

# UNCTAD REPORT: “*Contribution of Competition Policy to the Resurgence of MSMEs post-COVID 19*”

27-28 June 2022

VIE Hotel, Bangkok, Thailand

**Monday 27 June 2022**



**Harnessing the Interaction between Digital Platforms and MSMEs: Recommended Practices for Digital Platforms [RDP]**

## **Opening Session**

The opening ceremony was moderated by **Mrs Elizabeth Gachuri**, Economic Affairs Officer at UNCTAD.

The meeting was opened by **Professor Sakon Varanyuwatama**, Chair of the Trade Competition Commission of Thailand [TCCT]; **Mrs Teresa Moreira**, Head of Competition and Consumer Policies Branch, UNCTAD and **Ms Tientip Subhanij**, Chief of Investment and Enterprise Development, ESCAP (Economic and Social Commission for Asia and the Pacific).

In his remarks, **Professor Varanyuwatama** welcomed the delegates and assured them of the commitment of both the Thai government and the TCCT to have markets in Thailand that were driven by fair competition principles. He lamented the effects of COVID-19 on Small Medium Enterprises [SMEs] but also expressed optimism on the surgency of use and access to digital platforms. He welcomed the presence of TCCT, UNCTAD and ESCAP (Economic and Social Commission for Asia and the Pacific) to share knowledge gathered on the resurgence of SMEs. He recalled the work done through the UNCTAD Global Report, and the 3 national studies from Brazil, South Africa and Thailand. He expected the meeting participants to provide valuable feedback on the Guidance document for Thailand, the recommended Guidelines for the Digital Platforms, and the online course on interface between competition policy and SME development. He was optimistic that the focus on online platforms was not accidental rather because of the significance that digital platforms have had on business development during the COVID-19 pandemic. The Guidance document on Thailand was hopefully going to unlock the solutions to get Thailand out of the middle-income trap that it finds itself in.

**Ms Teresa Moreira** stated that the meeting was the ending of phase 3 of the UN emergency COVID response, which was known as the “UN DA Global Initiative towards Post-covid resurgence of MSME sector” and was launched in 2020. The UNCTAD CCPB was immediately engaged with competition authorities [CAs] and SME development agencies under the auspices of the 5 UN regional economic commissions in Latin America, Africa, Europe, Western Asia, Asia Pacific on initiatives for MSME resurgence. A global report was eventually produced, which led to 5 regional webinars on the findings and recommendations. During Phase 2 of the project, three [3] national studies on impact of COVID-19 on SME sector and the implementation of competition policy were undertaken in Brazil, South Africa and Thailand. Phase 3 outputs included Recommended practices for Digital Platforms aimed at seeking to facilitate access to digital platforms, an online course on interface between competition policy and SME development. The other output is the Guidance Document for Thailand on the implementation of recommendations from the national study and finally technical assistance for SMEs and competition agencies in Brazil, South Africa and Thailand. RDP are meant to provide a base for sharing ideas and subject to further refining following this meeting. Submissions from Thailand, Singapore, Moldova and Mexico were instrumental in calling for focussing on a framework for digital markets to deal with unfair access issues. She alerted the meeting that any digital transformation must include MSME, women and youths as contained in the UNCTAD IX Bridgetown declaration. The principles espoused by UNCTAD aim at streamlining relationships between bigger and smaller enterprises especially in developing. In this regard, knowledge and awareness between CAs and SME agencies is vital in addressing competition issues - which position inspired the development of the online course. The course has 5 modules i.e., on competition, market access and market positioning, access to finance, digitalisation and e-commerce and institutional linkages. She thanked Thailand for hosting the end of the Phase 3 project and was optimistic that the reports being launched would assist in review of better policy options for SME resurgence.

On her part, Ms **Subhanij** relayed the important work that ESCAP had undertaken, and the support rendered to regional member states in Asia and the Pacific region on policy matters affecting business development. She reminded the audience that ESCAP was also keen to engage in practical research that led to policy recommendations on social inclusion and sustainable development of enterprises. To this effect, a policy guidebook on SME policy and development was issued, which also was influenced by the cooperative work done with UNCTAD. ESCAP was keen to work with UNCTAD, notably on guidelines such as the proposed RDP, which she had no doubt would be very useful. Ms Subhanij stated further that she was aware that traditional business arrangements have been remodelled into increasing digital platform solutions for SME survival in the “new normal”. ESCAP was poised to continue to focus on SME, environment, social and governance matters and therefore, this meeting was to be a source of ideas for the development of future work products for ESCAP.

## PANEL 1

### **The importance of Digital Platforms for Sustainable Economic Development and MSMEs' access in the attainment of the UN SDGs**

The panel was moderated by Mr Akarapon Houbcharaun, Director of Foreign Affairs Division, TCCT. The panel comprised an excellent mix of distinguished speakers from both the Thai government and CSOs, UN agencies, American Bar Association and Meta [Facebook].

**Mrs Valeria Jordan**, of the ECLAC Digital Development Observatory kicked off the discussion by highlighting that there was an exponential of 400% increase in digital markets sector growth between 2019 and 2021 in Latin American Countries [LAC]. E-commerce growth during the same period was estimated at 350%. While this was the case, there were two global digital players who dominated e-commerce transaction procession, being Amazon and Alibaba. She noted that according to ECLAC findings, 86% of the start-ups in 2017-2021 were in the digital platforms sector, with COVID-19 playing a catalytic role between 2019 and 2021.

Regarding the attainment of the UN SDGs [notably 2, 7 and 8], Ms Jardin acknowledged the role that digital platforms had played in the agricultural sector in LAC, where both on farm and off-farm productivity [logistics] has greatly improved. On business performance, this had also improved assisted by reduction of intermediaries, improvement of inventory monitoring and logistics efficiency, and better credit information flows. Digital platforms further opened markets, created jobs and had network effects which unfortunately, meant in many cases that the “winner takes all”. It was however, undoubted that digital platforms had led to industry innovation and infrastructure development, responsible consumption - which all fed into the SDGs. Without appropriate digital governance, there was to be adverse effects on users and SMEs. Further, the observatory was working on data collection for decision and policy making decisions to ensure that any recommendations are founded on good data.

**Dr Chaichana Mitrpant**, Executive Director of Economic Transactions Development Agency, Ministry of Digital Economy and Society of Thailand, disclosed that the Thai government was upscaling broadband connectivity to ensure that ample opportunities were availed to SME development for digital entry, expansion, communication and transformation of business internally and progressively into cross-border trade. He stated that Thailand had an e-commerce law that was adopted using the UN Model Law on E-commerce, with appropriate adaptations to Thai conditions. The Thai e-commerce law provided for a complaint lodging and dispute resolution mechanism, with a 24/7 call centre to deal with issues of delay of supply of goods, supply of a wrong description of goods, etc. As part of attaining a more holistic legal framework, an Electronic Transactions Act had also been adopted.

It was noted that while this was in place, models and ecosystems for digital platforms were constantly evolving and there was therefore, a system in place to study the trends, risk levels [which depended on the size of the digital platform] and intervenes were made where the risk was higher. Types of users, size/number of users were also considered. Digital Platform Providers [DPPs] were also requested to input into the relevant risk profiling assessments. Specific law on digital platforms was being discussed.

**Mr Nattapon Dejvitak, Registrar of the Board of Trade of Thailand** explored the experience of Thai business in developing the digital sector through the interfacing relationships involving importers, exporters, banks, logistics suppliers and other intermediaries. He acknowledged that there was a lot of documentation required in trade, which in some cases included 30 processes with 10-15 parties to deal with. An e-trade platform had been created to streamline documentation and information exchange involving suppliers/buyers in import and export, including assisting with the elimination of unnecessary trade bureaucracy. This was to result in greater efficiencies by lessening processing time, fraudulence, increased finance accessibility by SMEs. To achieve better efficiencies, the key players were the banks, insurance companies, freight forwarders, import and export corporates, customs brokers. Arising from all these efforts, a National Digital Trade Platform [NDTP] as is implemented in Hong Kong, Japan and Singapore was being finalised in Thailand. The NDTP was to make trade processes more transparent, open, and easy for the users and beneficiaries. Mr Dejvitak was quick to point out that while the NDTP was a private-sector initiative, its success depended on government support. To this effect, government support had been sought through the relevant government department. The NDTP was touted as a practical solution to ease of doing business as per the government policy and thus key contributors to the attainment of the SDGs.

**Mrs Nadezhda Nikolaevna Pustovalova, Head of International Cooperation, Eurasian Economic Commission**, joined fellow panellists to underscore that Digital Platform Providers [DPPs] were useful economic agents that facilitated economic integration through expansion of the geographic reach for product sales. DPPs further provided competitive effects and reduced barriers to entry for SMEs in many ways. In this instance, there was need to make SMEs aware of digital platforms and how they could use them to have knowledge of markets and how to utilise the market opportunities through these platforms. However, there was need for competition authorities [CAs] to monitor and review digital platforms for any instances of abuse of dominant position of market power that can affect SME market access and expansion efforts. However, on the mechanism for implementing such CA actions, she advised that the national CAs could do so for digital platforms that were within their national jurisdiction while a regional framework for competition policy could deal with those platforms that had a regional dimension or cross-border effect. She disclosed that there was no binding regional framework for competition policy in the EEC. A framework for cooperation was being reviewed as well as regional coordination of initiatives.

**Mrs Lucia Ojeda Cardenas, Vice Chair of the International Committee of the Anti-trust Law Section of the American Bar Association [ABA]** acknowledged the digital transformation that had been experienced. She noted too, the numerous and fragmented laws regulating digital platforms and the complexity of global consumer complaint resolution systems. She called for best practices to harmonise and systematise remedies at global level. It was evident that digital platforms had changed and connected supplier networks with buyers, tremendously improved market access, efficiencies and information exchange in real time. The proliferation of data analytics, with free market intelligence, this contributed enormously to market development and those of SMEs. While digital platforms had assisted SMEs, Mrs Cardenas expressed concern that big enterprises controlled these digital platforms, of which developing countries were not well equipped and skilled to monitor them. She proposed that due to the fragmentation of digital platforms, there was need for concerted learning moments for the public and private sector legal minds to link and learn from each other on how to regulate digital platforms.

**Mr Clark Ke Liu**, Sustainable Development Officer, Division for SDGs – UNDESA, pointed out that SDGs 7 to 9 were closely related to digital platform transformation agenda and SME resurgence and resilience. Coincidentally, this particular day, was UN SME Day, which was a day to remind the delegates of the effects that COVID-19 had on SMEs and share strategies on SME resurgence. He recalled an SME covid-19 impact assessment that had been done in Gambia, Kenya and the Philippines where reliance on digital platforms had been paramount for survival. The emergence of digital entrepreneurship in countries such as Kenya has reduced the SMEs from multiple roles of sourcing and marketing products, thus reducing time and cost of logistics - including cutting off banking as real-time payments were made into bank or mobile money accounts. It was however lamented that there was an information gap in many developing countries due to the high informal sector. In Zimbabwe in particular, it was noted that 90% of the SMEs were informally based and UNDESA was working on a framework to assist in raising their access to information and digital opportunity utilisation. UNDESA was looking forward to forging new cooperation opportunities with other agencies to perfect access and utilisation of digital platforms for SME development.

**Mrs Marianela Lopez Galdos**, Public Policy Manager, Meta [Facebook, WhatsApp, Instagram digital platform providers] was the only representation of a DPP and acknowledged the need to have digital platform regulation. According to Mrs Galdos, there was fierce competition on digital platforms, although most platforms had 2 to 3 notable competitors. While a lot of public focus had been on their Facebook trademark, they realised that it was a good platform for SME development. Meta through Facebook provided data analytics including reviews and information of suppliers through advertisements tailored for particular customer profiles.

While there were various options for regulations, she suggested that there was need to have the kind of regulation for digital platforms that results in greater benefits for SMEs. In this regard, she posited that during the COVID-19 pandemic, Meta through Facebook had learnt a lot about how SMEs were affected. Data was available and ready to be shared in this regard. Arising from this experience and data, Meta has come up with new products and services that SMEs would greatly benefit from. She assured that Meta will continue to work with Governments and have constructive dialogue on how to improve its digital platforms and contribute to SME development and the attainment of the SDGs.

## PANEL 2

### **Best International Practices and experiences in the regulation of digital platforms in developed and developing nations**

**Mr Juan Pablo Herrera**, Deputy Superintendent, Superintendence of Industry and Commerce, Columbia, highlighted the two-sided market dimension of digital markets, which regulators generally found difficult to regulate. He was cautious about the capacity of competition authorities to regulate digital platforms which had very complex technical aspects as well as economic issues. He called upon competition policy interventions to be done in tandem with other technical policy interventions as an ideal regulatory approach.

**Ms Lenisa Rodrigues Prado**, Commissioner, CADE, Brazil, observed, rightly so, that COVID-19 had made the world smaller. Digital markets had become prominent, with competition, access issues and digital inclusion becoming topical. Arising from these realities, CADE developed digital platform technical recommendations. A linear growth had been noted in Brazil in use of internet, digital banking and e-commerce. Government has also used digital platforms to transfer social funds. She however expressed concern that on the global average of use of e-commerce, Brazil fell below the global average of 76.8%. With increasing use of digital platforms, she supported calls for other laws to be enacted, other than competition law, to regulate digital platforms, data protection on how data is commercialised and used for profiteering by DPPs. She also supported calls for an international cooperation mechanism to deal with digital platform monitoring and regulation.

**Ms Priscilla M Njako**, paid tribute to UNCTAD for facilitating the development of the Recommended Practices for Digital Platforms [RDPs], which were to assist to reduce what she termed ‘regulatory confusion’. As noted by other speakers, she noted that COVID-19 had sent at least 70% of Kenyan SMEs out of their markets and following reduction of risk and relaxation of public health restrictions, there have been a few which have managed to re-enter their markets. She narrowed down to buyer power experiences in Kenya, where there were complaints were received by CAK against Uber for predatory pricing. Investigations found that with the ongoing global digital transformation, there were no barriers to entry as there were at least 18 independent taxi apps that were in competition with Uber, fuelled by fierce price competition. This provided effective competition and provided SME entry and enhanced the power of consumers/buyers/users of taxi services to select the best price on offer. In this context, she suggested that buyer power actually worked in favour of SME development and ensure fairness for consumers.

She disclosed that CAK had also developed guidelines for collective bargaining for SMEs against dominant suppliers. The collective bargaining was guided through sectoral or trade association. A retail code of practice had also been promulgated, with alternative dispute resolution mechanisms to assist SMEs lessen the cost of handling disputes. She emphasised on the need to back guidelines through legal amendments as well as making any publications user/SME friendly.

**Ms Alexandra Ivanova**, Legal Officer, at the Federal Competition Authority of Austria acknowledged the UNCTAD initiatives on RDP and stated that Austria had a Digital Markets Act [DMA] that provided for ex-ante application i.e., there was no need to define markets or dominance

except for demonstration of anti-competitive effects. This was in contracts to competition law, which premised action relevant market definition. She explained that the DMA targeted “Gatekeepers”, i.e., those which were reckoned to have significant impact on internal markets in Austria, which operated an important gateway for business users to reach end users, or in a situation where they enjoyed a “durable position”. She cautioned however that there was a rebuttable presumption on all three conditions i.e., an enterprise had to have a turnover of at least €7.5 billion [in the previous year] in the European Economic Area, had to have a certain number of users on its digital platform [in a previous year]. She was however not oblivious to the remedies and actions available through enforcement of competition law, which were not limited by the DMA provisions.

**Ms Roland Hany Ramzy Kedwany**, Senior Researcher, Egyptian Competition Authority [ECA] acknowledged the role those digital platforms played in modern economic development and gave an example of the food industry in Egypt where ordering food through digital platforms had become prominent and assisted many SMEs. Independent apps were under scrutiny in Egypt following concerns on abuse of market power. Market power was presumed for enterprises with at over 25% market share, and where control was established in the absence of competitor restraints. Restaurants which first moved into digital food ordering were found to have had first mover advantages. For those that were considered dominant with own apps, found that where they had exclusive dealing arrangements, the Most Favoured Nation [MFN] clauses were reviewed by the ECA to ensure that there were no foreclosure effects.

**Dr Akarapon Houbcharaun**, Director of Foreign Affairs at TCCT welcomed the UNCTAD conference to discuss digital platforms and noted that the TCCT had intervened in the online travel agency market where there was ‘multi-horning’ i.e., where small hotels were required to meet certain targets for them to access benefits on certain digital platforms. Excessive fees for use of identified digital platforms was, price discrimination, wide rate parity clauses acted as a barrier to entry for new competitors. Other conducts were exclusive dealing [thus blocking multi-horning], tying and bundling [coupled with advertisement fee and top ranking].

Regarding e-commerce, there was evidence of self-preferencing [i.e., vertical integration of own products and services], tying and bundling [forcing business operators to join advertisement and sales promotions that they would otherwise not wish to join]. Arising from calls for greater regulation, a Royal Decree was issued which required registration of all digital platforms to assist with monitoring and compliance to regulation [*Ex-ante* regulatory approach was adopted]. The Digital Platforms Act [DPA] was enacted, which interfaced with the role of the TCCT. A requirement that all e-commerce payments be made in Thai currency was made.

Overall, there was still a need to improve on the law and the guidelines under the Trade Competition Act. Further understanding of digital markets more so on dominance and investigation strategies was an on-going process, in view of the complexity and dynamism of the sector.

Mr Houbcharaun called upon regulators and government to create an ecosystem for understanding digital platforms, ensuring that regulations and guidelines were always up to date while at the same time ensuring that the cost of doing business was not raised for SMEs.

**Prof. Xiaoye Wang**, Distinguished Professor at Schenzhen University and Professor of Law at Chinese Academy of Social Sciences in Peoples' Republic of China [PRC], welcomed the works that had been done in the form of RDP by UNCTAD. On dominance, he disclosed that in the PRC competition law, dominance was assumed at 50% but rebuttable if an enterprise could prove that it did not exercise unilateral market power. Like Egypt, the PRC had undertaken some investigations in the food delivery sector where there was a foreclosure strategy by Meituan. The strategy prevent effective participation of the competitor/s. Meituan was fined 3% of its turnover in 2020. The “either or” strategy implemented by Meituan on its digital platform, other than foreclosing competition, adversely affected MSMEs.

Arising from several complaints in digital markets, the PRC competition authority drafted guidelines on digital economy. These were expected to aid in effective enforcement of competition law primarily through removal of entry barriers and facilitation of online market access.

**Ms Emma Asusano**, OIC Director, Bureau of SME Development, DTI, Philippines, expressed confidence in the proposed UNCTAD RDP. She highlighted a number of legislations that had been passed in the Philippines over the last decade. These included the Philippines Innovation Act, the Electronic Commerce Act, the National Payment System Act, the Data Privileges Act and the Philippines Competition Act. Following the COVID-19 pandemic, the e-commerce legislation was revised and a roadmap that facilitate market access, digitalisation and logistics integration to ensure that business progress was done in a more transparent and easily regulated manner.



## PANEL 3

### **Harnessing the Interaction between Digital Platforms and MSMEs: Recommended Practices for Digital Platforms [RDP]**

The third panel was moderated by **Dr. Pierre Horna**, Legal Officer, Competition and Consumer Policies Branch, UNCTAD. Dr Horna introduced his panellists and invited them to make their remarks after the presentation of the RDP by Mr Jorge Padilla and Mr Juan Luis Crucelegui.

**Dr Jorge Padilla**, Executive Director, Compass Lexecon, presented the UNCTAD commissioned Recommended Practices for Digital Platforms [RDP]. He expressed that the objectives of the RDP were to provide some form of soft law for further discussion and development of a common international framework for RDP. He proceeded to outline the structure of the RDP.

Overall, he noted the problem of uncontrolled market power of DPPs and the effect this has on developing countries. This was because DPPs exercised significant control over e-commerce activities due to their durable position and capacity to erect barriers to entry and exploitation of network effects. He recalled the lack of capacity and/or of effective regulation to monitor and control the activities performed on digital platforms. In this context, the RDP were meant to complement any existing means of monitoring and enforcement, as well as providing a mechanism for self-regulation by DPPs and requirement for transparency and accountability of rules of access by users.

On the underlying principles of the RDP, he explained that the focus was to alert DPPs and users on market accessibility, fair competition, fair trading, neutrality and transparency. Pertaining to specific commitments, the RDP promulgated the need to preserve competition on digital platforms. DPPs were given guidance on how to have their platforms be configured in such manner that they did not restrict users from dealing with alternative or rival suppliers without the requisite increase in switching costs. There was also a commitment to publish acquisitions of actual or potential competitors of the same of connected product.

On implementation of the RDP, Dr Padilla emphasised that the RDP were voluntary and provided some form of soft law for any regulators that wished to use them or adopt them altogether in a prescribed but adapted manner to national conditions. The DPPs were also expected to use the RDPs to self-assess their compliance levels [on a voluntary but best practice model]. The RDPs could also be used to declare their acceptance of best practices and make the RDPs accessible to their users for transparency purposes.

There was also room for “competent authorities” in the legal context to adopt some of the recommendations for dispute resolution purposes and communicate the RDP to users of digital platforms. Dr Padilla otherwise hailed the RDP as a progressive step towards a universal adoption of related and morally binding best practices.

**Mr Juan Luis Crucelegui**, Chief of Capacity Building and Advisory Services Section, Competition and Consumer Policies Branch, UNCTAD, welcomed the RDP and was confident that the RDP would provide guidance to Member States, especially developing countries, in their dealings with digital platforms. On implementation, he was of the view that this would be left to competent authorities in Member States and regional bodies to see how they could use the RDP to have DPPs accountable in the name of transparency and fairness in access of digital platforms. He noted that digital platforms were dynamic and the RDP were to assist with user/consumer dispute resolution - and most importantly, could be recast as code of conduct. The embedded principles and commitments in the RDPs were therefore of importance. He noted that some Member States had requested for more time to comment on the RDP and it was reasonable to await for such further comments in order to enrich the final RDP product.

### **Comments on RDP**

**Mr Manu Sithiprasasana**, Executive Director, International Institute for Trade and Development [ITD], welcomed the RDP, particularly on the complaint resolution content, which was to assist in legal and regulatory review and local adaptation. He envisioned the RDP as a blue-print to act as a basis for engagement with DPPs.

**Mr Boniface Kamiti**, Manager – Consumer Protection and Competition, Competition Authority of Kenya, welcomed the RDP noting that it facilitates transparency for fair access to digital platforms. Such facilitation was a catalyst for innovation and market development. He noted that in Kenya, M-pesa, a digital mobile payment app, had created many opportunities for consumers and SMEs. It was noted that at least 50 million Kenyans use Mpesa. The RDP would assist facilitate greater global solutions to e-commerce, market growth and possible dispute resolution. The CAK would learn from both the soft and hard enforcement mechanism that would be necessary arising from the RDP.

**Mr Layhy Chhea**, Director - SME Department, Ministry of Industry, Science, Technology & Innovation, Cambodia, welcomed the launch of the RDP as a necessary contribution to facilitating better knowledge of facet for digital platform regulation. He shared that Cambodia had made commendable economic strides so far, of which e-commerce, competition law and policy were part of the success story. Considering the significance of e-commerce and SMEs, an SME fund had been set up to monitor and ensure smooth operation of e-commerce platforms. An SME Development Policy was in place, of which the RDP would assist to reinforce any further review, including of the existing legal framework. He was confident that the RDP will assist to have a better understanding of the components required for best digital platform practices and contribute to higher e-commerce and consequently, GDP.

**Mr Nestor Buenaflor**, Ambassador in Thailand, World Union of SMEs [WUSME] welcomed the launch of the RDP, notably that this day, 27<sup>th</sup> June 2022, was World MSME Day. He shared that their records indicate that on world average, 90% of businesses were MSMEs. Levels of technological advancement and usage increased during the COVID-19 pandemic in digital transactions by SMEs. He disclosed that Amazon had an artificial intelligence [AI] system to detect and collate consumer purchase decision preferences. Such data was useful for SMEs to access and use it to profile their products accordingly. Further what he referred to as “social digital

consumers” were also a useful source of trends on use of digital platforms. He welcomed the RDP and assured that they would be disseminated to Member States for further review and as a learning resource.

**Mrs Natalie Khaled**, Economic Affairs Officer, UN Economic and Social Commission for Western Asia [UNESCWA], welcomed the RDP as a necessary blue print for digital regulatory compliance in view of the low levels of understanding of how online platforms work. She was cautious about the dispute resolution mechanisms against dominant enterprises, as SMEs could be worried about repercussions of reporting instances of abuse of market powers. She also noted that in a number of developing Member States, there was weak backbone infrastructure for digital markets. Regulation was therefore in its introductory or development stages. The RDPs were therefore welcome as a reference point for discussion by Member States.

**Mr Quan Zhao**, Trade Policy Advisor, Division for Market Development, International Trade Centre [ITC], congratulated UNCTAD on the development of the RDP. He expressed confidence that the RDP would assist to infuse predictability, transparency, fairness as key principles in digital platform product offers. He noted that access to digital platforms by SMEs was still a problem of interoperability and transferability of data. He hoped that the adoption of the RDP would assist with providing good practices that dealt with such problems. Although it was obvious that the RDP were not binding/obligatory, their efficacy was persuasive enough to attract wider voluntary adoption. On whether the RDP would be effective to achieve their objectives or not, Mr Zhao was again optimistic that with increased awareness of the RDP by users, competition authorities and digital service consumers, there would be a movement towards adopting best practices. Such awareness would equally provide an effortless self-monitoring mechanism for implementation purposes.

Therefore, he emphasised on the need to have continuous dialogue with competition authorities on improving the RDP as they are tested in the market place. He also called on further partnering with the ITC on joint training initiatives for MSMEs and other users/beneficiaries of digital platforms. RDP were to be a tool to harness better regulatory opportunities and utilisation of digital platforms.

**Mr Giovanni Napolitano**, Director – Competition and Intellectual Property, WIPO welcomed the development the RDP and pointed out that digital platforms were part of intellectual property [IP]. Patents were part of IP, and it was important to ensure that regulation took a developmental approach. Further, as IP, digital platforms provided sources of economic growth, as Mpesa had demonstrated in Kenya. RDP were a higher standard for bigger market players in the digital space, which practices consumers were likely to hold them accountable to. The concern he raised was whether new players were to be held to the same higher standard as existing big players. He emphasised however that there was need to protect patents for the digital platforms to attract further and better technologies.

**Dr Annie Xue**, Partner, GEN Law Firm, China, welcomed the RDP and in particular the inclusion of curtailing switching costs and having fair competition principles to promote economic efficiencies in digital platform product offerings and usage. She however emphasised on the need to ensure that there was effective legal framework to assist the attainment of the RDP.

## **CLOSING CEREMONY FOR DAY 1**

**Mr Richard Bolwijn**, Head, Investment Research Branch, UNCTAD, thanked UNCTAD CCPB for the RDP, which were expected to ease entry in and participation on digital platforms for MSMEs. The decrease in investments had been noted during post-covid era in the latest World Investment Report and it was hoped that a framework for fair access to digital platforms would contribute to raising investment and trade opportunities.

**Dr Rupa Chanda**, Director – Trade, Investment and Innovation Division, ESCAP, noted the lack of digital knowledge and desired digital skilling notably amongst MSMEs. Therefore, she considered the RDP would afford many benefits for MSMEs. She noted that while it is not the role for policymakers to favour small businesses over larger ones, they must nevertheless ensure that the voice of smaller businesses is not lost in discussions on competition policy. She invited Member States to continue to work closely with UNCTAD and ESCAP to improve the scope and depth of the research products of these organizations.

**Mrs Teresa Moreira**, Head, Competition and Consumer Policies Branch, UNCTAD, thanked consultants who had assisted in developing the RDP, the various experts and competition agencies that made comments. She recalled that the RDP follows the Global Report that was launched as part of the UN DA project, which ends in June 2022. The input into the report comprised various studies, including 3 national studies in Brazil, South Africa, and Thailand on the effects of implementation of competition policy on SMEs during the COVID-19 pandemic.

**Professor Sakon Varanyuwatana**, Chairman of the TCCT hailed the whole day and the topics, including the launch of the RDP, as very educational. He paid tribute to UNCTAD and other local organisers for bringing together a diverse team of experts who were able to competently share and engage with the Thai colleagues. He relayed the history and the trajectory of the Thai developmental cycle and agenda and was hopeful that the knowledge gained would be useful to have a more purposeful enforcement of competition law towards SMEs and access to digital platforms.

**Tuesday 28 June 2022**



**Presentation of the Guidance document for Thai Competition and SME institutions and Presentation of the Online course on SME and Competition Policy**

**Opening Remarks**

The opening ceremony was moderated by **Mrs Elizabeth Gachuri**, Economic Affairs Officer at UNCTAD. She provided a brief on the background document on Thai national study that was led by **Dr Teerawat Charoenrat**. As part of the implementation process of this report, a Guidance document had been prepared for TCCT and SME development agencies. She ushered in Panel 1 experts.

**Panel 1**

**Dr Pattama Teanravisitsagool**, Commissioner - TCCT, reiterated the impact of COVID-19 on Thai SMEs as was noted in the national study. He pointed out the high price of fuel, low consumer purchasing power, high inflation, high interest rates, competitive pressures all posed higher risk to SME recovery. This period provided challenging policy options. The guidance document was therefore, welcome as it would provide views of experts on the path to policy options for resurgence of SMEs.

**Dr Pierre Horna**, Legal Officer at UNCTAD, thanked the TCCT and the SME support institutions for supporting the national study and also welcoming the Guidance document for auctioning of the recommendations of the national study. He recalled that the TCCT study on digital markets was a useful benchmark and the interagency coordination had been key in arriving at the Guidance document that was being launched this day. He said that he was expectant to hear from the Thai stakeholders and other experts from outside Thailand on the document. He noted the comments from the El Salvador competition authority and online comments that were to enrich the document.

**Dr Teerawat Charoenrat**, Director – Centre for Entrepreneurship, Innovation and SME Development in ASEAN Region, principal consultant to the Thai national study on competition policy and SME interface provided an overview of the report, which included overview of barriers to entry, policy implications, empirical models and policy recommendations. He highlighted from

the report that 38% contribution to GDP in Thailand was from SMEs, with an equal percentage [38%] contribution to jobs created. Of the exports, 30% was attributed to SMEs. There was realisation that there was greater potential for SMEs to contribute more, but they were faced with numerous challenges. Such challenges included unreasonable terms of access to finance opportunities, lack of marketing and management skills, digital marketing skills-gap, including anti-competitive trade practices and/or inadequacies in their enforcement with regard to SMEs peculiarity, notably during the COVID-19 era. Regarding policy recommendations, the following were advanced:

- Alleviating short term liquidity and financial pressure in the context of Covid 19
- Ensure access to markets and internationalisation, including strengthening of enforcement of competition law and policy
- MSME access to finance and addressing market failure (credit rationing)
- Greening of MSMEs
- Establish a dedicated unit in the department of industrial works as a focal point to support the greening of SMEs.

Dr Charoenrat expressed concern over the “missing middle” in the socio-economic structures of Thailand, who were key to SME resurgence. Regional economic disparities were also seen as problematic in nation-wide resurgence of SMEs. There was, therefore, the need to ensure that the demand for local products was maintained and policy support towards addressing the middle-income trap that Thailand had found itself in.

**Ms Leni Papa**, UNCTAD Consultant, presented the Guidance Document. She reiterated the need to have matters of access to finance addressed, of which enforcement of competition policy was seen as a key policy tool. Otherwise, keys were identified as follows:

- (i) Informality of MSMEs
- (ii) Digitalisation of MSMEs
- (iii) Greening of MSMEs
- (iv) Scope extended to trade and services
- (v) Access to MSME-specific financing
- (vi) Advocacy of competition policy to MSMEs
- (vii) Anti-competitive behaviours in the pharmaceutical sector
- (viii) Access of MSMEs to digital platforms/digital ecosystems

She highlighted 3 goals which were to be pursued for achievement, including strategies beneath each as follows:

Goal 1 - Improving the business climate and environment for MSMEs

- Strategy 1 - Encouraging the formalization of MSMEs
- Strategy 2 - Ensuring that MSMEs are considered in the design of policies for COVID-19 recovery

## Goal 2 - Developing the business capacity of MSMEs

- Strategy 3 - Improve MSMEs' awareness of relevant competition issues
- Strategy 4 - Improving MSMEs' access to digital technologies

## Goal 3 - Nurturing MSMEs' access business opportunities.

- Strategy 5 - Reducing anti-competitive practices affecting MSMEs
- Strategy 6 - Improving access to financing
- Strategy 7 - Improving awareness of local, regional, and international business opportunities

On approach and timeline, Ms Papa suggested that the TCCT and the MSME support institutions could establish a task force to study the strategies in the Guidance document or other interagency framework as has been done in Bangladesh and the Philippines. Advocacy efforts, including the guidelines already published by the TCCT could be used together with the Guidance document and the RDP to further competition related goals and strategies.

**Mr Suriyon Thunkijjanukij**, Senior Advisor, Office of the National Economic and Social Development Council [NESDC], reiterated the importance of enforcement of competition law against dominance enterprises as well as heightened cooperation between the TCCT and the NESDC. The Guidance document was seen as a useful document for interagency advocacy in better doing something progressive for the resurgence of MSMEs in Thailand.

**Mr Nippon Yuddhanaraveesak**, Executive Vice President, SME Development Bank of Thailand, spoke of the digital space as relevant to Thai business growth and development. Particularly, online payments were key to ease of doing business and facilitating SME transactions and lowering the cost and time thereof. The need for user-friendly and up-to-date technology was vital. He was confident that Thailand would keep pace with the digital developments. The implementation of various policy options in the Guidance document to assist SME resurgence was welcomed, including interagency cooperation.

**Mr Ranon Keowsuddhi**, Assistant Secretary General, Thai Bankers' Association, was philosophical in his opening as he asked what a competitive SME was. He disclosed that 70 million people accessed online payments annually in Thailand and it was necessary therefore to continuously improve access to finance for SME through digital platforms. Such access had to be pragmatic in terms of terms and access itself. It would therefore be assisted by digital transformation of the import and export payment systems, including the performance of intermediaries such as banks/financial institutions. He welcomed the Guidance Document and its pragmatic recommendations that it would equally be of assistance to SMEs to study the e-commerce opportunities and procedures in import and export that would assist them grow into new markets.

**Mr Thanan Apiwanthanaporn**, [former] Director - Department of International Business Development and Marketing Institute for SME Development [ISMED], welcomed the Guidance

document but urged SMEs to utilise opportunities for mergers to improve their efficiency/take advantage of synergies and economies of scope. Policy structures to create a conducive ecosystem to assist MSME resurgence appeared to have been provided for in the Guidance document. However, actualising this entailed practical market access and trading conditions through business environment restructuring, transformation and fundamental policy change to ensure the measures worked well for the lowest ranked MSMEs. He gave a comparison of how basketball stars in the United States are scouted from the lowest leagues and groomed over years to be stars. He urged policy makers to get rid of barriers to supporting MSMEs in reaching their potential.

### **Q and A Session**

On payment periods to SMEs, the TCCT Chair explained that the period had been reduced to 45 days. On the next area that would provide good in-depth study lessons, he identified the service industry, in particular tourism.

On how Thailand could effectively prioritise the Guidance Document recommendations in view of resource constraints by Ms Njako from CAK, **Dr Pattama Teanravisitsagool** Commissioner at TCCT explained that resource constraints were evidence but some of the recommendations would be achieved through interagency cooperation/collaboration. Use of existing guidelines, as opposed to drafting of new ones would be pursued.

**Mr Krisda Pampongsant**, ex-Vice Chair of the TCCT, stated that Thailand had over 5000 laws and regulations which needed to be reviewed, and this was on-going. Issue of prioritisation was therefore important and sectors that were of immediate importance will have to be identified and focus on interventions made therein. The same would apply to multi-layer markets.

On the question of whether TCCT had e-commerce guidelines during the COVID-19 pandemic, it was confirmed that the TCCT had the guidelines.

On whether there was any e-commerce investigation completed during COVID-19, the TCCT reported that they had cases, more so on tying and bundling.

### **Remarks from Competition and SME Experts**

**Dr Pattama Teanravisitsagool**, Commissioner - TCCT, recalled the need for interagency cooperation as key in the implementation of the Guidance document. The lead institutions were to be competition authority and the SME promoting agencies

**Ms Evelyn Olmendo**, Competition Authority of El Salvador expressed gratitude for the Guidance document. She went on to narrate the successes of her competition authority, which had developed a website with dedicated pages on SME initiatives, brochures on public procurement, capacity building programs for SMEs, remedies in competition enforcement and competition compliance programs. She welcomed the concept of interagency coordination and prioritisation, which was a “balancing act” that was also followed in El Salvador. To achieve pragmatic results in a sustainable manner, there was need to have progressive improvement and adoption of new technologies and access thereto, which was able to link small suppliers to the value chain opportunities.



**Ms Lenisa Rodrigues, CADE – Brazil**, welcomed the development of the Guidance document and requested one to be done for Brazil as well to assist with the next steps as COVID was not over yet. She recognised the impact of COVID-19 on MSMEs and that a measure undertaken in Brazil included tax reliefs, to assist with resurgence. Further, use of digital platforms was being encouraged to achieve the highest digital inclusion [which stood at 59%] before the pandemic but had grown where 72% of SMEs were using WhatsApp and 42% were using Facebook profiles to attract and exploit business opportunities. She added that to attain early childhood education in the subject of competition, comic book was published targeted as school going children - with consumer rights and complaint procedures indicated.

Ms Rodrigues supported the concerted efforts through inter-agency cooperation as necessary for a multifaceted approach to SME resurgence efforts. She was grateful for the empirical data in the Brazil national study report, which would be helpful.

### **Closing Remarks on Guidance document**

**Dr Pattama Teanravisitsagool, Commissioner - TCCT**, re-emphasised the role of competition law and policy to create a fair and level playing field. The Guidance document was a useful policy review and implementation blueprint, not just for Thailand, but also for other countries facing similar challenges.

## Presentation of the Online course on SME and Competition Policy



### Panel 1

#### Opening Remarks

The session was moderated by Mrs Elizabeth Gachuri, Economic Affairs Officer, UNCTAD. She highlighted the development of the online course that had been developed under the UN DA SME Resurgence COVID-19 Project, of which various subject matter experts had an input. She welcomed the two opening panellists.

**Dr. Pierre Horna**, Co-Manager of the COVID-1 Project Stream “Competition Policy and SME Resurgence”, UNCTAD, expressed optimism that the online course was an important part of the whole project that would be targeted at government officials. Over the subsequent 6 months following the launch, he assured that a trial team would be identified through Member States to undergo the training, after which a certificate would be issued. He thanked the various trainers who had lent their expertise to achieving the final product.

**Mr Benjamin McCarthy**, Associate Economic Affairs Officer, Investment and Enterprise Development Section, Trade, Investment and Innovation Division, ESCAP, disclosed that ESCAP had developed an SME Policy Guidebook, which is available on ESCAP’s website. To accompany the Policy Guidebook, ESCAP has also developed an Online Resource Centre for MSME Policy: [www.msmepolicy.unescap.org](http://www.msmepolicy.unescap.org) . He outlined the broad themes in the Guidebook and Resource Centre,, all stemming from the key subjects of competitiveness and sustainability. He was of the view that the guidebook could be used as part of the reference material by student undertaking the proposed online course.

**Panel 2:** The Panel was moderated by **Ms Puteri Sofia Amirnuddin**, former e-learning consultant, UNCTAD and Senior Lecturer at Taylor’s University, Malaysia. She provided a summary of the online course and introduced the panellists.

**Thula Kaira**, Senior Consultant, UNCTAD, on the question of “Can you share what interests you to participate in the developing the content of the online course?” posed by the Moderator, he answered that the interest was driven by the practical realities that SMEs play a vital role in socio-economic development in many countries, both developed and developing countries. The emergence of the COVID-19 pandemic saw a number of SMEs exit their markets. On how the module themes were derived or selected for delivery, Mr Kaira shared that the inspiration was the 3 national studies that were commissioned by UNCTAD in Brazil, South Africa and Thailand. The reports covered a number of challenges faced by SMEs, with the underlying base being anti-competitive trade practices. Common challenges were identified to be competition enforcement, market access, e-access to finance, digitalisation/e-commerce and interagency relationships for support of SMEs.

**Juan Pablo Herrera**, Deputy Superintendent, Superintendence of Industry and Commerce, Columbia delivered a part of the lecture in Module 3, on Competition Policy Issues relating to MSMEs Access to Finance. Based on his experience in delivering this course, he was asked to share on the practicality of this topic to the participants. Mr Herrera was quick to recommend the whole course, noting that 80% of SMEs in many countries form the bulk of businesses. These enterprises have difficulties accessing markets due to high finance cost. He recalled that many studies show that 15-20% of GDP consists of government procurement. A key component of this involves SME suppliers. He was optimistic that the course would equip relevant authorities with strategies to assist SME access to finance.

**Dr Aruna Sharma**, Practitioner and Dev Economist and Former Secretary, Ministry of Information Technology, India delivered lectures on Module 3 focusing on MSME Access to Finance and Gender Imbalances. It was noted by the Moderator that competition authorities and SME agencies have their own respective KPIs to achieve. Based on her experience, she was asked to describe the urgency for CA and SME agencies to address the issue of gender imbalances. Dr Sharma explained that there were 3 SDGs that were particularly useful in answering the question. These were SDGs 8, 9 and 10. No one was to be left behind in any opportunities for growth and therefore gender balance was necessary noting that many studies showed that women comprised a very high number of SME operated businesses. She voiced that there was a difference between having access and gaining access as interest rates could be prohibitive to women. She however recounted that it had been shown through empirical studies that women were more faithful borrowers who returned their loans than their male counterparts. She also remarked on the importance of linking women driven SMEs to important value chains so that they could maximise their potential.

**Mr Vinod Kumar**, President, SME Forum, India was reminded that the adoption pace of digitalisation certainly varies from one jurisdiction to another. He was asked to share his thoughts on what were the first few steps that CA and SME agencies should consider when it comes to digitalisation. Mr Kumar expressed concern at the low levels of digitalisation, although there was a remarked increase during the COVID-19 pandemic. There was need for CAs and SME agencies

to work together and ensure that there were no barriers to increase in infrastructure development, use and access to digital platforms used for e-commerce. While he acknowledged that the mobile phone penetration has been high, there was need to have a system to educate the SMEs on the various tools available that they can use as when as how to use them.

**Ms Carolyne Ariokot**, Manager for Access and Usage Pillar, Financial Sector Deepening, Uganda, was made alerted to the fact that the COVID-19 pandemic has radically pushed the shift to “go digital” in order for the MSMEs to continue to survive their business operations. From her experience as the Manager for the Access and Usage pillar, Financial Sector Deepening, she was asked to explain how relevant Module 4 was for the participants. She explained that the Module was critical to the learners because digitalisation was a gateway that exposes SMEs and other market actors to the global markets. While she acknowledged that there was policy fragmentation in Uganda and in many comparable countries, the course would inform policy makers on how to harmonise, use digital platforms to create inclusive financial growth and financial literacy as well. Ms Carolyne highlights that the module shares some common member digital networking platforms; Sharing toolkits that readily available in the market and ready to use. Tool kits that provide content for MSME’s provided by experts, and includes different business forms, tools, how-to-articles, business software and advice about starting and growing a business.

**Mrs Rachel Burgess**, ESCAP Consultant, Australia, addressed Module 5 on inter-agency collaboration. As an expert who had worked primarily in the ASEAN region and completed a range of capacity building and technical assistance programmes for new competition regimes, she was asked to highlight on one area where she felt that was the most important for the participants to take note of. Mrs Burgess stated that interagency or inter-institutional cooperation was an important part of any cohesive system that was to deliver effectively for the public. The role that competition played was cross-cutting and there need for MSME support agencies to understand the competition issues that affect SME growth and development. There was need for CAs as well to initiate and sustain advocacy efforts through SME trade associations so that CAs can equally understand how business at SME level works. She noted that the Australian Competition and Consumer Commission [ACCC] has a small business department that ensures that the implementation and notably enforcement actions of the ACCC are not oblivious to the plight and co-existence of SMEs in the value chains. On how the online course was unique and to be beneficial to the participants, Mrs Burgess was optimistic that the course came at an opportune time when most countries faced a daunting task of resuscitating their economies, including SME resurgence. The various country experiences that have been unveiled in the online course and solutions that are proposed would definitely assist a cross section of government officials.

### **Closing Remarks**

Mrs Elizabeth Gachuri thanked the panellists for the online course segment for their input into the course and assured participants that UNCTAD CCPB would row out the course first to government officials in the next months because they were the primary target. She thanked the TCCT, UNESCAP, UNESCWA and the support staff thereunder for the assistance that had been rendered to make the two-day event possible and successful.