UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

COMPETITION POLICY, TRADE AND DEVELOPMENT IN THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

THE RELEVANCE OF REGIONAL INTEGRATION, INTERNATIONAL COOPERATION AND THE CONTRIBUTION OF COMPETITION POLICY TO DEVELOPMENT IN COMESA COUNTRIES

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NOTE

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PART I

REGIONAL SEMINAR OF COMPETITION POLICY, TRADE AND DEVELOPMENT

***The Relevance of Regional Integration, International Cooperation and the Contribution of Competition Policy to Development in the Common Market for Eastern and Southern African Countries* (COMESA)**

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A. SUBSTANTIVE CONTRIBUTIONS

Trade and competition policy in the framework of African Countries

By the Economic Commission for Africa

Background Pape

SECTION I

Introduction

The globalization and liberalization of the world economy have brought to the forefront the debate on the issues of fair competition in international trade. The opening up of economies and markets to inward foreign direct (FDI) and other forms of participation by transnational corporations (TNCs) can contribute directly towards increasing the of host country markets in that these markets can now be entered by firms from other countries by establishing affiliates that produce goods and services for sale within the host country and thereby compete with domestic firms[1]. Furthermore, TNCs may be better able than domestic firms in a host country to overcome some of the cost-related barriers to entry that limit the number of firms in some industries and thereby result in the collapse of the domestic based industries.

The liberalization of foreign direct investment regimes can lead to contestability of national markets for goods and services, since it means that foreign firms are now free to establish operations in the host country and compete at a level playing field with domestic firms. The entry of TNCs can therefore influence the structure of host country markets that evolve for the products in which they operate. The rise of transnational corporations in international production and trade has given rise to fears of possible concentration of market power in the hands of these entities and also the possibility of formation of "international cartels." Furthermore, the globalization and liberalization of world trade has also given rise to a new problem for developing countries: that of dumping excess outputs of subsidized products produced in the developed countries on the markets of developing countries. This development threatens to kill basic manufacturing in developing countries.

Foreign direct investment into developing countries and transitional economies has usually had extensive effects in either increasing or reducing competition, as well as in increasing efficiency, in those product markets where it concentrates. The need, therefore, to control "restrictive business practices" is generally acknowledged. Countries have often adopted competition laws in order to avoid the development of concentrated market structures and to promote consumer welfare. Nonetheless, it is acknowledged that while adhering to universally valid principles, competition policy should be applied with flexibility in the light of specific circumstances of individual countries, and taking into account the need to balance "consumer welfare" and "efficiency considerations" as well as the need to win the confidence of the public and the business community.

There is growing realization that anti-competitive practices can have a negative influence on international trade. The challenge faced by developed and developing countries alike is to introduce national policies that will promote competition. A firm's competitiveness is essentially a function of the domestic economic environment in which it operates. However, the deepening structural integration of the world economy and the burgeoning of alliance capitalism are widening the geographical scope for creating or augmenting firm-specific competencies and learning experiences[2] Several case studies from both developed and developing countries indicate that trade competition is the prime motivation for enterprises to cut waste, improve production parameters through research and development (R&D) and innovation, and allocate resources more efficiently in response to market opportunities or threats. The other market structures that may exist in a country include: monopoly, monopolistic competition and oligopoly.[3]

The basic premise for a country adopting competition policy and law is that it will give rise to a more efficient allocation and utilization of resources and promote consumer welfare through "competitive price" for goods and services. In a "perfectly competitive market structure" there are many, many buyers and sellers and each firm produces a good that is identical to that produced by other firms (Alan Hochstein, 1993). The conditions needed for

[1] United Nations Conference on Trade and Development (UNCTAD): World Investment Report: Transnational Corporations, Market Structure and Competition, 1997, pp. 134-135

[2] John H. Dunning, the Geographical Sources of the Competitiveness of Firms; TNC, December 1996.

[3] A monopoly market structure is one in which there are many, many buyers, but only firm selling the product that has very few close subsidies; an oligopolistic market structure is one in which there are many, many buyers, but only a few sellers and if the firms in the industry produces a standardized (homogenous) product the market is called "pure oligopoly" and if their product is more heterogeneous, it is called a " differentiated oligopoly". See Alan Hochstein: Microeconomics, An Advanced Introduction, Thomposon Educational Publishing Inc., 1993. It is the desire by countries to minimize monopolistic and oligopolistic market structures that provides the impetus for adopting competition policy and law.

such a market structure to prevail include: the existence of a market price that is charged by all firms in the market; every buyer has to be perfectly knowledgeable as to the products produced by each firm and the selling price of each firm's output; entry and exit from the market should not be restricted; and any firm considering entry can do so and should be able to sell as much as it can at the going market price. This is indeed, the ideal situation that would ensure that "competitive prices" prevail.

In order to improve competitiveness of their economies, many African countries have embarked on economic reforms, and in many cases this has entailed a shift towards a "market eocnomy". These reforms have often not only involved decontrol of prices, but also liberalization of foreign exchange markets and movement towards market determined exchange rates and interest rates, privatization of state owned enterprises, and reduced government intervention in private sector economic activity.

The need for African countries to improve competitiveness of their economies in order to effectively participate in a globalizing and liberalizing world economy is now fully recognized. However, over-facile assumptions that deregulation, particularly trade liberalization, will always lead to more competition should be avoided. Trade liberalization does indeed often lead to greater competition, but not always because products in some sectors may not be tradeable (particularly, services). The reasons some commodities may not be tradeable may include: high -transport costs, shortage of foreign exchange, foreclosure of distribution channels, and anti-competitive practices by foreign exporters.

The aim of competition policy should be to ensure that the benefits of the removal of governmental restrictions are not reduced by private restriction upon competition.

Countries can promote competitiveness of their national economics by ensuring that firms do not indulge in "restrictive business practices", public enterprises do not crowd out the private sector, and government policies do not bestow monopolistic or oligopolistic powers on certain firms and also do not reward rent-seeking enterprises at the expense of productive investment. Government policies which may contribute to anti-competitive behaviour by firms may include: restrictive entry to certain industries; bestowing monopoly rights to certain firms; selective allocation of foreign exchange and credit rationing; multiple exchange rates and interest rates; and restrictive marketing arrangements for certain products and inputs, especially through the creation of marketing boards.

African countries have made significant progress to liberalize their economies and improve competitiveness of these economies. Many have eliminated and/or reduced price controls on a range of products and inputs, except in some cases for strategic commodities such as fuel. A number have also liberalized their foreign exchange markets and moved to remove exchange controls for current account transactions and shifted to market-based exchange rate regimes. Credit rationing and allocation have also been eliminated in a number of countries and some African countries have moved to market-determined interest rates.

A number of African countries have also made significant efforts in the more difficult areas of "privatization of public enterprises" and in dismantling monopoly power of "marketing boards" in the purchase and marketing of agricultural products and inputs. The belief of many African countries at the advent of independence was that public enterprises were an important channel for African Governments to "carve a stake" in African economies and to ensure some form of ownership of their economies. Accordingly, these enterprises were designed to play a pivotal role in the development process of African countries. Experience has shown that these good intentions have not been satisfactorily fulfilled as public enterprises became a serious burden on budgets of many African Governments and were crowding-out the private sector. Instead of contributing to development, many became centers of concentration of market power, with disastrous effects on competitiveness—of African economies. Privatization of public enterprises in Africa is therefore designed not only to improve efficiency of operation of these entities, but more importantly to unleash market forces which will result in a more efficient allocation and utilization of resources.

African countries in deciding on their competition policy and law ought to avoid over-emphasis on deregulation as a panacea to all the problems of African economies. It is essential also to emphasize "regulatory reform." African governments need indeed to disengage from direct intervention in economic activity and. from distorting competition, through the granting of exclusive rights, etc. Nonetheless, disengaging from direct intervention in economic activity does not absorb the government from its responsibility to act as the referee to ensure liberalized markets work properly and to assist enterprises through, information, training, and infrastructural development. Competition policy itself is a form of regulation.

The purpose of this paper is to contribute to the ongoing debate on competition policy and law, with particular focus on African economies. Section II will deal with the "conceptual framework of competition policy." Section III will highlight the 1mportance and the role of competition policy". Section IV will review both, the "evolution of competition policy and law" as it has emerged at the nation region and multilateral levels and "some African country experiences". Section V will deal with the "constraints on competition in Africa" and Section VI contains "concluding remarks".

A better understanding of existing competition policy and law in African countries will not only assist African countries to be better informed of the discussions taking place at the multilateral level, such as within the framework of UNCTAD and the WTO, but more importantly assist those countries that are in the process of adopting competition policy and law. The study is also intended to assist African countries in appreciating the importance of developing "open market structures" and avoiding "anti-competitive practices", elements essential for the development of a dynamic private sector.

Section II

The conceptual framework of competition policy

Competition in a market refers to rivalry among sellers and among buyers of goods or services; the sellers and buyers that can enter the contest constitute the market. The extent and nature of market competition is considered important in determining the performance of economic systems and under “static conditions” performance is judged in terms of efficiency which has two elements: technical efficiency which exists when the production and distribution of goods take place with minimum inputs, given technological constraints; and allocative efficiency, which exists when resources are allocated in the optimal manner.[4] The great majority of real world situations fall between “perfect competition” and “monopoly” and involve imperfect, but workable competition.[5]

Competition policy seeks to promote competition through the liberalization of governmental policies and measures where they unduly distort competition. Competition policy is also concerned with the enforcement of rules of the game to ensure that enterprises do not undertake restrictive business practices and many Governments have attempted to ensure incumbent firms do not take advantage of liberalization to “privatize” governmental restraints and bloc market entry.[6] Competition allows the market to reward good performance and penalize poor performance by producers. It encourages entrepreneurial activity, stimulates efficiency and market entry by new firms, and encourages production of a greater variety of products of good quality. Many governments have taken into account to ensure that the principles of competition policy are taken into account when developing and implementing other governmental policies.

Confusion may exist between “trade policy” and “competition policy”, although competition policy may aim at making trade policy work better in a framework in which the principles of competition policy are adhered to. Competition policy authorities may have an advocacy role vis-à-vis trade authorities. This does not nonetheless, imply that the two policies are the same. Competition policy can make a substantial contribution to improved

quently abuse their dominant positions and charge unduly high prices.

Discussions on Competition Policy and Law have tended to center on: identifying “common ground” in the approaches followed on different competition questions by Governments; exchange of views in areas where “identification of common ground” is more difficult, such as the role competition policy should play in the strengthening and improvement of economies of developing countries and countries in transition. The discussions in this regard have focused on, the development of the business community in those countries; identification and adoption of appropriate measures to help those countries that might be hampered by restrictive business practices (RBPs); the interface between competition policy, technological innovation and efficiency, the competition policy treatment of vertical restraints and abuses of dominant position; the competition policy treatment of exercise of intellectual property rights and of licenses of intellectual property rights and know-how. Furthermore, focus has also centred on analysis of differences in the scope of competition laws in individual sectors, in the light of the process of economic globalization and liberalization; and analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country.[7]

(a) *National and international competitiveness*

Competition policy can be analyzed at two levels: the country level (firm competitiveness) and, at international level (cross-country competitiveness). Issues that are addressed in this paper are drawn from the notion of international competitiveness. As defined by the American Commission on Industrial Competitiveness, a country’s competitiveness is the ability to produce goods and services that meet the test of international markets and simultaneously to maintain and expand the real income of its citizens (Tyson 1992; Ostry 1991).[8]

From the above definition, a country’s competitiveness must be judged not only against its performance in the world market but also in terms of its capacity to sustain economic growth over a period of time. This is the reason why such countries as Germany, Japan, Korea, and several other East Asian economies appear as strong competitors.[9] At firm level, a firm is considered competitive if it is