“Informal Cooperation in competition among competition agencies on specific cases”

See UNCTAD report TD/B/C.I/CLP/29  June 2014
Framing the Issue

For the last 5 Intergovernmental Meetings, UNCTAD has organized its work on four main themes;

• Development Dimension of Competition policy;

• Agency Effectiveness;

• International Cooperation; and

• Capacity Building.

This RT is a continuation of work on International Cooperation.
Lessons Learnt so far

• Takes note of work done by OECD, ICN separately and jointly;

• UNCTAD work with both with developed and developing countries in this area.
Lessons Learnt so far

South/South Cooperation

• Proliferation of Trade Agreements (with competition related provisions) at sub-regional and regional levels;
• Examples are available in many regions.

But;
• Implementation takes a long time;
• Impact has not been very visible especially in developing countries.
Lessons continued…..

• Proliferation of informal cooperation efforts different parts of the world; Examples
  – African Competition Forum, bilateral exchanges;
  – Asia – APEC Training courses and experience sharing events;
  – MENA (COMPAL Global);
  – Sophia Forum;
  – Lima declaration (Chile, Columbia, Peru);
  – SADC, On-line case information sharing;
  – Bilateral informal exchange (e.g. within EU and with other countries, US and other competition agencies etc.)
Question? Why informal cooperation?

Challenges to formal cooperation:

- Identified in 2013 IGE report on international cooperation:
  - Trade and Investment environment which differs significantly;
  - Sovereignty Issues (allocation of competence);
  - Lack of mutual interest in many instances to facilitate implementation of Agreements.
Why informal cooperation is easier?

- Informal cooperation is unofficial, friendly and unconstrained (definition from the UNCTAD paper);
- Not usually tied to RTA or other agreements;
- By choice of competition agencies, mostly peers.
Types of Informal cooperation

Two possible areas of informal cooperation:

☑ Cooperation of a general nature; including capacity building programmes, networking forums, conferences etc;

☑ Case specific cooperation.
Application Informal Cooperation

• Applicable to all types of anti competitive practices; mergers, agreements and abuse of dominance;

• However; Information sharing in cartel cases is more limited due to the nature of its content;

• Other additions:
  – Comparable case procedures;
  – Trust between agencies;
  – Confidence with each other;
  – Businesses confidence across borders.
Way forward for informal cooperation

Issues for action;

• Promoting better understanding of each other’s Laws;

• Building human and technical capacities of young competition agencies;

• Developing guidelines and best practices;

• Ensuring the inclusion of provisions in national laws allowing for cooperation and exchange of information for enforcement purposes;

• Establishing and implementing clear safeguards for due process and the protection of confidential information.
Way Forward for Informal Cooperation

Further:

- Targeted case information sharing sessions on case procedures;
- Opportunity to look back at cases already finalized (usually same case in different jurisdictions);
- Undertake post analysis of information gathered, strategy, evidence and share experiences;
- Identify lessons and areas where informal cooperation would have assisted;
- Build a data bank of such shared experiences and build capacity enhancement programmes based on lessons learned;
- Develop knowledge management techniques to share such information, locally and across borders.
THANK YOU FOR YOUR ATTENTION.