

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**THE DEVELOPMENT DIMENSION OF
COMPETITION LAW AND POLICY**

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Note

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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 and 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, establish appropriate institutional mechanisms and procedures, and participate effectively in the elaboration of international rules in this area.

At the present time, UNCTAD is quite active in the preparations for UNCTAD X, to be held in Bangkok, in February 2000. Moreover, UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, when it meets for its second session (7-9 June 1999), will act as preparatory body for the Fourth United Nations Conference to Review all Aspects of the Set of Principles and Rules for the Control of Restrictive Business Practices, scheduled to meet in September 2000.

In addition to this, at the Singapore Ministerial Conference (9-13 December 1996) WTO decided to establish a Working Group on the Interaction between Trade and Competition Policy at WTO, and also decided, *inter alia*, that this Group would draw upon work in UNCTAD and the contribution it can make to the understanding of issues. It further 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 non-governmental organizations, business people, consumers and researchers. While the series would best be read as a whole, each study may also be read on its own, independently of the others. The present volume constitutes the first of the series. The main objective in publishing these papers is informative, for background use by delegations, and is part of the process of capacity-building in the broad areas of competition law and policy and competitiveness in globalizing markets. 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.

A handwritten signature in dark ink, appearing to read 'R Ricupero', with a horizontal line underneath the name.

Rubens Ricupero

Geneva, May 1999

Secretary-General of UNCTAD

Executive summary

This study examines the implications of the development dimension for competition law and policy. The author suggests that the competition process does not run smoothly or produce optimal results in developing countries, particularly least developed countries, because of several market imperfections or other limits to competition. This would make it particularly necessary for developing countries to adopt and apply competition law and policy. Historical experience, including in countries which are now developed and in newly industrialized countries, has shown that the comparative advantages of today are mostly the results of the successful governmental intervention of yesterday, and that infant industry policies can increase efficiency and competitiveness. However, given the risks of predicting future comparative advantage, of rent-seeking behaviour and of government failure arising from weak institutional capacity, it is difficult to apply such policies in an optimal manner, and Governments' main task should be to create a more favourable environment for competition. This would require an active policy approach, focusing not only on controlling restrictive business practices, but also on enabling enterprises to obtain sustained productivity growth and on developing national and international competitiveness. Also essential would be the provision of such elements as market information, infrastructure, know-how, and human or financial resources (which would involve collaboration between the public and private sectors, or between producers and the educational system), as well as sound economic or other policies. Policy makers should intervene in economic activity or regulate the private sector only in accordance with specified criteria or procedures, and policies and institutional arrangements should minimize rent-seeking, force trade-offs to be faced among different policies, be transparent

regarding costs and communications between Governments and businesses, and continuously review trade protection.

Globalization necessitated international coordination on competition law and policy and trade matters, building upon the United Nations Set of Principles and Rules for the Control of Restrictive Business Practices. The adoption of waivers or exemptions for developing countries in order to permit import substitution could be justified as second-best interim solutions required to compensate for the trade disadvantages arising from their unfavourable conditions and lack of competitiveness, as well as countermeasures against neo-protectionist behaviour in industrialized countries. But such forms of trade protection should be applied selectively, made conditional upon meeting performance standards, transparent, time-limited, degressive, involving minimum discrimination, and constantly reviewed.

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