

Competition Policy and Consumer Protection Newsletter

UNCTAD

Competition Policy and Consumer Protection

Editorial Note

The Competition and Consumer Policies Branch (CCPB), a part of the Division on International Trade in Goods and Services and Commodities (DITC) at UNCTAD, is pleased to introduce the first issue of this quarterly newsletter on competition policy and consumer protection. The aim of this newsletter is to foremost communicate to our colleagues, clients (national and regional competition authorities) and partners in the private sector, civil society and academia information about the ongoing work of the CCPB, which revolves around 3 main pillars, research and policy analysis, technical assistance activities and consensus building through the holding of inter-governmental meetings and conferences. We will also endeavour through this newsletter to share best practices among competition authorities in developed and developing countries and highlight interesting developments on competition and consumer protection matters in the wider competition community. While many developing countries have been adopting national competition laws and establishing national competition authorities with support from UNCTAD over the last 30 years, significant challenges remain ahead in terms of ensuring the maximum benefits for these countries from competition policy and consumer protection as adapted tools for their development. UNCTAD will be highlighting at its next Trade and Development Board (TDB) meeting scheduled for May 2010, the implications of the recent global financial crisis on viable trade and development strategies for development. The occurrence of the financial crisis has led to a temptation for some countries to suspend competition principles, and instead adopt protectionist trade measures, revive interventionist industrial policies and seek exemptions from competition policy in order to dispense state aid on a large-scale to industries in need. UNCTAD in its forthcoming report to be released at the TDB meeting in May 2010, warns of the dangers of maintaining these interventionist and protectionist measures in the long term. The pursuit of national interests in the short-run risks negating the benefits from competition for global, regional and national development in the long-run. UNCTAD maintains that competition is the main driver for building competitiveness, innovation, technological advancement and economic development in the long-run and that the promotion of competition should remain as a policy tool, irrespective of a country's position in the business cycle.

Preparations on the way for the UN Sixth Review Conference And Voluntary Peer Review in Armenia

The Competition and Consumer Policies Branch will play a key role, as per its mandate in the organization of the United Nations Sixth Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Practices (also called the UN Set of Principles and Rules on Copetition) planned for November 2010. The UN Set, which was adopted by the UN General Assembly in 1980, has as its main objective the promotion of regional and international cooperation by countries parties to the Set in order to mitigate the negative impact of anti-competitive practices on international trade and economic development. The UN Review Conference takes place every 5 years and in that given year supersedes the annual Inter-governmental Group of Experts (IGE) meeting on Competition. It is meant to serve as a forum for member states (competition authorities and relevant parties from both developed and developing countries) to discuss possibilities of cooperation, exchange of information and sharing of best practices on competition matters, including issues with cross-

border and international dimensions. It also serves as a forum for identifying areas in which UNCTAD can support these countries in enforcing their national and regional competition policy regimes through capacity building and technical assistance programs. The UN Sixth Conference will also be an occasion to celebrate the **30th anniversary of the UN Set and the 25th anniversary of the UN Guidelines for Consumer Protection**. For this occasion, UNCTAD will be preparing a series of substantive reports around 3 substantive sessions that were agreed upon at the 2009 IGE meeting. These sessions scheduled for the Sixth Review conference will center around the following themes: (i) **implementation of competition law and policy**, more specifically judicial review of competition cases, appropriate sanctions and remedies and the use of leniency programs as a tool for the enforcement of competition law against hardcore cartels in developing countries (ii) a **review of the experience gained in the implementation of the UN Set including voluntary peer reviews**, namely among others, modalities for facilitating voluntary consultations among member states and regional groupings in line with Section F of the UN Set, evaluation of the experience gained so far in the implementation of the Set, including UNCTAD voluntary peer reviews and effectiveness of the capacity building and **(more on page 3)**

<http://www.unctad.org/Templates/Page.asp?intItemID=4106&lang=1>

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Inside this issue:

Preparations on the way for the UN Sixth Review Conference and Voluntary Peer Review in Armenia	1,3
A brief review of UNCTAD's activities in the last quarter 2009.	2,4
A glance at CCPB's main activities for 2009.	2-4
Special feature of UNCTAD publications on competition: Papers at IGE 2009	2
Upcoming conferences/workshops on competition issues	2
Ongoing and future research at UNCTAD	2
More on publications at UNCTAD	3
Featured Event at UNCTAD: Second Brainstorming Session on Section F of the UN Set on Competition	4

Special points of interest:

- Check articles on competition policy at www.voxeu.org.
- Check activities at the Max Planck Institute for Intellectual property, competition and tax law. <http://www.ip.mpg.de> www.en/pub/news.cfm
- Read about the United Nations Set on Competition principles at

A Glance at CCPB's main activities in 2009 by country

1. Workshop in **Angola** in April on the competition bill targeted at parliamentarians and stakeholders.
2. Workshops in **Bhutan** on consumers' laws and policies, meetings to disseminate findings of 2009 Market Survey on consumer products in March and study tours in May organized for Bhutanese officials to Australia to get training on application of consumer protection law.
3. Workshop in **Bolivia** on the linkage between consumer protection issues and the informal sector in July.
4. Advice given by UNCTAD in November to the Ministry of Trade and Industry of **Botswana** on the competition bill before its presentation to Parliament.
5. In **Cambodia**, meetings with the Vice-Minister of Commerce in March and consultative meeting held in October on the drafting of the Consumer Protection law.
6. **Launching of COMPAL II** and holding of an event for the dissemination of results achieved in COMPAL I in Colombia, Costa Rica, Peru in April.
7. A post-voluntary peer review meeting held in **Costa Rica** in April.
8. Workshop held in the **Dominican Republic** in April on the interface between trade challenges and competition as part of COMPAL and holding of a meeting to review regulations on the application of competition legislation for several sectoral studies.
9. Discussions launched in April in **Ghana** for the elaboration of a project on competition laws and policies and the establishment of relevant enforcement agencies.
10. Conduct of a workshop on merger control, a workshop for the validation of a manual on competition law and policy and a roundtable on the Peer Review Report in **Indonesia** in May. (contd next page)

A brief review of UNCTAD's activities in the last quarter 2009

- ✦ After the successful launch of the **Competition programme for Africa (AFRICOMP)** in June 2009 in Geneva, UNCTAD conducted a series of technical assistance activities backed by fact-finding missions last quarter within this programme. The focus of the AFRICOMP program is to support countries in advocating for, drafting and enacting competition and consumer protection legislation; support the establishment and functioning of competition authorities; support capacity building of competition officials (training of case handlers and judges for instance) and raise awareness on the benefits of competition for development. In this context, UNCTAD has supported Lesotho in drafting and presenting a competition law to stakeholders and will also assist in the set up of mechanisms to aid the implementation of the newly adopted consumer protection law. Support is being provided to Malawi and Swaziland to establish national competition authorities that will enforce competition laws and to partially operationalize the competition authorities. Seminars on competition law and policy or consumer protection and welfare were held in those 3 countries. In Mozambique and Rwanda, similar support in drafting competition laws is being given. The competition law in Rwanda is due for consideration by the cabinet. A mission was conducted in Sao Tome and Principe where a workshop was held with stakeholders to discuss the contents of a future competition law and UNCTAD will support the government in the process of drafting and enacting a competition legal framework there as well. Study tours to Australia and Hong Kong were organised for officials from Botswana. UNCTAD has also supported the relevant ministry of this country in drafting instructions for the implementation of their competition bill. So far AFRICOMP has five core beneficiary countries (Ghana, Lesotho, Malawi, Swaziland and Zambia) and has benefited for funding from among others Norway, Sweden and Switzerland. **A wider launch of AFRICOMP at a ministerial level is scheduled in Lusaka, Zambia for May 2010.**
- ✦ The **Competition programme for Latin America (COMPAL)** was extended last quarter from 6 beneficiary countries (Bolivia, Colombia, Costa Rica, El Salvador, Nicaragua and Peru) to 10 (including now Dominican Republic, Ecuador, Paraguay and Uruguay). The Swiss government is the main donor of this programme. The Government of Spain is funding activities for the Dominican Republic while the Government of Ecuador is supporting financially activities for Ecuador. (contd next page)

Special Feature of UNCTAD Publications on Competition : Papers at IGE 2009.

At last year's IGE held at UNCTAD's headquarters in Geneva in July, UNCTAD staff had prepared a series of papers for presentation and discussions by member states. These papers centered on (i) public monopolies, concessions and competition law and policies, in particular how concessions should be designed, awarded and executed in order to stimulate competition (ii) the relationship between competition and industrial policies in

promoting economic development, in particular the tensions and synergies between competition and industrial policies and the implications of the financial crisis on this relationship (iii) a review of UNCTAD's capacity building and technical assistance in the area of competition law and policy and (iv) the use of economic analysis in competition cases that

included an overview of how competition authorities are using economics and econometrics in defining markets, and assessing the competitive effects of mergers, abuse of dominance and vertical agreements. To read these papers, please go to <http://www.unctad.org/Templates/Meeting.asp?infItemID=4816&lang=1>

Upcoming Conferences/Workshops on Competition Issues

1. **Regional Training Workshop on Competition Law Enforcement (Anglophone countries in Africa)**. Followed by a successful three day training workshop on competition law enforcement for francophone countries, CUTS is organising a three day training workshop on the above-mentioned subject for the Anglophone countries in Abuja, Nigeria. Representatives from various competition authorities, government agencies and selected civil society organisations will be participating in this regional training workshop. Training on various issues of competition will be given by various experts and practitioners. The training will combine both theoretical and in-hand lessons which will help the participants to understand and analyse competition cases

Date and Venue: 13-15 January 2010, Abuja, Nigeria.

2. **Global Competition Review (GCR) 2010 Dominance and Unilateral conduct**. Update and trends in EU and US law and enforcement- implications of recent decisions.

Date and Venue: 9 February 2010, Le Méridien, Brussels, Belgium.

3. **IBA/ABA International Cartel Workshop**. The Workshop will address everything from cartel detection, to coordinated government investigations across multiple jurisdictions, to consideration of cooperating with the enforcers, to disposition of government prosecutions or claims, as well as the litigation and potential settlement of private damages claims on behalf of direct and indirect purchasers in the United States, Canada and elsewhere.

Date and Venue: 10-12 February 2010, The Westin, Paris, France.

4. **9th OECD Global Forum on Competition**. It will focus on competition, state aids, and subsidies as well as on collusion and corruption in public procurement. Participants will also discuss a peer review of competition law and policy in Brazil.

Date and Venue: 18-19 February 2010, OECD, Paris, France.

A Glance at CCPB's main activities in 2009 by country (contd)

11. Training of trainers organised for **Iraqi** officials in Geneva in June.
12. Consultative meeting on consumer protection law and a seminar on consumer protection and fair trading in **Laos** in October.
13. Presentation of the draft competition bill to stakeholders and Government in **Lesotho** in September.
14. In **Malawi**, induction workshop for the Board of Commissioners of the Competition and Fair Trade Commission in March and holding of a national workshop on consumer law and policy in September.
15. In **Nicaragua**, in September, event held to present the outcome of four sectoral studies carried out in 2008 and a training workshop held on investigation techniques for competition case handlers.
16. In **Peru**, consultations held with provincial and municipal authorities on the need for strengthening the local competition authority and a training workshop held for case handlers on the enforcement of competition legislation in November.
17. In **Rwanda**, consultative meeting held on the interface between competition authority and sector regulators in January.
18. In **Swaziland**, workshops held on investment agreements and competition policy and on the application and enforcement of the competition law in July.
19. In **Syria** in February, participation of UNCTAD in the UNDP/UNCTAD meeting on evaluating the needs of the competition agency and developing a joint UNDP/UNCTAD project on competition.
20. A fact finding mission organized to **Uruguay** in September for discussions with the newly created Competition Commission of Uruguay.
21. Participation of UNCTAD to a regional seminar (SELA meeting) on trade and competition for Latin America and the Caribbean held in Venezuela in April. Creation of a working group on trade and competition.

Ongoing and Future Research at UNCTAD

Several studies are in course of preparation in the Competition Policy and Consumer Protection Branch of UNCTAD. On the COMPAL project, that aims at strengthening capacities and institutions in the areas of competition and consumer protection policies in Latin America, various studies are planned for completion in the first quarter 2010. This includes among others the conduct of an economic study assessing the state of competition in the professional services market in Uruguay and the conduct of 3 studies assessing the state of competition in the poultry, construction and inland freight transportation sectors in the Dominican Republic. Future studies will include analysis of anti-competitive practices in sensitive sectors, including those that may register changes as a result of participation in regional agreements, in Colombia, Nicaragua and Peru and analysis of competition conditions in strategic markets at national and international levels in El Salvador. In Bhutan, the Ministry of Economic Affairs released in 2009 a market survey of Bhutan, prepared with strong support from UNCTAD and a similar study extending coverage to other areas of Bhutan is planned to start in 2010. UNCTAD played a major role in supporting the country draft and adopt a Consumer Protection Bill that will be enacted soon. UNCTAD will be providing support to a study mapping the state of competition in the Republic of Madagascar in 2010 within a project funded by the United Nations Development Program (UNDP), after the enactment of a competition law by the country in 2008. A communications strategy for consumer protection in Botswana will be discussed with government and drafted with support from UNCTAD. In Botswana, UNCTAD have been collaborating closely with the Department of Consumer Affairs, Ministry of Trade and UNDP in supporting the country set up a competition policy and consumer protection regime. Sector-studies on the state of competition will be undertaken this year for Zambia (petroleum), Malawi (tobacco) and Swaziland.

More on publications at UNCTAD

- ✦ **UNCTAD perspective, Competition policy for development.** This UNCTAD perspective is available at http://www.unctad.org/sections/ditc_ccpb/docs/ditc_ccpb0028_en.pdf. It highlights the major analytical reports and papers, written by UNCTAD over the last 7 years that are of interest to government officials dealing with competition issues, international trade experts, representatives of regional and international institutions, academia, business and civil society. Themes of these papers include: competition for energy markets, competition policy and the exercise of intellectual property rights, criteria for evaluating the effectiveness of competition authorities, abuse of dominance and much more.
- ✦ **Country specific technical assistance provided by UNCTAD in the area of competition and consumer welfare.** This report presents an exhaustive list of requests for technical assistance received by UNCTAD for the period 2006 to 2009 by country. It includes details on the type of assistance requested, mode of delivery, intended beneficiaries and impact (expected and achieved) of the interventions that were made. The report is available at http://www.unctad.org/sections/ditc_ccpb/docs/ditc_ccpb0026_en.pdf
- ✦ **Highlights on competition issues in the forthcoming Trade and Development Commission reports titled "Successful trade and development strategies for mitigating the impact of the global economic and financial crisis" and "Contribution of tourism to development".** UNCTAD will be hosting its annual Trade and Development commission meeting in May in Geneva and for this occasion 2 background reports will be released by UNCTAD focusing on trade and development issues. The competition policy and consumer protection branch have contributed 2 analytical notes to these papers. The first note discusses the need to maintain competition as an overall strategy even during times of crisis and highlights the special cases in which exemptions from competition policy may be granted at times of crisis. The second note discusses anti-competitive practices in the tourism sector and suggests policy options.

Preparations on the way for the UN Sixth Review Conference And Voluntary Peer Review in Armenia (contd).

technical assistance extended to newly developing country. For 2010 Armenia established competition authorities. In this context UNCTAD has held a **second brainstorming session on the implementation of the UN Set in January 2010 in Geneva** (iii) **the role of competition policy in promoting economic development** with a focus on evaluating the effectiveness of competition law in the promotion of economic development and the appropriate design and enforcement of competition law and policy in countries at different stages of development. In addition, as is the norm at the annual IGE meetings, a special session will be devoted to a voluntary peer review of competition law and policy in a specific

recommending of the report. Such results will then be used by UNCTAD and the Republic of Armenia to design tailor-made technical assistance activities for Armenia. The Peer review is also being supported by the German Technical Cooperation agency, GTZ. So far UNCTAD has supported peer review reports for a number of countries (including Benin, Costa Rica, Indonesia, Jamaica, Kenya, Senegal and Tunisia). On another note, a manual on consumer protection was prepared by UNCTAD in 2004 and is available upon request.

A Glance at CCPB's main activities in 2009 by country (contd)

22. Organisation by UNCTAD and the South African Customs Union (SACU) of a technical workshop in March in Namibia for the development of a SACU draft cooperation agreement on competition policy enforcement.

23. Provision of advisory assistance by UNCTAD at a regional seminar on competition law and policy for South African Development Community member states in August.

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Click on competition and consumer policies.

The Accra Accord recognizes that "UNCTAD is the focal point for the work on competition policy and related consumer welfare within the United Nations System. ...It provides to its member states a forum for intergovernmental policy dialogue and consensus building in the area of competition laws and policies...A forum to discuss competition issues on the multilateral level...UNCTAD's work in this area should promote competition law regimes that take into account the prevailing conditions in the developing countries"

Mandate of UNCTAD on Competition Issues

The Competition and Consumer Policies branch of UNCTAD has the mandate in assisting countries to implement the UN Set of rules and principles on competition. UNCTAD's involvement in this area rests on the premise that restrictive (commonly anti-competitive) practices can adversely affect international trade, particularly the benefits of trade liberalization, more so in developing countries and harm the economic development of developing countries as well as the welfare of consumers, especially the poor. In this context, UNCTAD's interventions have as primary objective to support developing countries in setting up competition laws and policies and consumer protection regimes that are adapted to their national circumstances and that will serve their development needs. UNCTAD's role is also to foster the sharing of best practices and information on competition and consumer protection issues among all countries and to encourage these countries to collaborate at bilateral, regional and international levels in dealing with or eliminating anti-competitive practices, including those of transnational corporations and those with a cross-border dimension. UNCTAD's support to countries takes place through a mix of technical assistance, research and analysis and facilitation of consensus building. Currently UNCTAD is implementing two main competition programmes in Latin America (COMPAL) and the Africa region (AFRICOMP). Ad-hoc support is also provided to a range of other countries including in Asia and the Arab world. The branch is headed by Mr.Hassan Qaqaya.

For more information or to obtain copies of UNCTAD documents, please contact Bineswaree Bolaky at bineswaree.bolaky@unctad.org.

A brief review of UNCTAD's activities in the last quarter 2009 (contd)

- ✦ COMPAL (contd): In Paraguay last November, UNCTAD officials met with the President of the Republic to discuss the nature of UNCTAD support to the country on competition matters. In Ecuador, workshops and seminars were held in October-November on the theme of consumer protection, in collaboration with the national competition authority (MIPRO) and national universities. The aim of the workshop in Cuenca was to inform on the consumer protection legislation of Ecuador and on the importance of consumer protection in general. Participants at that workshop included members of civil society (indigenous groups, small producers) and local government. UNCTAD and MIPRO, supported by competition officials from Costa Rica and local academics also held seminars on the theme of competition law and policy and its interface with consumer protection. The UNCTAD manual on consumer protection was presented at that occasion. It is to be noted that COMPAL consists of both a national component and a regional component. Activities under the regional component will start this year.
- ✦ In Asia, UNCTAD continued its support to Indonesia, namely supporting the competition authority in adapting UNCTAD's manual of training for trainers to the Indonesian context. The manual will be translated into national language for more effective use. A manual on cartel detection is being prepared. In Laos and Cambodia, UNCTAD has aided the government on elaborating new or revising older versions of competition and consumer laws. The final versions of these laws were presented to Parliament in December in the case of Cambodia.

Featured Event at UNCTAD: The Contribution of the UN to the emergence of Global Competition Policy Regimes: Second Brainstorming Session on the implementation of Section F of the UN

The Competition Policy and Consumer Protection Branch held in January 2010 a second brainstorming session on the implementation of Section F of the UN Set on Competition as part of the preparatory process for Session 2 of the UN Sixth Review Conference. Featured speakers at this event, to which all UNCTAD staff were invited, included **Professor Ioannis Liannos** at the University College London (UCL) and also executive director of the Jevons Institute of competition law and economics at UCL, who presented and discussed his paper assessing the contribution of the UN to the emergence of global antitrust law; **Mr. Hassan Qaqaya**, head of CCPB discussed the UN Set on competition law and policy and **Mr. Philip Monaghan**, a senior associate at the law firm Norton Rose in Hong Kong talked about the extra-territorial application of competition laws, inter-agency cooperation agreements and the UN Set on competition. These presentations were followed by a roundtable discussion that included representatives from UNCTAD, the European Union, World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO). The event closed with a Q&A session.

UNCTAD Competition and Consumer Policies Team.

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