“Modalities and Procedures for International Cooperation in competition cases involving more than one country”

UNCTAD 13th Intergovernmental Group of Experts on Competition Law and Policy

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Presentation by the UNCTAD Secretariat

See UNCTAD report TD/B/C.1/CLP/21 June 2013
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…..

• North/ South Agreements; EU/Euromed, EU/Mexico, Chile, South Africa etc.

• Possible areas of cooperation;
  – Cooperation is liniency applications;
  – Application in merger analysis; and
  – Cooperation in capacity building

• Tangible outcomes have been limited in terms of case specific cooperation, but in capacity building programmes, steady progress.
Question? Are cooperation objectives being fully met?

Hinderances:

North/South Cooperation Efforts

• Trade and Investment environment which differs significantly

• Lack of mutual interest in many instances to facilitate information sharing.
Pre-conditions of Effective Cooperation

Cooperation in anticompetitive agreements, mergers and abuse of dominance

Requires:

(a) Leniency programmes to address collusion

- Compatibility of legal systems
- Similarity in case procedures
- Ease of information access between agencies
- Common analytical approaches (unpacking the complaint)
Pre-conditions of Effective Cooperation

(b) Mergers cases

Mergers applications form a good basis for cooperation

• Requires:
  – Comparable case procedures
  – Trust between agencies
  – Confidence with each other
  – Businesses to develop confidence across borders
Pre-conditions of Effective Cooperation

(b) Capacity Building Programmes

• Requires:
  – Targeted case information sharing sessions on case procedures
  – Opportunity to look back on cases already finalized (usually same case in different jurisdictions)
  – Do post analysis of information gathered, strategy, evidence and share experiences.
  – Identify lessons and areas where cooperation would have assisted.
Pre-conditions of Effective Cooperation

(b) Capacity Building Programmes

Further;

• Build a data bank of such shared experiences and build capacity enhancement programmes based on such lessons

• Invoke knowledge management techniques to share such information, locally and across borders.
THANK YOU FOR YOUR ATTENTION