives of the local judiciary. During the COMPAL dissemination event held on 7 March 2007 in San Jose, Costa Rica, major COMPAL outputs, including sectoral studies and country-specific consumer protection strategies prepared in 2005 and 2006, were disseminated, together with COMPAL studies on the distribution sector, carried out with the support of the International Development Research Centre

(IDRC) of Canada. In La Paz, Bolivia, UNCTAD held a national seminar on the implementation of the COMPAL programme on 3 October 2007.

## ***2. Assistance in the preparation of national competition laws and policies***

Within the framework of efforts to help countries draft and/or review their competition legislation, two workshops for review of the draft competition law with representatives of government departments and of the private sector were jointly organized by UNCTAD and the Ministry of Trade of Viet Nam 19–20 February 2004 in Hanoi and 23–24 February 2004 in Ho Chi Minh City. A workshop in Ho Chi Minh City also reviewed the situation in various sectors, with a view to identifying existing and possible anticompetitive practices and their implications for the draft competition bill. A national competition workshop aimed at finalizing with government officials the country's economic mapping and legal inventory as well as at formulating a competition policy framework was co-organized by UNCTAD and the Ministry of Trade and Industry of Lesotho on 11 August 2004 in Maseru. A national dissemination seminar on the draft competition policy framework document was jointly organized by UNCTAD and the Ministry of Trade, Industry, Cooperatives and Marketing of Lesotho 21–22 June 2005 in Maseru. The competition policy was finalized and passed by Parliament in July 2007. A stakeholders' workshop on the review of Kenya's competition law and policy was held by UNCTAD in cooperation with the Monopolies and Price Commission of Kenya on 25 February 2005 in Nairobi. In 2004–2005, UNCTAD also assisted Egypt in drafting of the executive regulations for the application of the competition law. In 2006, Oman was assisted in preparation of a policy framework for competition and consumer protection legislation, followed by a national competition advocacy workshop.

The eight WAEMU members were assisted with the implementation on common competition rules (see section D.1 on competition advocacy). Thanks to UNCTAD's assistance, links were created between the WAEMU Commission and member States in the fields of effective enforcement of community competition rules, identification of areas of concern for national competition authorities and sector regulators, and the need to conduct an in-depth peer review of competition policy for WAEMU and its member States. In this connection, four regional seminars on WAEMU community competition rules were held in 2006, in (a) Abidjan (Côte d'Ivoire) 28–30 June; (b) Lomé (Togo) 7–9 August; (c) Bissau (Guinea-Bissau) 2–5 October; and (d) Cotonou (Benin) 22–24 November. These seminars were organized jointly with the WAEMU secretariat and were designed to assist WAEMU members in strengthening their capacities to enforce the community competition rules. In 2007, UNCTAD organized with the WAEMU secretariat regional meetings held 26–27 March 2007 in Cotonou, Benin. The first of these meetings discussed the main components of the UNCTAD peer review report on competition policy for WAEMU, and the second assessed the work undertaken in 2006 within the framework of the implementation of the UNCTAD/WAEMU capacity-building project on competition policy. A regional seminar on common competition rules of WAEMU was also held 10–14 December 2007 in Dakar (Senegal). This seminar was also organized jointly with the WAEMU secretariat and was designed to assist the WAEMU members in strengthening their capacities to enforce the community competition rules.

Assistance was provided to Botswana with the preparation of a competition bill via a consultative meeting for stakeholders that took place from 1 to 3 March 2006. A second meeting (15–16 June 2006) was held

between members of the reference group, Ministry of Trade, industry officials, the Attorney General's Office and stakeholders to discuss the draft Competition Bill 2006 and the corresponding application guidelines. The draft bill was subsequently finalized and submitted to the National Assembly in November 2006. In Cambodia, a consultative meeting to review the competition bill was organized by UNCTAD together with the Ministry of Commerce from 3 to 5 July 2006 in Phnom Penh, and the revised draft was submitted to the Ministry of Commerce in September 2006. In Mozambique, in 2006 UNCTAD prepared two reports – a competition policy framework report and an economic and legal analysis of the status of competition as well as a competition policy framework that served as a basis for the formulation of a Competition Policy Terms of Reference for the preparation of a Competition Law. UNCTAD also provided advice regarding the draft competition legislation of Afghanistan and Sudan.

A meeting to discuss the newly adopted competition law and its application guidelines for Saudi Arabia was held in Riyadh from 25 to 29 September 2006. In this connection, UNCTAD provided commentaries on the law and made proposals for the preparation of secondary legislation. UNCTAD continued its ongoing assistance to Malaysia with the preparation of the draft competition law and related application guidelines. The final draft law was reviewed from 15 to 18 August 2006 at a meeting in London with the consultants and the representatives of the Government. Assistance to Swaziland with the preparation of the competition regulations and the fine-tuning of the final version of the competition law was provided in the summer of 2006. A review meeting of the report on the status of competition and a stakeholders' meeting were held in 2006 in Uganda.

In 2007, assistance was provided to COMPAL beneficiary countries (Bolivia, Costa Rica, El Salvador, Nicaragua and Peru) within the framework of an academic course on competition and consumer protection laws, organized in San Jose, Costa Rica 8–15 March 2007. In Cambodia, consultations were held between UNCTAD and the Ministry of Commerce and a round table was organized on 13 June 2007 in Phnom Penh for representatives of the Government and the private sector to assist Cambodia to design and adopt the national competition law. Assistance was also provided to Botswana with the preparation of a competition bill via a workshop for stakeholders to discuss its final draft that took place on 1 November 2007 in Gaborone.

**Box 3. Relationship between competition law and other development policies**

In 2006, UNCTAD assistance to Botswana, Cambodia and Mozambique with the preparation of a competition policy framework, a first step towards the formulation of competition law and policy, helped the three Governments to appreciate the interface between competition law and policy and other government policies, including privatization, regulatory reforms, trade liberalization, investment regimes and the need to address development and poverty reduction concerns.

In addition, this capacity-building provided for the formulation of national competition laws, drew attention to the need to ensure coherence between the creation of a competition culture and other objectives pursued by the Government, and underscored the importance of putting in place well-functioning commercial courts and mechanisms for judicial review for the effective enforcement of competition law.

**3. Training of competition case handlers**

Within the framework of training activities for competition case handlers, a course on the implementation of competition law for high-level officials and competition experts was held by UNCTAD in cooperation with Ministry of Finance of Angola 26–30 January 2004 in Luanda. A national workshop on competition policy for competition experts was organized by



UNCTAD and the Ministry of Commerce and Industry of Botswana 5–6 February 2004 in Gaborone. Together with the Commission for the Supervision of Business Competition of Indonesia, UNCTAD held a training course for judges on issues related to competition law and policy 25–27 November 2004 in Jakarta. An intensive training course on the implementation of competition law was organized in Pretoria 1–7 December 2004 by UNCTAD, in cooperation with the Government of South Africa, and with German financial support. A training course on competition law and policy was co-organized by UNCTAD and the Ministry of Trade and Private Sector Development of Malawi 9–11 December 2004 in Blantyre.

A training course on investigation tools for case handlers was held by UNCTAD in cooperation with the Monopolies and Price Commission of Kenya 1–4 March 2005 in Nanyuki (Kenya). Two national stakeholder meetings on competition law and policy were held by UNCTAD in cooperation with the Ministry of Industry and Trade of Mozambique in Maputo 24–25 June and 22–23 August 2005. A national induction seminar for competition commissioners was co-organized by UNCTAD and the newly established Competition and Fair Trading Commission of Malawi in Blantyre, 25–26 August 2005. Together with the Ministry of Tourism, Trade and Industry of Uganda, on 4 October 2005 in Kampala, UNCTAD held a stakeholders workshop to discuss the Uganda sector competitiveness study. A training course on the application and formulation of competition policy was organized in Maputo 3–7 October 2005 in cooperation with the Ministry of Industry and Trade of Mozambique.

A judicial seminar was held in cooperation with the Commission for the Supervision of Business Competition and the Supreme Court of Indonesia 13–14 June 2006 in Bali (Indonesia). A national seminar

for judges and other adjudicators was co-hosted with the Ministry of Trade and Private Sector Development from 27 to 28 March 2006 in Mangochi (Malawi). In addition, three national workshops were co-hosted with the Malawi Competition and Fair Trade Commission from 19 to 22 September 2006 in Lilongwe and Blantyre for parliamentarians, sector regulators and professional associations. Their aim was to clarify the objectives of the competition law and the ways the commission intends to apply the law. A course on competition law and policy for government officials was given in 2006 in Angola. In WAEMU, five national training seminars on the implementation of the WAEMU common competition rules were staged in 2006 in cooperation with the secretariat of WAEMU in five member States: (a) 29 May–2 June, Niamey (Niger); (b) 5–9 June, Dakar (Senegal); (c) 3–7 July, Ouagadougou (Burkina Faso); (d) 11–15 September, Bamako (Mali); and (e) 20–21 November, Cotonou (Benin).

A workshop on competition law and policy for new staff of the Indonesian competition authority (KPPU) and a round table discussion on competition law and policy were held in Jakarta (Indonesia) respectively on 24 and 25 April 2007. They were co-organized by UNCTAD, KPPU and GTZ of Germany. A study tour for judges of the Supreme Court of Indonesia to a number of competition-related institutions in Germany was co-organized by UNCTAD and GTZ 7–11 May 2007 within the framework of a programme on the Implementation of Competition Law of Indonesia. From 21 to 23 May 2007, a study tour for a delegation from Botswana (including members of the law drafting committee) to the Swedish and Swiss competition authorities was organized. The same month, another study tour to the Swiss competition authority was also organized for a WAEMU delegation, headed by a WAEMU commissioner. A study tour for

competition officials from Saudi Arabia was organized in February and in June 2007 respectively to Swiss and German competition authorities.

A benchmarking exercise for the Botswana officials in the competition authorities of South Africa and Zambia was held 5–6 and 8–9 November 2007 respectively in Pretoria and Lusaka. It was intended to build capacity towards the development of institutional structure for the establishment of a competition authority.

**Box 4. Study tours for officials from Botswana**

In May 2007, UNCTAD organized study tours for members of the Ministry of Trade and Industry and the Attorney General's office of Botswana to the Swedish and Swiss competition authorities. These study tours served the purpose of improving the understanding of Botswana's officials in the different aspects of work of a competition authority, namely its structure, functions and competences, as well as the role that these authorities play in promoting consumer welfare and competitive markets. During these study tours, the members of the Botswana delegation had an opportunity not only to benefit from experiences accumulated by Swedish and Swiss competition agencies in their work, but also to gain the necessary experience for finalizing the draft of a national competition law, especially in respect to the elements of the institutional structure and powers of a future national competition authority. Botswana is in the process of adopting competition legislation and envisages the establishing of an operational competition authority in the first half of 2008.

In WAEMU, national training seminars on the WAEMU common competition rules were organized in 2007 in cooperation with the secretariat of WAEMU in (a) 24–28 September in Abidjan (Côte d'Ivoire); and 29 October–2 November in Lomé (Togo).

#### **4. Institution-building**

UNCTAD assists newly established competition agencies through institution-building. In this area, UNCTAD has cooperated with the United States Department of Commerce's Commercial Law Development Programme in organizing an intensive training course for the recently recruited staff of the Egyptian Competition Agency, which was held from 12 to 14 September 2006 in Cairo. Saudi Arabia was assisted with the preparation of a report on the institutional framework for the establishment of a competition agency and the organization of a workshop for the newly-appointed commissioners to review the report and prepare internal proceedings. In 2006, assistance was also provided to Kenya with the internal restructuring of its competition Commission. In Trinidad and Tobago, in 2006, UNCTAD began work on the institutional framework for establishment of the Fair Trade Commission. This report was later submitted to the Government and a framework for the establishment of a Competition Commission and other related issues were discussed at a workshop co-organized by UNCTAD and the Ministry of Trade and Industry 12–14 June 2007 in Port of Spain. From 12 to 15 February 2007, UNCTAD organized a visit to Switzerland of a delegation from the Saudi Arabia Competition Commission, which was being established. During the meeting with the Swiss Competition Commission, trilateral cooperation capacity-building activities for a Saudi competition authority were discussed and agreed upon. On 11 September 2007 in Riyadh, UNCTAD participated in the national stakeholder meeting for the launching of the Saudi Competition Commission.

**Box 5. Cooperation with German development agency GTZ and the German authorities regarding competition policy in Indonesia**

In April 2007, UNCTAD carried out a training workshop with the Indonesian competition authority KPPU as well as a seminar with the judges of the Supreme Court of Indonesia and representatives of district courts. Both events were the result of close cooperation between UNCTAD and the GTZ, which co-hosted these two events. Another step in the cooperation between UNCTAD and Germany was a study visit of the Indonesian Supreme Court judges to the German Supreme Court, to the German competition authority Bundeskartellamt, the German Federal Network Agency, and other German authorities active in the enforcement of competition law and policy in May 2007. This event was organized by GTZ and benefited from very active participation of the German authorities.

**5. Consumer protection**

In the area of consumer protection, cooperation with Consumer International's Regional Office for Asia and the Pacific (CIROAP), an Asian Conference on Consumer Protection and the United Nations Millennium Development Goals was held on 23 August 2005 in Kuala Lumpur, Malaysia.

Two national workshops on consumer protection issues were held by UNCTAD together with the Ministry of Trade and Industry of Bhutan from 1 to 3 February and from 28 to 29 June 2006 in Paro, Thimphu and Chukha Dzongkhag (Bhutan). In addition, two national consultative meetings to review the Consumer Protection Law and unfair trade practices took place from 26 to 29 June 2006 in Thimphu and Chukha Dzongkhag (Bhutan). At the international level, UNCTAD cooperated with CIROAP in preparing a study on "Alternative dispute resolution systems for consumer protection cases". The report was presented at a conference held in Jakarta from 5 to 7 November 2006. In the context of assisting the Caribbean countries with the

enforcement of national and regional consumer protection issues, a regional Workshop on Investigating Consumer Complaints for CARICOM member States was held in Saint Lucia from 27 to 29 November 2006. Within the framework of the COMPAL programme, in 2006 a consumer protection workshop was organized in El Salvador and a decentralized enforcement system of consumer protection was formulated in Peru. COMPAL beneficiary countries (Bolivia, Costa Rica, El Salvador, Nicaragua and Peru) were assisted within the framework of an academic course on competition and consumer protection laws, organized in San Jose, Costa Rica 8–15 March 2007. Two national workshops on consumer protection issues, including the presentation of the national draft Consumer Protection Bill, were held by UNCTAD together with the Ministry of Economic Affairs on 5 November 2007 in Mongar Dzongkhag and on 8 November 2007 in Gelephu Dzongkhag (Bhutan). Assistance was also provided to Botswana with the review of the Consumer Protection Act via a workshop for stakeholders that took place on 2 November 2007 in Gaborone. In addition, a Training Course on Competition and Consumer Protection for government officials of Botswana was organized by UNCTAD in Francistown 4–7 December 2007.



*Training on consumer protection issues in Laos*

**Box 6. Botswana: example of all-inclusive approach**

- **2000:** Starting point of the process of elaborating competition law and policy: a consultative meetings with the Government and stakeholders to discuss the need for a competition policy and law for Botswana, and agreement to undertake an economic mapping and a legislative inventory;
- **2004:** Finalization and adoption of the two comprehensive reports on economic mapping and legislative inventory;
- **2005:** Competition policy document prepared and published in July;
- **2006:** Lay draft competition law prepared and finalized together with a suggestion on the institutional framework and a note on policy clarification points;
- **2007:** Official drafting of the competition bill, discussed and finalized in November; and
- **2008:** Enactment of the law and preparation of regulations for the application of the law.

**Other recent activities in Botswana**

**November 2007:** A stakeholders meeting to discuss the review of the consumer protection act, 1998 was held in Gaborone. The act is being reviewed in the light of the fact that the competition policy document stipulates that the administration of the consumer act will be done under the framework of the competition authority. In addition, the act needs to be revised to strengthen certain provisions, and also include new ones to cover some aspects of consumer protection that are missing. The drafting of the revised consumer protection law will start in January 2008, taking into consideration the comments and views expressed during the stakeholders meeting.

**December 2007:** A training course on the application of competition law and policy for government officials will take place in Francistown, Botswana. This course is a part of a capacity-building initiative in preparation of the enforcement of the competition law.

Another parallel activity being undertaken is the preparation of application regulations for the competition law once it is enacted. The drafting of the regulations is starting in January 2008.

**6. Peer reviews and follow-up**

In addition, and in order to ensure coherence between overall governmental approaches to privatization and liberalization of trade and investment regimes, UNCTAD initiated ad hoc voluntary peer reviews on competition law and policy, which provide an ideal forum to review how reforms in the field of competition can promote development and ensure that markets work for the poor. In this connection, in 2005–2006, UNCTAD held three voluntary peer reviews (for Jamaica, Kenya and Tunisia), which formed the basis for an exchange of views and best practices, particularly on the role which competition law and policy can play in unlocking the benefits of trade liberalization and reforms. Voluntary peer reviews on competition law and policy, namely for Jamaica and Kenya, were held during the Fifth United Nations Conference on Competition held 14–18 November 2005 in Antalya (Turkey). To assist the Kenyan Monopolies and Prices Commission in disseminating the results and implementing the recommendations of this peer review,

two consultative shareholders' workshops were co-organized by UNCTAD and the Commission, 5–6 June 2006 in Nairobi and 8–9 June 2006 in Mombasa. Also, study tours in four different countries were conducted within the framework of the review of the Restrictive Trade Practices, Monopolies and Price Control Act. In order to promote South–South cooperation and the exchange of best practices, three of these study tours for Kenyan competition officials were conducted in the Zambian, Indonesian and South African competition agencies, and one visit was organized to the United Kingdom Office of Fair Trading and the Competition Commission. A resource centre at the Monopolies and Prices Commission in Nairobi was also established, as recommended in the UNCTAD peer review. Three sectoral studies on status of competition have been also launched.

The seventh session of the Intergovernmental Group of Experts on Competition Law and Policy (Geneva, 31 October–2 November 2006) provided a framework within which the Voluntary Peer

Review on Competition Law and Policy of Tunisia was held. It resulted in several recommendations regarding how the application of the legislation in that country might be made more effective.

During the eighth session of the Intergovernmental Group of Experts on Competition Law and Policy (Geneva, 17–19 July 2007), UNCTAD held a voluntary peer review on competition law and policy of WAEMU and its eight member States. It was the first-ever review of the regional grouping's competition policy, which highlighted the challenges and opportunities which developing countries face in strengthening their regional cooperation and integration schemes. The peer review resulted in a range of recommendations regarding how the application of the legislation at regional and national levels might be made more effective, as well as in an UNCTAD regional project to build capacity for enforcement and advocacy of competition policy at the regional and national levels. Discussions are also under way on assisting the Competition Appeal Court of South Africa with conducting an internal review. In this context, consultations between the Competition Appeal Court and an UNCTAD team were held in Pretoria 19–20 July 2007. They covered a number of issues related to the preparation of the review, including the adoption of detailed terms of reference.

### ***7. Examples of the impact of introducing competition law and policy on the economy of developing countries***

It is difficult to measure the direct impact of competition law and policy on the economy. However, indirect measures such as changes in government policies and regulations which can create an enabling environment for business to prosper, for consumers to benefit and for markets to work for the poor, can be indicative of the improvements in business environment through reducing the cost of doing business

and of promoting consumer welfare. The following examples illustrate some of the recent changes in countries where UNCTAD has provided assistance on competition law and policy and where noticeable changes have been registered:

**Kenya** launched an ambitious licensing reform programme, which has led to the elimination of 110 business licenses and the simplification of eight, reducing the time and cost of obtaining licenses and registering a company. At the end of the programme, more than 600 of the 1,300 licenses will be simplified or eliminated. The peer review of the competition law in UNCTAD and the amendment of the Monopolies and Prices Control Act led to the introduction of competition among land valuers (allowing private practitioners) and to a faster turnaround – one week instead of one month for a land valuation. The private credit bureau also deepened its database coverage by adding retailers and utility companies as providers of information.

In **Malawi**, the commercial division of the Blantyre high court started hearing cases as of May 2007, and two judges specializing in commercial cases have been appointed. These developments also benefited from UNCTAD training in competition law and policy.

**Mozambique** passed a new commercial code, which replaced the 1888 commercial legislation. The new code implements modern corporate governance rules and strengthens the rights and duties of minority shareholders. It also better identifies the liabilities of the board of directors. This code also modernized the business registration process, cutting provisional registration and making notaries optional. These reforms are a complement to the adoption of a competition policy framework and the preparation of a competition law under an UNCTAD project. The Maputo court now has two specialized judges in charge of commercial matters and new court

rules which should make the judicial system more efficient.

**Indonesia** introduced a simplified process and new temporary permits that allow construction to begin while the full permit is being approved, cutting the time to obtain a building permit from 49 to 21 days. The minimum loan threshold was lowered from 50 million Rupiah (\$ 5,460) to zero in the public credit registry, increasing coverage of loans by 150 per cent. These reforms are part of the competition policy which the KPPU advocates within government departments and Parliament. UNCTAD technical assistance to Indonesia covers training for the KPPU, Supreme Court and regional judges.

**Malaysia** recently adopted, with the assistance of UNCTAD, a competition policy framework which serves as a basis for a new competition law. It also sped checking and registration of business, thus reducing delays by a week. Malaysia reduced the profit tax by 1 per cent (with another 1 per cent reduction planned by 2008) and simplified online tax filing to reduce the time burden by 24 hours.

**Viet Nam**, which benefited from UNCTAD assistance in the preparation of the consumer protection decree and the competition law, now allows businesses to use general description of assets and obligations in collateral agreements, as well as to use future assets to secure a debt or obligation. Viet Nam adopted new securities and enterprise laws. The securities law sets up a new securities exchange and trading centre. The enterprise law mandates investor involvement in major company actions and increases disclosure for related-party transactions. In addition, it introduces fiduciary duties for directors.

**Costa Rica and El Salvador**, beneficiaries of the UNCTAD COMPAL programme, made major reforms. **Costa Rica** allowed traders to directly transmit customs declarations electronically and

improved the capacity of the customs services, resulting in reduced cross-border trade by six days for imports and seven days for exports. **El Salvador** established a one-stop shop for importers, thereby facilitating the documentation and approval process.

**Trinidad and Tobago**, which UNCTAD assisted in the preparation of institutional framework for the competition law, now includes utility companies as providers of information to credit bureaus, thus increasing the credit information index. In addition, the corporate income tax rate decreased from 30 to 25 per cent.

**Egypt**, which UNCTAD has assisted in recent years in preparing and adopting a competition law, cut the minimum capital required to start a business from LE 50,000 to LE 1,000, and halved start-up time and cost. Egypt also reduced the cost of registering property from 3 per cent of the property value to a low fixed fee. New one-stop shops were launched for traders at the ports, cutting the time to import by seven days and the time to export by five days. Egypt also reduced the cost of dealing with licences.

**Tunisia**, which benefited from UNCTAD technical assistance, including a peer review of its competition law in 2005, computerized the files in its property registry, reducing the time needed to register a property from 57 to 49 days. Tunisia also reduced the corporate profit tax to 30 from 35 per cent and enhanced its credit information by lowering the minimum loan requirement at its public registry from D20,000 to zero.

**Bhutan**, which receives UNCTAD assistance in its accession process to the World Trade Organization (WTO), as well as capacity-building in the area of consumer protection and unfair trade practices, made it easier for entrepreneurs to start limited liability trading companies by eliminating two procedures – name approval and location clearance – and increasing

efficiency at the Registrar of Companies. The time to start operating a business in Thimphu dropped from 62 to 48 days. In addition, on 27 June 2007, the National Assembly endorsed the Land Bill of Bhutan 2007 as well as the Consumer Protection Bill. The establishment of an anti-corruption commission will introduce more control in public procurement.

### **E. Regional and subregional activities**

During 2004–2007, UNCTAD's technical cooperation and capacity-building activities were increasingly provided within the framework of regional and subregional groupings. Thus, a regional seminar on strengthening institutional and capacity-building in the area of competition and consumer policy for Latin American countries was held 22–24 March 2004 in Lima, Peru. It considered the cases of Bolivia and Peru and was organized by UNCTAD together with the Peruvian Competition Agency, the Swiss Competition Agency and the Swiss State Secretariat for Economic Affairs. A regional workshop on competition law and policy for Arab country members of the Organization of the Islamic Conference was co-organized by UNCTAD and the Islamic Development Bank 27–28 April 2004 in Khartoum, Sudan. A competition policy, competitiveness and investment conference was held 10–12 May 2004 in Dar es Salaam, United Republic of Tanzania, for participants from countries of Southern and Eastern Africa. The conference was co-organized by the World Bank and UNCTAD, and co-financed by the European Commission. An international conference on competition policy for countries in transition was held in Kiev, Ukraine 18–19 May 2004. It was organized by UNCTAD in cooperation with the Antimonopoly Committee of Ukraine and was attended by representatives of Commonwealth of Independent States countries, and several East European and Baltic states.

Taking advantage of the UNCTAD XI ministerial conference, June 2004 in San Paulo, Brazil, an interregional seminar was held on the role of competition policies in the promotion of competitiveness and development. It provided an opportunity for an exchange of views between government officials involved in competition issues from Latin America, the Caribbean and other countries, and aimed at positioning member countries with regard to the role of competition policy in the promotion of competitiveness and development. At the request of seven African countries – Kenya, Zambia, Malawi, Zimbabwe, the United Republic of Tanzania, Namibia and South Africa – from 5 to 12 October 2004, UNCTAD, in cooperation with the Government of Zambia, held in Livingstone a seminar for judges and public prosecutors on the enforcement of competition law, as well as a training course on investigation and evidence-gathering on competition cases. An international conference on the contribution of competition policies to the achievement of the United Nations Millennium Development Goals in countries in transition was held in Baku, Azerbaijan, 27–28 September 2005. It was co-organized by UNCTAD with the Department of Antimonopoly Policy of the Ministry of Economic Development of Azerbaijan. In 2005, assistance was also provided to a number of member States of the Association of South-East Asian Nations (ASEAN) in preparation and coordination of the ASEAN regional meeting on conversion to common competition policy.

In cooperation with the International Development Research Centre (IDRC) of Canada, UNCTAD organized a series of regional cooperation seminars in Turkey, the Republic of Korea, South Africa and Brazil on competition law and policy as a tool for development and integration. These included the following events: (a) the International Conference on Competition Provisions in Regional Trade Agreements, co-organized with Yeditepe University,



31 July–1 August 2006 in Istanbul (Turkey); (b) the Eleventh International Workshop on Competition Policy organized by UNCTAD and the Korea Fair Trade Commission in Gyeongju City, 6–7 September 2006 (Republic of Korea); (c) the seminar Competition Provisions in Regional Trade Agreements held by UNCTAD and the Trade Law Centre for Southern Africa (Tralac) in Cape Town, South Africa on 4 October 2006; and (d) the Seminar on Competition Law and Policy in Latin America, organized by UNCTAD and the Fundação Getulio Vargas School of Law, 30 November–1 December 2006 in São Paulo, Brazil. The aim of these seminars was to disseminate widely the findings of the UNCTAD/IDRC publication entitled *Competition provisions in regional trade agreements: how to assure development gains to member States and regional trade groupings*. An inception seminar took place at the Graduate School for International Studies on 24 May 2006 in Geneva. As a result of these dissemination activities, the new UNCTAD/IDRC publication *Implementing competition provisions* was prepared. It was presented at the Ad Hoc Expert Group Meeting on the Development Interface between the Multilateral Trading System and Regional Trade Agreements organized by UNCTAD 15–16 March 2007 in Geneva. The publication was also presented at the regional workshop for sub-Saharan African Countries, jointly organized by UNCTAD and the United Nations Development Programme (UNDP) in Brussels, 13–14 July 2007 on Economic Partnership Agreements: Investment, Competition and Public Procurement Issues. In the context of the European Union–African, Caribbean and Pacific countries’ economic partnership agreement negotiations, the workshop aimed at clarifying the coverage of competition issues within the WTO system, as well as giving an opportunity for sub-Saharan African negotiators from the various economic partnership agreement configurations to

exchange views and lessons learnt on the treatment of these issues. The publication was also presented and commented at the Tralac Annual Conference held 20–21 September 2007 in Cape Town, South Africa.

COMPAL is a regional programme covering Bolivia, Costa Rica, El Salvador, Nicaragua and Peru, which is funded by the Swiss Government. Following the need-assessment phase (2003–2004) and since its inception in 2005, the COMPAL programme (a) assisted the beneficiary countries by producing in-depth sectoral studies on the status and conditions of competition in key markets in Bolivia, El Salvador, Nicaragua and Peru; (b) provided assistance with the adoption of the Competition Law in Nicaragua; (c) helped prepare legal reforms as well as competition and consumer protection guidelines in Costa Rica; and (d) co-organized academic programmes with local universities in Nicaragua and Costa Rica. The programme also contains an internship programme for competition officials from participating countries, which is organized at the Swiss Competition Agency. In addition, study tours to Mexico, Peru and Chile were run for the benefit of Nicaragua. A monitoring meeting of the COMPAL programme for the Central American beneficiary countries was held in cooperation with the Ministry of Industry and Trade from 30 to 31 January 2006 in Managua (Nicaragua). The second monitoring meeting of the COMPAL programme for the beneficiary countries was organized in cooperation with the Comisión para la Promoción de la Competencia (COPROCOM) and the consumer protection agency of Costa Rica 5–6 March 2007 in San Jose. It was followed by a workshop aimed at dissemination of the sectoral studies carried out under the COMPAL and IDRC (Canada) project on the distribution sector as well as an academic course on competition and consumer protection laws. UNCTAD also held a seminar on the implementation of COMPAL (La Paz,



3 October 2007) and discussions with the Bolivian National Coordination and Consultative Group established to undertake COMPAL activities.

The eight WAEMU members were assisted with the implementation on common competition rules (see section D.1 on competition advocacy). Thanks to UNCTAD's assistance, links were created between the WAEMU Commission and member States in the fields of effective enforcement of community competition rules, identification of areas of concern for national competition authorities and sector regulators, and the need to conduct an in-depth peer review of competition policy for WAEMU and its member States. In this connection, four regional seminars on WAEMU community competition rules were held in 2006 in (a) Abidjan (Côte d'Ivoire) 28–30 June; (b) Lomé (Togo) 7–9 August; (c) Bissau (Guinea-Bissau) 2–5 October; and (d) Cotonou (Benin) 22–24

November. These seminars were organized jointly with the WAEMU secretariat and were designed to assist WAEMU members in strengthening their capacities to enforce the community competition rules. In 2007, UNCTAD organized with the WAEMU secretariat regional meetings held 26–27 March 2007 in Cotonou, Benin. The first of these meetings discussed the main components of the UNCTAD peer review report on competition policy for WAEMU; the second assessed the work undertaken in 2006 within the framework of the implementation of the UNCTAD/WAEMU capacity-building project on competition policy. A regional seminar on common competition rules of WAEMU was also held 10–14 December 2007 in Dakar (Senegal). This seminar was also organized jointly with the WAEMU secretariat and was designed to assist WAEMU members in strengthening their capacities to enforce the community competition rules.

#### **Box 7. WAEMU competition rules and policies**

The West African Economic and Monetary Union (WAEMU), created in 1994 by the Dakar Treaty, is a regional organization comprising eight West African countries, namely Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.

WAEMU was initially conceived as a monetary union. Subsequently, member States decided to strengthen their monetary cooperation by strengthening competitiveness in economic and financial activities in the member States within the framework of an open, competitive market and a rationalized and harmonized legal environment. One of the objectives was creation of a common market based on free movement of people, goods, services, capital and the right of residence, as well as a common external tariff (CET) and a common trade policy. In particular, in the context of common market, it seeks to improve the free movement of goods by means of a customs union and support of sectoral policies. In bringing about this common market, WAEMU embarked on a series of reforms, one of which consisted of the adoption of community competition rules in May 2002.

The Union's competition policy is intended, above all, to protect the consumer, promote economic efficiency, combat inflation and promote international competitiveness. The Union also seeks to influence market structures and distribute economic power more widely while facilitating integration in regional and globalized economies.

The WAEMU competition rules prohibit anticompetitive agreements among firms which harm consumers (cartels), abuse of a dominant position, anticompetitive mergers and state aid that distort competition in the common market. These provisions are contained in articles 88, 89 and 90 of the Treaty. The WAEMU Court of Justice conferred to the WAEMU Commission exclusive authority to implement the Treaty provisions concerning competition. Accordingly, national laws are inoperative in areas covered by community rules.

In 2006–2007 UNCTAD provided various types of technical assistance to all members of WAEMU (see main text), including in the areas of advocacy activities and training of stakeholders at national and regional levels. Also, in 2007 a voluntary peer review of the WAEMU competition rules was conducted by UNCTAD. The peer review recommended that further actions are required to: (a) strengthen the culture of competition; (b) adapt and clarify some of the basic rules; (c) define the competencies of competition authorities at both the national and regional levels; and (d) adapt procedures for the enforcement of the regional competition rules.

Following a review meeting on a possible framework for cooperation among SACU member States on anticompetitive practices, held 9–10 August 2004 in Maseru (Lesotho), UNCTAD undertook a feasibility study and prepared a report on regional cooperation on competition policy for SACU member States. In 2006–2007, UNCTAD continued its assistance to SACU in the preparation and operationalization of the SACU agreement on provisions on competition and unfair trade practices. A series of national consultative and information-gathering workshops for the development of the SACU Cooperation Agreement on Competition Policy Enforcement and an Annex on Unfair Trade Practices (Art. 40 and 41 of SACU agreement) were co-organized by UNCTAD and the SACU secretariat in (a) Windhoek (Namibia), 11–12 December 2006; (b) Maseru (Lesotho), 14–15 December 2006; (c) Gaborone (Botswana) 18–19 December 2006; (d) Pretoria (South Africa) 26–27 February 2007; (e) Windhoek (Namibia), 1–2 March 2007; and (f) Manzini (Swaziland), 5–6 March 2007. A draft agreement was submitted to the SACU secretariat.

Following UNCTAD's assistance in the drafting of competition legislation for COMESA member States, common COMESA competition rules were adopted in early 2005.

A regional training course on competition issues and consumer protection for CARICOM member States was held in Castries, Saint Lucia, 11–15 April 2005. It was organized jointly with the Ministry of Commerce, Investment and Consumer Affairs of Saint Lucia and the CARICOM secretariat, and was designed to equip CARICOM member States with sufficient knowledge and skills on CARICOM competition and consumer protection regulation and to enhance national consumer protection activities and programmes. In 2005, UNCTAD also assisted in the facilitation of the application of the CARICOM Treaty (art. 81) on competition

policy and consumer protection. Assistance was also provided to OECS, a subgroup of CARICOM comprising smaller island countries, with the formulation of the CARICOM Community Competition Rules. In this context, assistance relating to the review and finalization of these rules was also provided to CARICOM in the context of a regional OECS meeting held in Saint Lucia on 30 November 2006.

UNCTAD cooperated with the authorities of Brazil to hold in Brasilia a conference on the role of competition policy and cooperation among Portuguese-speaking countries, 29–30 August 2005. The meeting was attended by participants from Brazil, Angola and Mozambique. The Second Lusophone Conference on Competition was organized by UNCTAD in cooperation with the Portuguese competition authorities from 29 to 30 May 2006 in Lisbon (Portugal) and was attended by representatives of eight Portuguese-speaking countries. The conference aimed at facilitating access to competition expertise in Portuguese, available in Brazil, the European Union, Portugal and UNCTAD.

#### **F. Thematic cluster on competition policy and consumer protection**

Following the results and decisions on technical cooperation adopted by the forty-ninth session of the Working Party on the Medium-term Plan and the Programme Budget (10–14 September 2007), and in response to the concern of member States to rationalize large number of technical cooperation projects implemented by UNCTAD, the Division on International Trade in Goods and Services, and Commodities (DITC), implementing the subprogramme on international trade of the UNCTAD programme budget, proposed to establish a number of thematic clusters. One of these thematic clusters is on competition policy and consumer protection, and it seeks to promote several development objectives in different countries and regions, namely:

(a) strengthening institutional capacities on competition law and policy; (b) formulation and enforcement of competition and consumer protection rules; (c) strengthening national and regional competition policy and consumer protection in Latin America and the Caribbean; (d) strengthening national and regional competition policy and consumer protection in Africa; and (e) strengthening national and regional competition policy and consumer protection in Asia and the Pacific. In accordance to these objectives, five projects with similar goals are clustered (two international and three regional projects). It is envisaged that, in 2008, objectives (a) and (c) will continue to be implemented under ongoing projects on training on restrictive business practices and COMPAL, while other goals are planned to be implemented within the

frameworks of three new projects proposed to be launched in 2008.

As the thematic cluster bunches together existing and proposed projects into several main development objectives, it is envisaged that eventually the cluster would form a kind of single umbrella, and new projects would be elaborated with this format in mind, and with a view of providing demand-driven and tailored assistance to countries at the national, regional and international levels. The DITC thematic clusters indicate possible inter-divisional cooperation that the division will foster. Internal DITC collaboration among its different branches is a standard feature of its technical cooperation activities, and synergies are built wherever relevant.



## **IV. The COMPAL programme: drawing lessons from experience**

### **A. Introduction**

The COMPAL programme is a three-year technical assistance programme on competition and consumer protection policies supported by the Swiss Secretariat for Economic Affairs (SECO), which provides assistance to five beneficiary countries: Bolivia, El Salvador, Costa Rica, Nicaragua and Peru. This UNCTAD-led programme implemented with national project coordinators (NPCs) from each beneficiary country, involves the establishment and/or strengthening of capacities in various institutions dealing with competition and consumer protection policy issues. In addition to providing support at the national level, the programme promotes the exchange of experiences among beneficiary countries so as to maximize the benefits resulting from the planned activities. The ultimate goal of UNCTAD capacity-building in this field is to provide developing countries with tools to promote competition in their markets and to enhance consumer welfare through lower prices, better quality and a wider variety of choice for consumers.

Thanks to UNCTAD's long-standing experience on competition and consumer protection law and policies and its international exposure on these issues, as well as its experience in implementing capacity-building programmes, the planned activities can be dealt with in an efficient and effective manner. Given their large number and the commonalities across beneficiary countries, the programme has developed economies of scale that may benefit all COMPAL stakeholders. Among the tangible results obtained by this UNCTAD-led programme, it is worth

mentioning, are the promotion of cross-country experiences, the preparation of sectoral studies, policy recommendations and training activities. UNCTAD extensive contacts and thematic networks developed throughout Latin America increase the likelihood that in case of any problem (e.g. high turnover in competition and consumer protection agencies, changes regarding consultancy assignment or simply delays in implementing activities), measures will be adopted accordingly. Moreover, UNCTAD has promoted the use of the Spanish language as a basis for communications at the level of the Programme Management Committee (PMC), documentation and reporting of the activities (see <http://compal.unctad.org>).

In addition, there are two sets of inputs that UNCTAD has provided to COMPAL. The first is the analytical support to the programme activities. UNCTAD professional expertise, along with that of the NPCs and the national and international advisors and consultants, are key to ensuring the seriousness of the programme contents. The second set of inputs is the overall supervision of the programme, which draws on UNCTAD experience in managing and implementing development programmes, specifically in the area of competition law and policy. In view of the country-by-country approach envisaged to implement each objective, the NPCs play a crucial role in achieving the programme objectives. To this end, UNCTAD coordinates with NPCs in order to ensure that the programme objectives and activities are included in their national plans, and also in the plans of action of other local partners' work programmes.

## B. Understanding COMPAL: the three levels of analysis

COMPAL can be based on the type of components, projects and activities organized according to the aggregated/disaggregated level. Thus, three levels can be identified, as follows: macro,<sup>2</sup> mezzo<sup>3</sup> and micro<sup>4</sup> levels. These three levels of analysis have recently served to better evaluate the design and activities and their impact of the whole COMPAL programme.

For instance, when validating the strategy applied for the design of COMPAL, one should look into the overall objectives of the programme in the form of assessing how the activities at the micro level contribute to the realization of the country objective (mezzo level) and to the overall objective at the macro level would be achieved.

An example of this strategy is explained as follows: In Costa Rica, the activity related to amend the current competition

### Box 8. Genesis of COMPAL

COMPAL saw its underpinnings in Phase I (September 2003) related to the assessment of needs and priorities of a selected group of countries (seven at the time) in the areas of competition and consumer protection. During that phase, the pressing needs of each (potential) beneficiary in the field of competition and consumer protection law and policy were explored. In addition, it was found useful to determine the degree of commitment to the programme from the part of the main stakeholders.

Phase I (needs assessment) of COMPAL provided a clear picture of the level of development of seven selected Latin American countries at the time (Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru), in terms of the culture of competition and consumer protection. Thus, a number of facts were drawn from this phase starting from the common historical background of these countries, the practical commonalities and potential, and established synergies amongst them that could actually be the *raison d'être* of UNCTAD support.

Therefore, phase II of the COMPAL programme was launched as a concrete outcome with a comprehensive approach resulting from the initiative put forward in September 2003 (launching of phase I). There are various reasons to understand how a programme such as COMPAL, comprising five projects and more than 70 activities could be evaluated from various angles. Indeed, a first dimension could be to consider the valuable inputs provided by COMPAL's three major components: (a) the substantive component that has set the basis to the work on strengthening competition and consumer policies' institutions in the five beneficiary countries; (b) the managerial-financial component necessary to ensure the implementation of the activities; and (c) the logistic component that it is essential to deliver on time the procurement and administrative inputs required to execute every activity accordingly

(See <http://compal.unctad.org>.)

<sup>2</sup> At the macro level, COMPAL could be regarded as a set of country projects of a regional and cross-cutting nature involving experience-sharing amongst beneficiary countries. The macro level analysis also includes the validation of the general strategy of the programme as well as the overall management arrangements.

<sup>3</sup> At the mezzo level, COMPAL is being calibrated taking into account the overall performance of the country projects encompassed with the activities that are in the direction of achieving the whole country objective.

<sup>4</sup> At the micro level, each activity is deemed an independent strategy with its own level of performance and impact at the local level (e.g. the academic programmes in Costa Rica – activities CR.1.4. and CR.2.4; or the sectoral studies carried out in Peru – Activity P.1.1.)

chapter had its own strategy that was put in place in 2005. The local circumstances (change of parliamentarians) led to the minor changes of the strategy applied to this particular activity. Parallel to this, at the mezzo level, the impact of the activity was straightforward as the first objective conceived for Costa Rica was precisely “to broaden the scope for the enforcement of the competition law and improve the internal work processes of COPROCOM”. Since the deliverable of the activity was presented to the National Assembly, COMPAL had its own contribution towards broadening the scope for the Costa Rica competition law enforcement by preparing a full diagnosis to

amend the competition law towards pre-merger notification and the application of competition rules to certain regulatory sectors.



**COMPAL evaluation meeting with the international evaluator and national co-evaluators**

(Lima, Peru, 5 October 2007)

### C. Impact of COMPAL: assessing its results

The programme has been designed taking into consideration the impact of the activities and the desired sustainability of each activity. Box 9 briefly describes the overall COMPAL programme results achieved throughout its inception.

In addition, each year of the programme, the PMC Geneva has established a set of priorities in accordance with the outcomes of the annual monitoring meetings held in the field since 2006. These meetings were also supported by the mid-term review meetings.

For instance, in 2005, five priorities were established by the COMPAL strategic direction committee, arising from bilateral preparations of the COMPAL programme in June 2004. These priorities are as follows:

- (a) Improve the impact of COMPAL activities, particularly the impact of activities related to sectoral studies;
- (b) Launch all activities planned for the first year;
- (c) Launch the internship programme with COMCO;
- (d) Position COMPAL by informing the public about its general characteristics in Latin America and other regions; and
- (e) Establish protocols to guarantee the continuous and adequate implementation and monitoring of COMPAL activities.

#### Box 9. Overall COMPAL results

- Fourteen national reports have demonstrated the adverse affect of major anticompetitive practices on economic growth, efficiency and consumers' welfare.
- As a result of the advocacy activities, five countries volunteered to enter into a national commitment for the formulation and implementation of competition and consumer protection laws.
- At least eight policy options available to address the potential overlapping jurisdictions between competition agencies and sectoral regulators have been identified.
- The need-assessment phase identified best practices that can be shared among the participating countries for promoting and strengthening regional cooperation in these areas.
- Ten sectoral in-depth studies have been carried out, aimed at assessing the conditions of competition in key markets within Bolivia (one), El Salvador (four), Nicaragua (two) and Peru (three).
- Assistance has been provided for the adoption of the competition law and its future implementing agency in Nicaragua.
- Law reforms as well as competition and consumer protection guidelines have been prepared in Costa Rica.
- Two academic programmes have been jointly organized with local universities in Nicaragua and Costa Rica.
- A full comprehensive internship programme has been sponsored by the Swiss Competition Commission (COMCO).
- Study tours in other Latin American countries have been organized for Nicaragua.
- Advocacy seminars on competition and consumer protection workshops have been organized for El Salvador.
- A decentralized system of consumer protection has been designed at the national level in Peru.

Source: COMPAL Annual Report 2005 and 2006.

**Table 2. Main priorities and achievements of the COMPAL programme in its first year, 2005**

| Number | Priority  | Achievements  |
|--------|---|---|
| 1      | Improve the impact of COMPAL activities, particularly the impact of activities related to sectoral studies      | <ul style="list-style-type: none"> <li>• Establishment of the PMC</li> <li>• Selection of NPCs</li> <li>• Development and implementation of manuals and protocols for the respective country</li> <li>• Establishment of communication channels between different actors established in the COMPAL programme</li> </ul>   |
| 2      | Launch all activities planned for the first year  | <ul style="list-style-type: none"> <li>• 33 activities initiated</li> <li>• 25 activities advanced or completed</li> <li>• 7 national annual reports prepared by the NPCs</li> </ul>  |
| 3      | Launch the internship programme with COMCO  | <ul style="list-style-type: none"> <li>• 3 Bolivian officials sent to COMCO (Activity B.1.5)</li> <li>• Maintenance of regular communication aiming to assure COMCO requirements concerning interested interns</li> </ul>   |
| 4      | Position COMPAL by informing the public about its general characteristics in Latin America and other regions    | <ul style="list-style-type: none"> <li>• COMPAL's support has been recognized in different international forums on competition organized by UNCTAD, OCDE and other regional and international forums</li> <li>• Massive use of the COMPAL's Extranet</li> </ul>   |
| 5      | Establish protocols to guarantee the continuous and adequate implementation and monitoring of COMPAL activities | <ul style="list-style-type: none"> <li>• Design of a standard model for TORs, to be applied by all beneficiary countries or other interested users</li> <li>• Conception of processes to hire consultants</li> <li>• Establishment of implemented processes at the PMC level related to the assessment of reports, sectoral studies and other documents</li> <li>• Availability of information prior to public events sponsored by COMPAL</li> <li>• Availability of information on the impact of activities at the local level and taken as input for monitoring reports of COMPAL activities</li> </ul> |

For 2006 and as a result of the outcomes of the first annual monitoring held in Managua (Nicaragua) and La Paz (Bolivia) in February 2006, three new priorities were set for the second year:

- (a) Improving the impact of COMPAL activities, particularly those related to sectoral studies;
- (b) Consolidating and refining the internal organization of COMPAL in order to guarantee the execution of activities according to their plan; and
- (c) Positioning COMPAL as an integral programme of technical assistance on competition and consumer protection in Latin America, projecting the events at a regional level.



**Table 3. Main priorities and achievements of the COMPAL programme in its second year, 2006**

| Number | Priority  | Achievements  |
|--------|---|---|
| 1      | Improve the impact of COMPAL activities, particularly those related to sectoral studies   | <ul style="list-style-type: none"> <li>• The sectoral studies contain policy recommendations for the institutions in charge of watching competition</li> <li>• Actions to strengthen participation of the private sector have been undertaken in COMPAL</li> <li>• Academic programs were launched in Nicaragua</li> <li>• Important lessons throughout the sectoral studies were learnt</li> <li>• The impact strategy of the COMPAL programme for the first half of 2006 was implemented</li> <li>• Issues on competition (sectoral studies) were disseminated through strategies promoting consumer protection by institutions committed to this issue</li> <li>• A network of consultants that are expert in the topics related to the programme was created</li> </ul> |
| 2      | Consolidate and refine the internal organization of COMPAL in order to guarantee the execution of activities according to their plan                                | <ul style="list-style-type: none"> <li>• Procedures and workflows were revised, specially those with UNDP</li> <li>• Administrative procedures were revised taking into account the circumstances of each beneficiary country</li> <li>• The Manual of COMPAL Committees was used as an implementation guide to the programme</li> <li>• Special attention was provided to the cases of Bolivia and Nicaragua, since they were countries without competition legislation at that time, and it was agreed to monitor the situation in other countries</li> </ul>   |
| 3      | Position COMPAL as an integral programme of technical assistance on competition and consumer protection in Latin America, projecting the events at a regional level | <ul style="list-style-type: none"> <li>• The COMPAL programme was exposed in several regional and international forums, such as (a) the UNCTAD Regional Seminar on Competition for Latin America and the Caribbean (Colombia, January 2006); (b) the OECD Latin American Forum on Competition (14 July 2006); (c) the Ibero-American Forum of Competition (31 May – 01 June 2006); (d) the Foundation Getulio Vargas (November 2006); and (e) ALADI (4–5 December 2006)</li> </ul>  |

Finally, as regards the last year of the COMPAL programme in its first phase, four new priorities were set, and this time the second annual meeting of the programme (March 2007, San Jose de Costa Rica) mandated COMPAL stakeholders to set out the following annual priorities:

(a) Pay special attention to the COMPAL Programme activities of the Project for Bolivia;

(b) Continue to strengthen the impact of activities to all beneficiary countries, paying special attention to obtained results;

(c) Establish the mechanisms allowing the sustainability of COMPAL activities; and

(d) Prepare the third phase, COMPAL II, with the Swiss cooperation in areas of competition and consumer protection.

**Table 4. Main priorities and challenges of the COMPAL programme in its third year, 2007**

| Number | Priority   | Achievements  |
|--------|--|---|
| 1      | Pay special attention to the COMPAL programme activities of the Project for Bolivia  | <ul style="list-style-type: none"> <li>• Promote the creation of a working group in Bolivia with the participation of governmental sectors, in order to strengthen the Project for Bolivia by providing sustainability (under discussion); depending on the availability of resource, undertake a working mission of PMC-Geneva to Bolivia</li> <li>• Improve the dissemination of competition issues (sectoral studies of activity B.1.2. and the academic programmes according to activity B.1.4) via an analysis of their impact on consumers by the institutions in charge</li> </ul> |
| 2      | Continue to strengthen the impact of activities to all beneficiary countries, paying special attention to obtained results | <ul style="list-style-type: none"> <li>• Based on the lessons learned during the first two years of COMPAL, continue with the <i>Impact Strategy</i> (infra section 4) related to each one of the activities of the Programme</li> </ul>  |
| 3      | Establish the mechanisms allowing the sustainability of COMPAL activities  | <ul style="list-style-type: none"> <li>• Based on lessons learned during the first two years of COMPAL, explore, jointly with national coordinators, specific mechanisms to guarantee the sustainability of all activities in each national project</li> <li>• Identify possible alliances with beneficiary countries within the framework of COMPAL in order to implement regional projects that contribute to strengthen the work in the areas of competition and consumer protection</li> </ul>  |
| 4      | Prepare the third phase, COMPAL II, with the Swiss cooperation in areas of competition and consumer protection             | <ul style="list-style-type: none"> <li>• Prepare a project document for COMPAL II that will primary involve :                             <ul style="list-style-type: none"> <li>– Consolidating the situation of beneficiary countries by assessing the participation of new candidates</li> <li>– Proposing an action framework</li> <li>– Ensuring the sustainability of the COMPAL programme, and</li> <li>– Preparing the presentation and dissemination, at the level of beneficiary countries and the PMC-Geneva, with respect to UNCTAD XII</li> </ul> </li> </ul>                |

## **Annex. Selected 2004–2007 UNCTAD documents and studies on the interface of competition and development**

Preliminary assessment of the set; TD/B/COM.2/CLP/45, 13 October 2004.

Recent competition cases; TD/B/COM.2/CLP/47, 16 September 2004.

(WTO) Core principles and prohibition: obligations relating to private practices, national competition laws and implications for a competition policy framework; UNCTAD/DITC/CLP/2003/2; 2004.

Can developing economies benefit from WTO negotiations on binding disciplines for hard core cartels? UNCTAD/DITC/CLP/2003/3; 2004.

Manual on the formulation and application of competition law; UNCTAD/DITC/CLP/2003/4; 2004.

Multilateral competition policy and economic development – a developing country perspective on the European Community proposals; UNCTAD/DITC/CLP/2003/10; 2004.

Competition, competitiveness and development: lessons from developing countries; UNCTAD/DITC/CLP/2004/1; 2004.

Competition policy for development – a report on UNCTAD's capacity-building and technical assistance programme; UNCTAD/DITC/CLP/2004/2; 2004.

A presentation of types of common provisions to be found in international, particularly bilateral and regional, cooperation agreements on competition policy and their application; TD/RBP/CONF.6/3; 6 September 2005.

Synthesis of recent cartel investigations that are publicly available TD/RBP/CONF.6/4; 5 September 2005.

Recent important cases involving more than one country TD/RBP/CONF.6/5; 6 September 2005.

Assessment of the application and implementation of the Set; TD/RBP/CONF.6/10; 9 September 2005.

Roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy; TD/RBP/CONF.6/11 and TD/B/COM.2/CLP/37, Rev.2; 14 September 2005.

Experiences gained so far on international cooperation on competition policy; TD/RBP/CONF.6/12 and TD/B/COM.2/CLP/21/Rev.3; 14 September 2005.

The Organization of Petroleum Exporting Countries: Competition and the World Trade Organization. Might a WTO agreement on competition constitute a threat to OPEC? UNCTAD/DITC/CLP/2003/11; 2005.

The Southern African Customs Union (SACU). A regional cooperation framework on competition policy and unfair trade practices; UNCTAD/DITC/CLP/2005/3; 2005.

Exclusionary anticompetitive practices: their effects on competition and development; UNCTAD/DITC/CLP/2005/4; 2005.

Review of recent experiences in the formulation and implementation of CLP in selected developing countries: Thailand, Lao People's Democratic Republic, Kenya, Zambia and Zimbabwe; UNCTAD/DITC/CLP/2005/2; 2005.

Competition provisions in regional trade agreements; UNCTAD/DITC/CLP/2005/1; 2005.

COMPAL Programme. Strengthening institutions and capacities in the area of competition and consumer protection policies in Latin America. Cases of Bolivia, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Peru; UNCTAD/DITC/CLP/2004/3; 2005.

Voluntary peer review on competition policy: Jamaica; UNCTAD/DITC/CLP/2005/5; 2005.

Voluntary peer review on competition policy: Kenya; UNCTAD/DITC/CLP/2005/6; 2005.

Recent important cases involving more than one country; TD/RBP/CONF.6/5/Rev.1, TD/B/COM.2/CLP/53; 13 October 2006.

Role of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy; TD/RBP/CONF.6/11/Rev.1, TD/B/COM.2/CLP/37/ Rev.3; 31 August 2006.

Experiences gained on international cooperation on competition policy issues and the mechanisms used; TD/RBP/CONF.6/12/Rev.1, TD/B/ COM.2/CLP/21/Rev.4; 7 September 2006.

Best practices for defining respective competencies and setting of cases, which involve joint action by competition authorities and regulatory bodies; TD/RBP/CONF.6/13/Rev.1; TD/B/COM.2/CLP/44, Rev.2, 17 August 2006.

COMPAL Global Annual Report 2005, COMPAL Programme: Projects for Bolivia, Costa Rica, El Salvador, Nicaragua and Peru; UNCTAD/DITC/CLP/2006/1; 2006.

Examen collégial volontaire de la politique de concurrence: Tunisie; UNCTAD/DITC/CLP/2006/2; 2006.

Voluntary peer review of competition policy: Tunisia. Overview; UNCTAD/DITC/CLP/2006/2 (Overview); 2006.

Criteria for evaluating the effectiveness of competition authorities; TD/B/COM.2/CLP/59; 26 April 2007.

Competition in energy markets; TD/B/COM.2/CLP/60; 26 April 2007.

Recent important competition cases involving more than one country; TD/B/COM.2/CLP/62; 26 April 2007.

Ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling these countries to introduce and enforce competition law and policy consistent with their level of economic development; TD/B/COM.2/CLP/46/Rev.3; 7 May 2007.

Experiences gained so far on international cooperation on competition policy issues and the mechanisms used; TD/B/COM.2/CLP/21/Rev.5; 26 April 2007.

Model Law on competition – substantive possible elements for a competition law, commentaries and alternative approaches in existing legislations; TD/RBP/CONF.5/7/Rev.3; 2007.

Implementing competition-related provisions in regional trade agreements: is it possible to obtain development gains? UNCTAD/DITC/CLP/2006/4; 2007.

Voluntary peer review of competition policy: West African Economic and Monetary Union, Benin and Senegal; UNCTAD/DITC/CLP/2007/1; 2007.

UNCTAD guidebook on competition systems; UNCTAD/DITC/CLP/2007/2; 2008.

Manual on consumer protection. UNCTAD/DITC/CLP/2007/3; 2008.

Competitive neutrality: the experience of Switzerland in deregulation and re-regulation of the network industries; UNCTAD/DITC/CLP/2007/4; 2008.

Approaches to consumer redress in national and cross border issues; UNCTAD/DITC/CLP/2007/5; 2008.

Making markets work better for development and poverty reduction: the experience of the Lao People's Democratic Republic; UNCTAD/DITC/CLP/2007/6; 2008.