

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**The effects of anti-competitive business practices on
developing countries and their development
prospects**

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FOREWORD

During the last decade, many developing countries have adopted or are in the process of enacting competition laws. There is growing awareness among developing countries of the adverse effects of anti-competitive practices on their economies as well as their populations. The effects of such practices are not easily quantifiable and may therefore not be obvious. Nevertheless, developing countries have come to recognize the potential benefits that can be derived from competition law enforcement. The drive to establish legal and institutional frameworks in order to fight anti-competitive practices has intensified in recent decades.

In over three decades working with many developing countries across the globe, UNCTAD has accumulated a wealth of knowledge and expertise in making competition law and policy work for development. The Accra Accord (paragraph 104) 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.*" Within this framework, the current publication brings together studies by practitioners and academics focussed on identifying the effects of anti-competitive practices on developing countries and their development prospects.

The various sections of this publication cover a wide range of cross-cutting competition issues. The publication highlights the synergies between competition and consumer laws and policies. It emphasizes the role of competition law and policy as a complementary policy tool in poverty alleviation. It also draws attention to competition concerns in commodity markets, which are of crucial importance to developing and least developed countries. Moreover, it provides lessons from a broad range of experiences from developed as well as developing countries, including economies in transition. The contribution

of competition enforcement can often be indistinguishable from that of other economic policies in increasing efficiency and competition. Nonetheless, this publication upholds the view that competition law and policy are supportive of the overall process of economic development by curbing anti-competitive practices that negatively impact consumers and increase costs to business.

It is my hope that this publication, which is being launched at the ninth session of the Intergovernmental Group of Experts on Competition Law and Policy in Geneva, in July 2008, will contribute to the enhanced understanding among government officials, private-sector stakeholders, consumer organizations and civil society of the necessity of competition law and policy and raise awareness on the damage caused by anti-competitive practices on the economies of developing countries.

I would like to reiterate that UNCTAD will continue to support developing countries in their efforts in adopting competition and consumer laws and establishing and strengthening the capacities of their competition authorities through technical assistance and capacity-building programmes.

A handwritten signature in black ink, appearing to read 'S. Panichpakdi', is written in a cursive style.

Supachai Panichpakdi
Secretary-General of UNCTAD

EXECUTIVE SUMMARY

During the 1990s, many studies were undertaken to demonstrate the effects of anti-competitive practices on consumers and producers both in developing and developed countries. Damages caused by such practices to developing countries have implications for the purchasing power of consumers through increased prices. Producers in the developing world are also affected by anti-competitive practices through increased barriers to entry by restriction of information on technology. A World Bank study¹ shows that, in 1997, developing countries imported US\$81.1 billion worth of goods from industries where companies were involved in price-fixing arrangements in the 1990s. These goods represented 6.7 per cent of imports and 1.2 per cent of GDP in developing countries. These figures reveal the significance of the economic impact of the damages of anti-competitive practices on developing economies. It is worth mentioning that the quantitative effects of anti-competitive business practices are not easy to demonstrate. The most obvious effect of such practices is seen in the form of price increases in markets involving output-restricting or price-fixing cartels and dominant firms abusing their market power. In such cases, consumers are the ones who suffer directly from restricted competition.

One of the policy options available to governments to prevent or eliminate anti-competitive practices is the introduction and enforcement of competition law. The interrelationships between competition law and other government policies, such as consumer protection, macroeconomic policies and poverty alleviation, are an important catalyst to economic development and better livelihoods. Among these policies the synergies accruing between competition and consumer protection law enforcement to protect consumer interest and welfare are worth noting.

This publication is a compilation of studies done by competition practitioners and academics. It brings together studies quantifying the

¹ Margaret Levenstein and Valerie Suslow (2001), *Private International Cartels and their Effect on Developing Countries*, Background Paper for World Bank's World Development Report 2001, available at <http://www.worldbank.org/wdr/2001/bkgroundpapers/levenstein.pdf>.

effects of anti-competitive practices, on the one hand, and, on the other, studies demonstrating/emphasizing the benefits of competition law and policy, through establishing links between competition and other cross-cutting issues. Part A deals with the interaction between competition and consumer policies. Part B focuses on competition law and policy and on poverty eradication. Part C discusses competition issues in commodity markets. Part D is devoted to lessons learnt from competition policy and law enforcement; experiences of developing as well as developed countries from both national and regional implementation perspectives. Lastly, Part E deals with specific anti-competitive practices, such as cartels, abuse of dominance and patent policy, which have a bearing on competition in the market.

The Interface between Competition and Consumer Policies

Competition and consumer protection law and policy areas form part of the development perspective of UNCTAD's work. Considering the needs of consumers, especially in developing countries, and the imbalances they face in economic terms, educational levels and bargaining power, UNCTAD published the *Guidelines for Consumer Protection*.² The objectives stated in the Guidelines include, among others, assisting countries in controlling abusive business practices by all enterprises, which practices adversely affect consumers, and encouraging the development of market conditions, which provide consumers with greater choice at lower prices. These objectives point to the close relationship between consumer protection and competition policies.

Competition law and consumer protection policies are complementary and mutually reinforcing. Competition in the market increases efficiencies and encourages innovation. Competition also creates incentives for product differentiation and improves the quality of goods and services provided. In that sense, competition enhances consumer welfare by providing consumers with a wider choice at competitive prices. Consumer protection strengthens competition in the markets. Consumers make informed decisions in their preference for goods and services in respective markets when they are well informed.

² *UN Guidelines for Consumer Protection*, United Nations, New York and Geneva, 2001, available at: <http://www.unctad.org/en/docs/poditcclpm21.en.pdf>.

This increases competition between firms and results in efficiency and/or quality improvement, which in turn benefits consumers. In this publication there are studies that quantify benefits to consumers from competition in different sectors of the economy as well as those that quantify the adverse effects of anti-competitive practices on consumers (Sections 1, 2 and 3). These studies illustrate the strong link between competition and consumer protection. Other studies use econometric models to demonstrate the contribution of competition law to alleviate the costs of cartels incurred by consumers. Some competition authorities have even estimated the rate of return in terms of consumer welfare on each dollar spent on competition law enforcement (Section 2).

In some cases, total damages caused by the violation of competition law are found to be significant while the damage per consumer is relatively low, especially with respect to the price of the product and the household budget. These are some of the factors hindering or discouraging consumers from initiating private damage actions. There are particular cases in which the market where violation takes place is different from the market where the damage occurs. Therefore damages are not visible to individual consumers. In such cases, consumers may not be aware of the costs they incur. Market assessment can be a useful tool to give visibility to damages caused by anti-competitive practices. Such studies would strengthen the competition advocacy work of competition authorities, by analysing the level of competition in the market as well as the causes and possible consequences of all factors restricting competition. The outcomes of these studies may be used by policy makers in decision and policy making (Section 13). It is interesting to note that one of the tasks of the US Federal Trade Commission's Bureau of Competition is to provide information for consumers, businesses and policy makers on competition issues and market analysis (Section 1).

With respect to the interface between competition and consumer interest, there are trade-offs between the two. Competition law works to achieve efficiencies in the market. These can be categorized as productive, allocative and dynamic efficiencies. It is unlikely to achieve all these efficiencies at the same time. Therefore, the competition authorities have to make an assessment as to which efficiency shall be given more weight in each competition case. This creates a trade-off between different types of efficiencies. One trade-off

is between static and dynamic efficiency while another occurs between productive and allocative efficiencies. For instance, although consumers would not gain from dynamic efficiencies resulting from innovation in the short term, they may benefit significantly in the long term (Section 1).

Tensions between competition and consumer interest arise in situations where competition results in outcomes not favourable to consumers, such as high switching costs, trade-offs between price and quality. Additionally, consumers may have difficulties in price calculations due to complex pricing schedules offered by companies. This problem is prevalent in recently liberalized sectors, such as utilities and professional services, where there could be need for regulations to protect consumers and ensure that an adequate quality of services is provided. However, such regulations may reduce competition in these markets and in the extreme cases may even result in anti-competitive practices (Section 1). Furthermore, competition in the market may lead to negative effects on the environment and may not fully address the social benefits of public good. In these areas, there is need to impose regulatory rules to balance the long-term costs and benefits in terms of social welfare. Health and safety issues also require attention by consumer protection authorities since information asymmetries impede the functioning of competitive markets, such as in the restaurant food and used car markets (Section 2).

In jurisdictions such as India, the EU and the US, competition law includes promotion and protection of consumer interest and welfare among its goals. In these cases, there is a direct reference to consumer welfare and interest. In the case law of many jurisdictions, relevant courts or competition authorities consider consumer interest in their decisions. Although consumer interest is one important element of competition law, not all aspects of consumer interest need to be protected.

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