

Ad Hoc Expert Meeting: The role of competition law and policy in fostering sustainable development and trade through the enhancement of domestic and international competitiveness of developing countries

7 July 2014, Geneva, Switzerland

Palais des Nations, Room XVII

Concept note

Competition refers to rivalry among firms in the marketplace. It also extends to envisaged or potential rivalry. Competition policy refers to government policy aimed at preserving or promoting competition among market players and at promoting other government policies and processes that enable a competitive environment to develop.

In 1980, the *United Nations Conference on Restrictive Business Practices* approved the *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* (the so called "UN Set on Competition Policy"), a multilateral agreement providing a set of equitable rules for the control of anti-competitive practices, which recognizes the development dimension of competition law and policy and provides a framework for international cooperation and exchange of best practices.

As acknowledged by the Accra Accord (paragraph 104), UNCTAD is the focal point for work on competition policy and related consumer protection policy within the United Nations system. In this capacity, UNCTAD seeks to promote the use of competition law and policy as tools for achieving competitiveness, growth and development, by providing a forum to member States for intergovernmental policy dialogue and consensus-building in the area of competition (and consumer protection laws and policies), with close linkages to existing networks of competition authorities.

In this context, UNCTAD is organizing this Ad Hoc Expert Meeting on Monday July 7 2014, preceding the 14th Session of the IGE on Competition Law and Policy.

Aware of the fact that sustainable long term growth and development depend on efforts carried out in many different fields and on the interface between different public policies such as competition, trade, IP and good governance policies, UNCTAD has invited officials from OECD, WIPO and WTO to discuss issues including innovation, competitive neutrality and good governance policies (Part I of the Meeting), and trade liberalization, global value chains, IP rights and international cooperation in enforcing competition law (Part II of the Meeting).

The Meeting will be structured as follows¹:

First, the Chair of the Meeting **Mr. Sothi Rachagan** will open the session.

Second, **Mr. Guillermo Valles**, Director of the Division for International Trade in Goods and Services and Commodities in UNCTAD Secretariat, will welcome all participants to the Meeting.

Third, **Mr. John Fingleton** will deliver the introductory speech to the Meeting.

Prof. Alberto Heimler will introduce Part I of the Meeting: Governments play a significant role in determining how markets function and use a variety of policies for this purpose, including economic regulation, trade policy and antitrust. Some of these policies (i.e. trade policy and

¹ See presentations and contributions from speakers in the Meeting's website: <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=485>

antitrust) in principle promote competition directly but sometimes are too intrusive, while others pursue other general interest objectives and in so doing restrict competition, sometimes beyond what is strictly necessary. By discussing some selective relevant examples, he will show how economic regulation, trade policy, intellectual property and antitrust laws have been applied in recent years without considering the compatibility with proper incentive schemes, and will suggest some policy changes and legislation reforms.

Then the Panelists will be given the floor:

- **Mr. Giovanni Napolitano (WIPO)** will talk about the relationship between IP, innovation and growth and focus on how effective IP protection can help research intensive industries to grow faster than their competitors in countries with less effective IP enforcement. He will also argue that competition law and enforcement may create or strengthen the economic context that will foster innovation and growth in those countries where the IP system is less developed or exploited
- **Mr. John Davies (OECD)** will reflect on competitive neutrality issues. State owned companies (SOEs) are becoming more prevalent in the world economy, mainly as a result of the increasing weight of jurisdictions with more state ownership. There is increasing concern to ensure that when these companies compete with the private sector, they do so on a 'level playing field'. This is easily stated as an aspiration but harder to achieve in practice. Most other policy communities are mainly concerned with foreign SOEs in cross-border investments, yet for competition experts the focus is on domestic firms, so we often talk at cross-purposes. Other policy communities are typically concerned with unfair advantages of SOEs, while our focus is usually on inefficiencies and distortions – especially through advocacy of policies to promote competition in markets with SOE involvement. Often, when doing so, competition experts will seek separately to identify the social policy aspects of a SOE's functions from its more commercial functions. However, although this might work for an SOE charged with specific social responsibilities, it is a model that is much harder to apply when state ownership (or other controls and support) have been established in the pursuit of general economic developmental goals. OECD is working on across many different policy areas – competition, investment, corporate governance, trade – to address these issues.
- **Mr. Hassan Qaqaya (UNCTAD)** will present the *problematique* of resource-rich developing countries and, based on country experiences², put forward some reflections about what competition policy, competition law and competition authorities can do to help these countries make the most of their natural-resources endowment to achieve inclusive and sustainable development.
- **Mr. Robert Anderson (WTO)** will refer to the complementarities between trade liberalisation and economic reforms. Effective (national) competition policies are important to the success of the multilateral trading system including (very much) its contribution to development. This presentation develops three examples of such dependence, namely: (i) the importance of competition policy in deterring international cartels, which have the ability to undermine directly the gains from trade; (ii) the importance of pro-competitive structural reforms in enabling developing and transition economy businesses to take advantage of market access opportunities

² The Competition and Consumer Protection Policies Branch (CCPB) in UNCTAD Secretariat acknowledges and appreciates the effort made by delegations and experts to contribute to its note on Competition and natural resources-based development.

created by trade agreements; and (iii) the importance of competition rules as an adjunct to liberalized government procurement regimes, as embodied in the WTO Agreement on Government Procurement and the chapters on government procurement that are incorporated in many recent regional trade agreements (RTAs). The examples that will be discussed do not, by themselves, pre-suppose or establish a need for any elaborate coordination mechanism between competition policy and international trade; rather, they are intended merely to establish the (arguably very basic but nonetheless important) proposition that the success of the international trading system depends, to an important degree, on the existence of effective national competition policies.

Prof. Eleanor Fox will introduce Part II of the Meeting: Markets are a key to fostering growth and development, and market systems sympathetic to the entry and growth of entrepreneurs and all challengers to authority and power are a key to inclusive, sustainable growth and development. Trade liberalization, flexibility of value chains, protection of IP rights, and checks against privileges of state-owned enterprises all play their role in moving towards efficiency. But each one can have a double edge and play into the hands of vested interests and entrenched oligarchs. Therefore it is important to engage with the questions: What exactly is the measure – such as a measure of IP protection; is there a right balance between (e.g.) the stated IP protection and competition for the good of the people; is there a conflict or not between full liberalization of trade with maximum IP protection and total freedom of GVCs to squeeze the last drop from suppliers, and the needs of developing countries to protect their space to grow and develop inclusively and on their own terms?

Then the Panelists will be given the floor:

- **Ms. Anna Müller (WTO)** will discuss five principles/recommendations with regard to the use of competition policy in supporting development, trade liberalization and effective participation in global value chains. First, the focus of policy makers in using competition policy as tool for poverty reduction should be on approaches that are relatively easy to implement but have a track-record of being effective and economically sound. Second, for competition policy reforms and legislation to be successful, public acceptance and support is critical and must be an essential focus of related initiatives. Third, to serve as an effective tool for poverty reduction, competition policy needs to address the needs of the poor in their capacities as producers, in addition to their capacities as final consumers/households. Fourth, 'competition policy' is more than just 'what competition agencies do' and includes the full spectrum of measures that governments employ to enhance competition and improve the performance of markets. Fifth, in order to address the challenges posed by the changing landscape of competition policy worldwide, new forms of international co-operation may need to be considered. Two specific areas in which competition policy can contribute to poverty reduction will be discussed, namely the reform of public and business infrastructure sectors, particularly in the context of developing and transition economies, and the addressing of possible monopsonistic practices in international supply chains that may affect the ability of developing country producers to reap gains from participation in international markets.
- **Mr. Richard Bolwijn (UNCTAD)** will focus on Global Value Chains (GVC). Competition policies take on a crucial role as countries increase GVC participation. Value capture for the domestic economy is often determined by power relationships in GVCs. Such relationships may involve contractual arrangements between independent operators in GVCs, which can restrict competition. Examples are the fixing of purchase or selling prices or other trading conditions, the territorial distribution of markets or sources of supply and the application of different conditions to equivalent transactions with other

trading parties. Competition policies can play a crucial role in preventing or sanctioning such anti-competitive behaviors, and thus in safeguarding and maximizing the benefits that economies can derive from GVC participation.

- **Mr. John Davies (OECD)** will speak about international cooperation in enforcing competition law. Competition benefits consumers and promotes productivity growth, and thereby economic growth and development. So constraints on the ability of competition authorities in developing countries to act effectively to promote competition will harm development. Competition law is now global; many businesses already operate globally and more will do so in future. Consequently, to operate effectively, competition authorities will increasingly need to co-operate. Smaller developing countries especially, often face difficulties in effective co-operation, and this limits their effectiveness – most worryingly, when trying to deal with international cartels and market-sharing agreements. International organizations like UNCTAD and OECD, along with ICN (International Competition Network), are working on ways to improve competition authorities' awareness of one another's work, as well as to develop more effective mechanisms for co-operation. Yet as globalization continues, competition authorities might increasingly need to find ways to take joint action. This is much harder to achieve – ideas such as mutual recognition of decisions are being discussed, but are probably a long way from implementation. Perhaps the most promising area of progress at present is through regional networks, especially among developing countries.
- **Mr. Nuno Pires de Carvalho (WIPO)** will argue that the interface between IP and Competition law operates on three levels: the correct dosage or calibration of IP rights, anticompetitive abuses and essential facilities. A small number of WIPO-administered treaties address the first two levels of the interface, but in an ambiguous manner. However, WIPO Member States have no plans to establish new multilateral rules on that interface.

The interventions by the panelists in each Part of the Meeting will allow for lively debates and exchanges of experiences among themselves and with the Experts attending the Meeting, who are hereby kindly encouraged to actively participate in the discussions. **Prof. Fox, Prof. Heimler and Mr. Kiyoshi Adachi (UNCTAD)** will provide their comments too.