



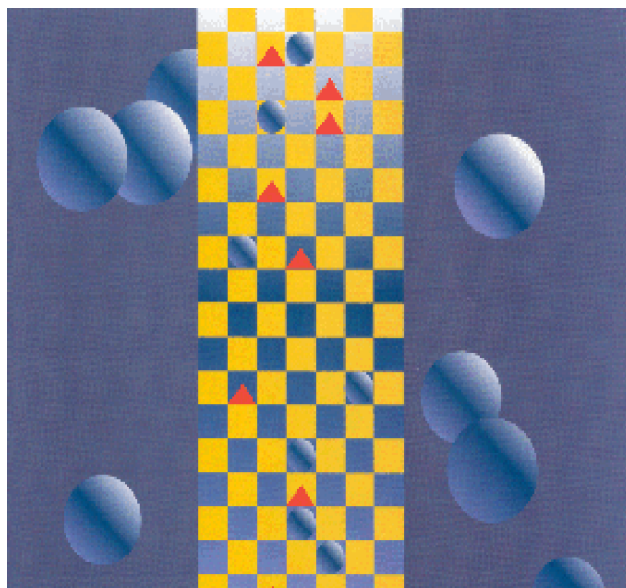
UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**THE ROLE OF COMPETITION POLICY  
FOR DEVELOPMENT IN GLOBALIZING WORLD  
MARKETS**

Papers presented at the pre-UNCTAD X Seminar

Geneva, 14-15 June 1999

UNCTAD Series on Issues in Competition Law and Policy



**UNITED NATIONS**  
Geneva, 1999

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## **PART I**

### **SUMMARY OF THE PROCEEDINGS OF THE PRE-UNCTAD X SEMINAR ON THE ROLE OF COMPETITION POLICY FOR DEVELOPMENT IN GLOBALIZING WORLD MARKETS**

## Executive Summary

The pre-UNCTAD X Seminar focused on the interface between competition policy and development by organizing discussions around (i) worldwide concentration of market power through mega-mergers etc.; (ii) deregulation and privatization; (iii) transfer of technology and intellectual property rules; and (iv) the role of business and consumers to promote competition and development proved highly successful. It brought home the point that integration of developing countries into the world economy depends to a large extent on their ability to gain an equal opportunity to access technology, human and financial resources and export markets, which in turn depends on the ability to challenge anti-competitive practices and abusive conduct of firms with market power (e.g. international cartels, mega-mergers leading to monopolies or dominant powers, abuse of IPR to corner markets, etc.).

The discussions showed that, in addition to the measures to be taken at the national level, there is a strong case for exploring the merits of studying the implications for development of a possible multilateral framework on competition policy. Further research and analysis are needed to evaluate the policy implications and possible international commitments which may emerge from such an agreement. This would allow developing countries to form an opinion on the merits of such a multilateral framework. The discussion also focused on consumer welfare and benefits arising from implementing effective competition law and policy. Participants were of the view that ways and means should be identified to set up a new forum to discuss consumer policy at UNCTAD, distinct from the IGE on Competition Law and Policy.

The Seminar also addressed the issues of (i) whether the direction given to the work programme meets the needs of member States, and primarily developing countries; (ii) identifying research and policy issues requiring priority attention on the part of UNCTAD and the international community; (iii) assessing the capacity and institutional building needs of developing countries and economies in transition in the area of competition law and policy; (iv) on the basis of the above, formulating a list of proposals which could constitute the first step of reflection on a programme of work for the secretariat that could be adopted by UNCTAD X. In addition to the above policy issues, the highlights of the discussions which took place during this Seminar are listed below:

(a) Since Midrand, the work of UNCTAD on competition law and policy has been broadened to cover a range of related development issues brought about by liberalization and globalization. This development was highly appreciated by member countries and most delegates felt that it should be continued;

(b) UNCTAD should increase support of developing and other countries in respect of capacity-building in the field of competition law and policy, both at national and multilateral levels;

(c) To this end, work should cover specific areas, such as IPRs, parallel imports and exhaustion of intellectual property rights, in order to clarify the competition dimension of IPR negotiations, such as TRIPs and other multilateral talks taking place at WTO and elsewhere;

(d) In order to increase transparency and increase access to information for developing countries, UNCTAD should publish annually a world report on competition law and policy;

(e) The creation of a competition culture is an essential component of the success of market-oriented reforms in developing countries and economies in transition; the positive role that consumer organizations and businesses themselves can play in this respect should be further explored at UNCTAD X; and ways and means of closer cooperation with UNDP in this context should be developed.

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## A. Introduction

1. In order to provoke a debate on key competition issues that impact on development with a view to contributing towards building a consensus in this area of UNCTAD's work for consideration by UNCTAD X, the Secretary-General of UNCTAD convened a one and a half day seminar in Geneva, at the Palais des Nations, on 14-15 June 1999. This decision was approved by the President of the Trade and Development Board, on 30 March 1999.

2. As decided by the Secretary-General, the seminar was divided into three sessions, and a concluding panel. The first session, devoted to globalization, competition and development, reviewed three issues of major importance for developing countries and economies in transition, namely (i) FDI, mergers and alliances; (ii) Deregulation, demonopolization and privatization; and (iii) Intellectual property rights, competition and transfer of technology. The second session explored the possible role of the civil society (both consumer organizations and business representatives) in promoting competitive markets supportive of sustainable developments. The third session, on Tuesday 15 June, exchanged views on the role of competition policy in providing a more equitable playing field for development in globalizing markets. This session was directed at competition and trade policy issues linked to development, and views were expressed about the issue of a possible multilateral framework on competition. The final panel, consisting of key speakers and panellists, reviewed appropriate measures to address the specific needs of developing countries, including LDCs, and economies in transition, in promoting a competition culture (at the national level) and in building a more equitable playing field (in global markets).

## B. Summary of substantive discussions

3. The Secretary-General of UNCTAD, opening the seminar, noted that, despite the growing importance of competition and of mergers in the world economy, developing countries' role in this area had so far been limited; few of them had effectively applied competition laws. With its specific development perspective, UNCTAD was trying to assist developing countries to adapt to global economic trends, including by establishing the institutional framework necessary to enforce competition laws. Two key issues were (i) how competition policy could be integrated into development strategies, and (ii) how UNCTAD, in cooperation with other international organizations, could best promote competition policy principles and demonstrate their relevance for development. After welcoming the participants, he immediately went on to the first session of the seminar.

### *Session I. Globalization, competition and development*

4. The first item to be discussed under this session was that of *foreign direct investment, mega-mergers and strategic alliances: Is global competition accelerating development or heading towards world monopolies?* The speaker from the private sector expressed confidence that globalization and the integration of national and regional

economies into the global economy would bring large benefits to all in the long term, while recognizing the suspicions that globalization had provoked. The focus should therefore be on practical issues of how to make globalization work for the benefit of all. He felt that the trend towards mega-mergers should be kept in perspective—they were mainly concentrated in a few sectors in developed countries, there had been a parallel trend towards divestment, and FDI continued to flow to developing countries, bringing important benefits for growth, technology transfer and consumer welfare. There was little risk of global monopolies. Most mergers had a neutral impact upon firms' performance, market dominance usually eroded rapidly when markets functioned effectively, and there was competition from substitute products and from local or regional competitors. But the regulation of markets by governments lagged behind the reality of globalization. A level playing field would be created by greater transparency of, and consistency among, national competition systems, as well as international rules providing for adoption of national competition laws, common approaches in this area and international cooperation which should safeguard business confidentiality.

5. Another speaker noted that global mergers had not so far had a significant impact in the Southern African region, little new FDI was taking place, and only a few countries of the region had adopted competition laws. This called into question the relevance for the time being to the region of international competition rules. He drew attention to the manner in which privatization in the region was taking place, without adequate competition safeguards.

6. Describing current trends relating to mergers and strategic alliances, a speaker from a consumer organization reviewed the determinants of such trends and the motivations and effects of mergers. He warned that such trends were leading to concentration of wealth, economic and market power, while not necessarily leading to greater efficiency. Appropriate competition regimes were therefore necessary at national as well as international levels.

7. In the discussion which followed, it was noted that competition policy and trade and investment liberalization were consistent and complementary, leading to market integration and a level playing field. However, while there were long-term benefits to market opening, there were also short-term costs. The ability of countries to take advantage of market opportunities depended upon levels of technological development, endowments and culture. The distribution of gains and losses was thus unequal among countries and over time. This led to tensions between economics (focused on the long-term benefits) and politics (focused on the short-term losses). Both competition policy (in respect of exemptions, exceptions and prosecutorial discretion) and trade policies (in respect of anti-dumping and safeguards) were therefore not always consistent with the ultimate goal of the opening of markets. It was incorrect to consider that competition policy instruments were "purer" than trade instruments.

8. The resistance of some developing countries to the adoption and implementation of competition policy was due to the weight given to the short-term costs rather than

the long-term benefits. This concern needed to be addressed. There was evidence that developing countries' markets were affected by international cartels, abuses of dominance and mergers, and that the adoption and effective enforcement of national competition laws would help to control or deter anti-competitive practices emanating from abroad.

9. National action was insufficient and needed to be complemented by international cooperation. Voluntary international cooperation would not suffice because: (a) it gave no incentive to developing countries to adopt competition regimes; (b) as the decision to enter into cooperation agreements was left to the initiative of each country, countries with advanced competition regimes would see no benefit from entering into cooperation with countries without competition regimes, or with regimes considered inadequate; (c) cooperation on individual cases would only occur where interests converged such as in the case where import cartels blocked market access. A multilateral framework involving commitments to adopt and effectively enforce competition laws and to cooperate in respect of problems arising in the interface between competition and trade was therefore necessary. The GATS and the TRIPS Agreements (in respect of standards for enforcement) were useful models for this purpose. As the recent cases brought to the WTO dispute settlement body indicate, problems might arise in respect of substantive standards and dispute settlement. Any minimum standards adopted should be flexible and progressive. Competition policies were adopted and implemented within the context of specific national environments, and differences among them were legitimate. Common approaches might be adopted. A balance should be sought between commitment and flexibility. Another approach was to make the provisions of trade agreements more consumer- and competition-oriented.

10. The second item under the first session addressed the following question: *Deregulation, demonopolization and privatization: how to ensure consistency with competition?*

11. A speaker noted that competition law and policy were an important part of the institutional and regulatory framework needed for countries to be able to address today's challenges. In this connection it was important for each country to consider reforms in the light of its own

with careful attention to the underlying goals of using market forces to yield beneficial results. The most important thing a country could do to assure the pro-competitive potential of its economy and its regulatory regime consisted of having a sound competition law, enforced by a strong competition authority. These authorities needed to cooperate in their competition law enforcement work to deal with restrictions that have cross-border effects. Increased globalization and a higher percentage of competition cases with a significant international component require increased international cooperation in the design and implementation of competition law and policies. This could be achieved at different levels and under different forms including voluntary cooperation among competition agencies, voluntary convergence in competition laws and enforcement practices as well as development of a multilateral agreement—an issue of growing attention in the context of preparations for the WTO Ministerial meeting.

13. Another speaker stressed that deregulation, demonopolization and privatization were inseparable and major parts of economic reforms carried out in many countries and that there were no common mechanisms ensuring correspondence among various elements of these reforms. Deregulation, demonopolization and privatization were treated in his country simultaneously, while the reform affected practically all enterprises which, as a result, were put under the pressure of competition. This was favoured by the establishment of a mechanism of interaction between the competition authority and other State bodies. It was necessary to elaborate various elements for such interaction, namely the agreed purposes of activities; joint programmes of action; and mechanisms to resolve conflicts. In his view the combining of functions in support of competition with functions of regulating specific industries in a single body would be mistaken owing to the fact that the activities of a competition authority consisted of the protection of a competitive market mechanism, while regulation provided for substitution of a market mechanism by means of decisions taken by a State body. The relevant State body would not be able to assess objectively its activities from the point of view of competition.

14. Describing his country's experience in privatization, a speaker stressed the need for transparency, speed and public awareness, while political interference in the privatization programme should not be permitted and perpetuation of monopolies should be avoided by ensuring

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