

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**COMPETITION POLICY FOR DEVELOPMENT:
A REPORT ON UNCTAD'S CAPACITY BUILDING AND TECHNICAL
ASSISTANCE PROGRAMME**



**UNITED NATIONS
New York and Geneva, 2004**

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Executive Summary

1. For the past two decades UNCTAD secretariat has conducted a capacity building programme and technical assistance activities funded principally by donor countries and agencies for the benefit of developing and least developed countries and their competition agencies when they exist. The capacity building and technical assistance activities have so far concerned 42 developing countries in Africa, Asia, Latin America and the Caribbean. There have been four main features of the programmes: Advisory services in the drafting of competition law and related legislation, strengthening of institutional capacity and upgrading of skills of case handlers for effective enforcement, workshops and seminars to strengthen regional and International cooperation on competition policy and preparation of technical papers and studies on substantive legal and economic issues relating to the interface between competition and development.

2. Depending on the level of development of the requesting country, UNCTAD has assisted in explaining the role of competition Policy in maximising the benefits from liberalisation and integration into the world economy, advised, on the basis of the Model Law on Competition, in preparing competition laws and setting up regulatory frameworks for enforcement of competition law, promoted the creation of "Competition culture" among the supporting institutions (government agencies, academia, business groups, consumer associations, and the press) and provided a training of trainers programme, including through the use of distance learning for sustaining capacity building at the national level and promoting South-South cooperation.

3. Over the last two decades and with the accumulation of experience UNCTAD has learned a great deal about the evolution of developing countries' needs in this area as well as how to formulate and deliver an effective capacity building and technical assistance programme at relatively low cost. Several lessons flow from this experience:

(i) Although most developing countries have liberalised their economies and have adopted a market base strategy for their growth and development, their level of development and the extent of poverty levels constrain their ability to introduce and apply the most modern standards in competition policy. UNCTAD's strength is in its ability to provide tailor made studies and policy advice based on a thorough analysis of the economic situation of interested countries in a way that supports the development and functioning of markets, while addressing development and poverty issues.

(ii) The most effective form of capacity building and technical assistance activities are those which are integrated in the recipient country development strategy and that can be sustainable in the long-run. There must be a commitment from the beneficiary agency or institutions to provide human and technical resources for using effectively the acquired skills and knowledge and to replicate their use as widely as possible including sharing expertise with other developing countries and competition agencies.

(iii) Capacity building and technical assistance can be provided in a variety of ways and there is no general rule that one method of delivery is superior or more useful than another. The method of delivery should be based on a needs assessment of the beneficiary country as well as its cost effectiveness. Resident advisors can be extremely effective if the assignment is long enough, the advisor has the appropriate skills and knowledge, including an understanding of local conditions as well as how the beneficiary agency uses the advisor. Seminars and workshops provide less in-depth training but are most likely to benefit policy makers, business executives and consumer representatives about the role and benefits of adopting competition policy. Technical workshops on topics such as investigation methods, definitions of relevant markets and mergers review analysis may have a limited target population but can be very effective for case handlers and the success of competition law enforcement. The use of training of

trainers programme, including through distance learning may have limited application for day to day matters in the short run, but it ensures sustainability, transfer of skills and knowledge and overcome some of the problems created by “brain-drain” of limited available human resources.

(iv) Limited resources and the expanding demand from developing countries have led UNCTAD to make use of information technology that is relatively cheap to deliver some of its technical assistance, develop manuals and case study material which can be adopted to suit individual country needs, and network and cooperate with other institutions that provide technical assistance activities in the area of competition policy.

(v) Developing countries believe that

competition policy is needed for the success of market-oriented reforms and for generating growth and development, but their conviction vary. Some still doubt whether reliance on market forces alone can generate income and employment for the poor or whether globalisation and liberalisation can benefit the least developed among them. The strength of UNCTAD's programme is its ability to provide policy advice and technical assistance in the two areas, namely of formulation and enforcement of competition law advocacy for market-oriented reforms. As a development agency, UNCTAD stature with developing countries provides an additional credibility to the policy recommendations and advice, which it dispense to interested countries on the formulation of competition policy and development issues.

Chapter I. UNCTAD Capacity building mandate and objectives In the area of Competition law and Policy

1) UNCTAD mandate

4. UNCTAD is the focal point on all work related to Competition Policy and Consumer Protection within the United Nations system. The mandate, which dates from the adoption of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980,¹ has as objective number one: "to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from liberalisation of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries". The UN Set also recognises that the basic norms of competition law, which have long been in use in developed countries, should extend to the operations of enterprises, including TNCs, in developing countries. Thus, the Objectives Section of the UN Set emphasizes that the interests of developing countries in particular, should be taken into account in the elimination of anti-competitive practices that may cause prejudice to international trade and development. Furthermore, the Objectives Section sees the UN Set as an international contribution to a wider process of encouraging the adoption and strengthening of laws and policies in this area at the national and regional levels.

5. These objectives should be seen alongside UNCTAD's work on the formulation of a Model Law on competition. The draft Model Law and the regular commentaries received from member states embodies the principles laid down in the Set and couples these with a scheme for national competition authority. It is aimed at developing countries that do not, have a domestic competition law. Section C (iii) (7) of the Set further lays down a principle of preferential treatment for

¹ The United Nations Set of Principles and Rules on Competition – The Set of Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, Resolution 35/63 adopted by consensus by the General Assembly on 5 December 1980.

developing countries as an aspect of the equitable application of the principles contained in the UN Set. Thus, States, in particular developed countries, are to take into account in the application of their competition law the, "development, financial and trade needs of developing countries, in particular of the least developed countries, for the purposes especially of developing countries in: (a) promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and (b) encouraging their economic development through regional or global arrangements among developing countries." (Box 1.)

6. In the last two UNCTAD Ministerial Conferences, Midrand (UNCTAD IX) and Bangkok (UNCTAD X), Ministers further reiterated that:

"the globalisation of production and the liberalisation of trade offer opportunities for all countries and enable developing countries to play a more active role in the world economy." "...Participating fully and effectively in international trade, investment and production requires capacity-building, improving the transparency, soundness and certainty of domestic economic environment, and securing access to markets..."

In this respect, globalisation has in many cases highlighted differences in regulatory regimes in various policy areas of which competition policy is an important one.

2) UNCTAD missions in Competition Policy

7. The objective of UNCTAD capacity building programme on competition policy is to implement the mandate of UNCTAD as stipulated in the UN Set, the Bangkok Plan of Action adopted in February 2000, and the 4th UN Review Conference², according to which UNCTAD is to serve as a forum for policy

² See Fourth UN Conference to Review All Aspects of the Set of Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 24-29 September 2000

analysis and consensus-building, inter-alia, in the area of competition law and policy and development. In particular, paragraph 91 (iii) of the Bangkok Declaration stipulates that UNCTAD:

"Should continue and expand its help to interested countries in developing their national regulatory and institutional framework in the area of competition law and policy.

To continue to examine issues related to competition law and policy of particular relevance to development. It should prepare periodical reports on restraints in strategic sectors and their impacts on developing countries and countries in transition, particularly on their competitiveness. UNCTAD should study in depth developmental impact of possible international agreements on competition.

UNCTAD should further study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition.

*The work in this area should, in cooperation with UNDP, the World Bank and other relevant organizations, strengthen the capacity of public institutions for competition and consumer protection in developing countries and help them to educate the public and representatives of the private sector in this field."*³

8. In line with the direction given by Ministers, UNCTAD capacity building programme has been developed in the context of UNCTAD's cooperation with WTO, OECD and the World Bank on matters related to competition policy. It has been conceptualised on the basis of the complementarity of functions and capacities between UNCTAD and other organizations and takes into account, inter-alia, the encouragement the WTO Singapore and Doha Ministerial Conferences, have given to cooperation between the two organizations. Paragraph 20 of the Singapore Declaration says:

"As regards UNCTAD, we welcome the work under way as provided for in the

Midrand Declaration and the contribution it makes to the understanding of issues. In the conduct of the work of the working groups, we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account". World Trade Organization. WT/min (96)/DEC, 18 December 1996."

In paragraph 24 of the Doha Declaration it says:

"We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs." World Trade Organization, WT/min (14 November 2001, Doha, Qatar)"

9. Over the last eight years, UNCTAD has implemented the relevant parts of the Midrand and Bangkok mandates and will continue to implement the relevant mandate to emerge from UNCTAD XI conference at Sao Paulo, in June 2004, including cooperation with the WTO, the World Bank, OECD, regional organizations and the ICN in matters related to competition law and policy and development. The components of the Capacity building programme are designed as a coherent strategy aimed at maximising synergies between its elements, building on earlier work of UNCTAD work in this area including, Investment, trade and development issues.

³ United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Geneva 29th September 2000. TD/RBP/Conf.5/L

During the annual consultations held by UNCTAD Intergovernmental Group of Experts on Competition Policy many developing countries have expressed the views that at the national and regional levels, there is a further need for the fashioning of appropriate policies and development and that would include competition policy and legislation that can make markets work better for the poor. They have also indicated that at the international level, countries with more experience in the application of competition laws and policies and international organizations should provide sustained support to poorer countries through Capacity building, technical co-operation and the exchange of experiences and expertise.

10. The overall objective of the mandated capacity building programme should be (i) to assist countries in designing appropriate competition laws and policy and enforce them effectively. To this end, the activities should seek to upgrade the skills of experts dealing with competition laws and policy, institution

building, including support in the establishment of competition authorities and in the initial stages of enforcement activities; and (ii) Strengthen their negotiating skills with respect to regional and multilateral negotiations, including through exchange of information and experiences.

11. With these objectives in mind, and while formulating capacity building activities, UNCTAD has cooperated with development planners and with experts from national, regional and international organizations including the WTO and the OECD secretariats, the IBRD, the Regional Development Banks, the secretariats of regional integration groupings and the International Competition Network (ICN) to mobilize expertise as well as human and financial resources. These cooperation activities are discussed in Section IV (6) below.

Box 1: The Objectives of the UN Set of Principles on Competition:

The UN *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Anticompetitive Practice* contains the following objectives:

- to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;
- to attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through (i) the creation, encouragement and protection of competition; (ii) control of the concentration of capital and/or economic power; (iii) encouragement of innovation;
- To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;
- To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;
- To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive

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