

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**DEVELOPING A COMPETITION ADVOCACY MODEL IN THE
CONTEXT OF THE INTRODUCTION OF COMPETITION
POLICIES IN LATIN AMERICA**

**Study prepared for the Competition Law and Policy and
Consumer Protection Section**

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Preface

The basic mandate for UNCTAD's work in the area of competition law and policy is provided by the Conference itself and by the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (adopted by General Assembly resolution 35/63 of December 1980), which constitutes the sole universally applicable multilateral instrument in this area, although it is not a legally binding instrument. In the implementation of this mandate, the UNCTAD secretariat prepares studies on different competition issues, services annual meetings of UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, and undertakes technical assistance, advisory and training activities for developing countries and countries in transition, aimed at assisting them to adopt and effectively implement national competition laws and policies, to establish appropriate institutional mechanisms and procedures, and to participate effectively in the elaboration of international rules in this area.

At the present time, UNCTAD is heavily involved in the preparations for UNCTAD X in February 2000. Moreover, UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, meeting at its second session (7-9 June 1999), acted as preparatory body for the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, scheduled to meet in September 2000.

In addition to this, the World Trade Organization (WTO), at its Singapore Ministerial Conference (9-13 December 1996), decided to establish a Working Group on the Interaction between Trade and Competition Policy at WTO, and decided, *inter alia*, that this Group would draw upon work in UNCTAD and the contribution it can make to the understanding of issues. Further, it encouraged cooperation with UNCTAD, to ensure that the development dimension is taken fully into account.

To help fulfil these mandates, the UNCTAD secretariat is issuing a series of papers with the aim of providing a balanced analysis of issues arising in this area, and addressed to governmental officials, officials of international organizations, representatives of intergovernmental organizations, business people, consumers and researchers. While the series would best be read as a whole, each study may also be read by itself, independently of the others.

The main objective of publishing these papers is informative, for background use by delegations, and they are part of the process of capacity-building in the broad areas of competition law and policy and competitiveness in globalizing markets. However, the papers are published under the name of their authors and the views expressed therein do not necessarily reflect those of UNCTAD.

This series of papers has been made possible thanks to voluntary contributions received from the Netherlands and Norway. These contributions are gratefully acknowledged.

Geneva, August 1999

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Rubens Ricupero
Secretary-General of UNCTAD

Executive summary

This study is a contribution to the current debate on the introduction of competition policies into Latin American countries where markets have begun to be opened up and deregulated. It tries to identify the policies likely to produce the institutional and cultural changes needed if the processes involved are to be successful, particularly with regard to competition advocacy.

The study is organized around three policy objectives: (i) greater market contestability; (ii) an efficient economy, thanks in particular to lower transaction costs; and (iii) the introduction of a cultural framework that allows competition ideas and goals to become embedded in society and to become part of society's values.

The actual economic circumstances of each country - particularly the level of economic development, the size of the economy, the relative importance of the public and private sectors and the pattern and nature of foreign trade - need to be taken into account. These factors have a major influence on the cost of adjustments and, consequently, on the specific, realistic goals set by competition agencies.

The redefinition of the role of the State is a crucial factor in the economic reorganization that needs to take place. The State should act as the guarantor of clear and transparent rules and as the monitor of conduct that might restrict, or which already restricts, the smooth functioning of competition mechanisms.

Within this general framework, competition agencies will have a decisive role to play. Their success will depend on: (i) their independence, and sufficient political support for them; (ii) the introduction of competition advocacy models that enable entry barriers to be removed and the markets to operate; (iii) the development of market-monitoring mechanisms; (iv) the strengthening of the courts; (v) steps to encourage competition agencies to share their experiences; (vi) recognition and support for the role of private actors; and (vii) the involvement of competition agencies in privatizations.

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Introduction

This study is a contribution to the current debate on the introduction of competition policies into various Latin American countries. It is impossible to begin to discuss the content of policies for the competition regimes in the region without looking at the context in which competition laws have been enacted, which is one of opening up and deregulation. The prevalence of interrelated systems in the form of protectionist policies has given rise to some problems in rising to the challenge of establishing market economies.

That is the basis on which the problem at the heart of this study has been defined. It concerns the promotion and consolidation of an institutional and cultural change in society in a way that helps strengthen the institutions intended to support the new economic system. First and foremost among these institutions is the market itself, which can be accepted and become a reality only if new values and patterns of behaviour are established and the aims of competition policy are reinforced. It is therefore essential to review the characteristic features of more traditional systems, as well as the way in which those aims are interpreted in industrialized countries. The central problem is to determine which of the elements intended to consolidate market principles should be incorporated into competition policy so as to ensure that the policy is effective and that free market principles operate efficiently in the countries which have recently started to open up their economies.

To solve this problem, academics and experts from developed countries were interviewed and a good deal of information was exchanged with the experts running the competition agencies in Latin America. The extensive literature on the key aims of competition policies was reviewed, as were the experiences of implementing them in Eastern Europe and some relevant work in developing countries. The theoretical basis for the main reference points can be found in the classic works on how to set up competition frameworks and in publications dealing with institutional economics, transaction costs, entry barriers and structural reform.

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