

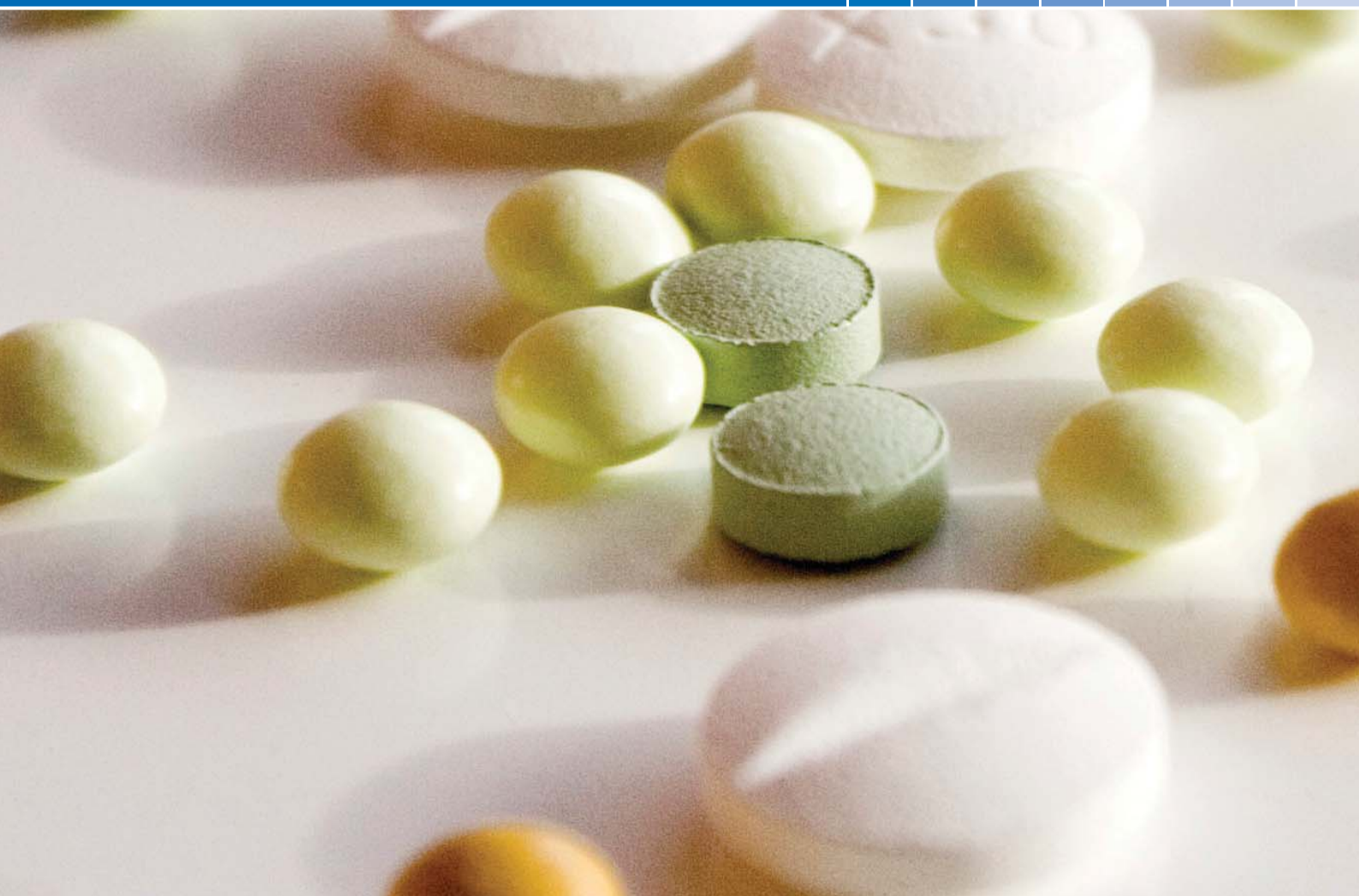


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USING COMPETITION LAW TO PROMOTE ACCESS TO HEALTH TECHNOLOGIES

A guidebook for low- and middle-income countries

United Nations Development Programme





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Using Competition Law to Promote Access to Health Technologies:

A guidebook for low- and middle-income countries

Frederick Abbott, Sean Flynn, Carlos Correa,
Jonathan Berger, Natasha Nyak

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One United Nations Plaza
New York, NY 10017
U.S.A.

Website: <http://www.undp.org/>

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ABOUT THE GUIDEBOOK

This guidebook originated from a small meeting of experts convened by UNDP in March 2011 to explore how competition law and policy in low- and middle-income countries might be better harnessed to increase access to essential health technologies. Following that meeting, UNDP partnered with a subset of experts from the meeting to develop this guidebook, which was finalized in May 2014. UNDP and the authors are particularly grateful to Frederick Abbott for his stewardship in coordinating the review and amalgamating the papers as a single resource, and to Brook Baker, Kazuyuki Uji, Boyan Konstantinov, Lisa Hamelmann, Katie Kirk and Tenu Avafia for their helpful suggestions and editorial reviews. This project was overseen by Katie Kirk, Consultant, and Tenu Avafia, Policy Advisor within the HIV, Health and Development Group of UNDP's Bureau of Development Policy.

For any enquiries, contact: Tenu Avafia
Email: Tenu.Avafia@undp.org
Telephone: + 1.212.906.6372

ABOUT THE AUTHORS

Frederick Abbott is Edward Ball Eminent Scholar Professor of International Law at Florida State University College of Law. He has served as expert consultant for international and regional organizations, governments and nongovernmental organizations, mainly in the fields of intellectual property, public health, trade, technology transfer and sustainable development.

Sean Flynn is Associate Director of the Program on Information Justice and Intellectual Property (PIJIP) at American University Washington College of Law. He has represented consumers and local governments in competition law, regulatory affairs and intellectual property matters at the law firm of Spiegel & McDiarmid and at the public interest nongovernmental organization Consumer Project on Technology (now Knowledge Ecology International).

Carlos Correa is a professor and the Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics Law, at the University of Buenos Aires in Argentina. He is also Special Advisor on Intellectual Property and Trade, South Centre, Geneva.

Jonathan Berger is an advocate of the High Court of South Africa. Before joining the Johannesburg Bar, he worked as head of policy and research at SECTION27, a South African non-profit human rights organisation. He is a member of the Expert Advisory Group of the Medicines Patent Pool, and a former member of South Africa's Medicines Control Council.

Natasha Nyak is a competition lawyer with training in Indian competition, US antitrust and EU competition laws. She has done her LL.M and post graduate studies from the George Washington University, USA and King's College, UK. She is currently the assistant professor of law at the O.P. Jindal Global University, India, where she teaches Indian Competition Law and Comparative Competition Law.



There is a strong and reciprocal relationship between health and human development—just as health shapes development, development shapes health. The right of every human being to access the highest attainable standards of health is recognised by numerous international human rights treaties and national constitutions. With access to essential medicines, diagnostics and vaccines now regarded as a critical component of the right to health, countries are increasingly focusing on enabling laws and policies to achieve that right.

With 9.7 million people on antiretroviral treatment at the end of 2012, the AIDS response has provided a powerful example on realising the right to health, especially in terms of expanding access to life-saving essential medicines. Fourteen years ago, the cost of HIV treatment was US\$ 10,000 per patient per year. Today, internationally approved first-line treatment regimens are a little more than US\$ 100 per patient per year. As a result, many low- and middle-income countries (LMICs) have made dramatic gains in scaling up life-saving HIV treatment. Generic competition for antiretroviral medicines has been an indispensable part of this success, and is well accepted as one of the key drivers for expanding access to HIV treatment.

Competition law is one of the least discussed flexibilities within the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. There remains great untapped opportunity for countries to achieve price reductions for health technologies by instituting competition law and policy frameworks and complimenting them with strong enforcement mechanisms. The need for greater use of competition law was highlighted by the Global Commission on HIV and the Law, an independent body of eminent persons tasked with interrogating the relationship between human rights, law and public health in the context of HIV. The Commission recommended that *"countries must proactively use other areas of law and policy, such as competition law, price control policy and procurement law which can help increase access to pharmaceutical products."*

This resource provides practical guidance on using competition law and policy in LMIC settings to increase access to affordable health technologies. The guidebook provides a number of model interpretations of key aspects of competition law, and uses country case studies to examine the successes and challenges experienced in using competition law and policy.

This guidebook is intended for use by government authorities in LMICs who may have an interest in promoting access to health technologies through the effective use of competition law—including competition authorities, procurement and health authorities, judges and members of legislatures. It is also intended as a resource for civil society to inform their advocacy, policy and programmes work on treatment access and consumer/patient rights, including addressing anti-competitive activities that may affect consumer/patient welfare.



By elucidating the relationships between intellectual property rights, competition law and access to treatment, and through the study of examples where competition law and policy have been successfully used to address anti-competitive practices, we hope this Guidebook will serve as a valuable starting point for expanded cooperation within and among countries on this important area of law and policy. Ultimately, we hope it will contribute to the capacity of countries to enhance value for money, allowing for greater purchasing power in essential health technologies and leading to the improved health outcomes which are critical to accelerating progress on the Millennium Development Goals and the post 2015 development agenda.

This Guidebook has been developed by UNDP's HIV, Health and Development Group, Bureau for Development Policy with the support of numerous experts and field partners. We are grateful for their valuable contributions and welcome your comments and feedback.

M. Dhaliwal

Mandeep Dhaliwal
Director: HIV, Health and Development Practice
United Nations Development Programme

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