


The Multilateral Trading System in the 21st Century: Interaction between Trade and Competition Policy

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Report

Interactions between trade and competition could not be more intimate as they are today when countries world over are getting severely affected by the volatility of trade in primary commodities. The major commodity spike of 2007-08 sent alarm bells ringing when the prices of many primary goods doubled from what they had been not so long ago. Much of this is attributable to trade related competition distortions (e.g. export restrictions) and competition-related trade distortions (e.g. export cartels) that continue to operate in these markets. Since competition was taken off the Doha round negotiations in 2004 as a result of developing countries' opposition, more than 120 countries have adopted a competition law today as opposed to 35 in 1995.

CUTS International, Geneva organised a session titled "The Multilateral Trading System in the 21st Century: Interaction Between Trade and Competition Policy" with the objective to revive the discussions about this critical interaction, towards shaping elements of multilateral rules on competition. Some of the questions addressed by the panellists included: How do trade and competition policies interact with one another? What are some of the costs of the cross-border anticompetitive practices? How effective would multilateralisation of rules be in addressing the negative externalities caused by anticompetitive practices of a country beyond its borders? Given the growing number of national competition regimes in the world, would such rules be better received by countries? What is the appropriate forum for negotiating and hosting such an agreement?

Pradeep S. Mehta, Secretary General of CUTS International and member of the WTO Panel on Defining the Future of Trade who was the moderator of the session, said that as a result of price fixing conspiracies during the 1990s developing countries paid about US\$ 20-25 billion in excessive prices. He pointed out that the Havana Charter already included competition provisions, which were not included in the GATT, and that the attempt to include such provisions in the current Doha round was opposed by developing countries, because of politics. Seeking a unilateral solution has limitations for developing

countries due to capacity constraints. Given the reforms in competition regimes brought about across the world since the collapse of the agenda in WTO and now that it seems as though the Doha negotiations do not have an immediate future and that the WTO has to redirect its focus from trade negotiations to analyses, there is a need to revive the study on interaction between trade and competition. He proposed that UNCTAD and WTO should establish a joint forum to undertake this.

When analysing the implementation of competition rules by different countries, all panellists acknowledged the substantial improvement that has taken place in the last two decades. Back in 1995, only about 35 countries had implemented competition rules into their legal systems.

Mr Yoichi Otabe, Ambassador of Japan, observed that, fifteen years later, many developing countries have adopted competition laws and even signed Free Trade Agreements that include competition provisions, which have become most commonly used instruments to enact competition rules at an international level. According to Carlos Braga, Director of the Evian Group, the developing countries' opposition was a result of the after taste of the Uruguay round. The world has changed and if the proposal would come today, it would be received very differently.

Mr Eduardo Perez Motta, Chair of International Competition Network and President of the Mexican Competition Commission, also pointed out the fact that currently 123 countries (including many developing countries) are members of the International Competition Network. This proves that there is an increasing awareness of the importance of competition law in relation to international trade, and international coordination on competition issues is also improving.

Mr Hassan Qaqaya, Head of Competition and Consumer Policies Branch, UNCTAD, was of the opinion that competition policy can be an important tool for meeting the MDGs and reduce poverty through providing better opportunities for job creation, while their work at UNCTAD has shown that international cartels have a negative impact on the poor.

Several panellists stressed the need for developing countries to adopt competition law provisions in order to fight against the numerous international and export-based cartels, which usually target developing countries and have their origins in developed countries.

Mr Robert Anderson, Counsellor at the Intellectual Property Division of the WTO pointed out that competition authorities in the countries of origin do not act against these cartels because they do not affect their domestic markets, while competition authorities in the victimised countries often do not have powers to act against the export cartels. Among the many possible reasons, Mr Anderson mentioned the fact that they may lack extra-territorial jurisdiction, or may not have the means to gather the evidence they would need to convict the cartels in their jurisdiction. The strongest argument in favour of the adoption of competition rules is the high cost that the lack of these rules entails for consumers.

In fact, export cartels have a significant influence on prices in general and on the swing of prices of primary products in particular. As a result of price fixing conspiracies during the 1990s, developing countries paid about 20-25 billion US Dollars in excessive prices. Mr Mehta mentioned that in a recent study for CUTS, the noted economist and Chairman of the OECD Competition Committee, Frederic Jenny has highlighted the overcharge paid by India due to anticompetitive practices in the global potash market, estimated at a billion US Dollar per year.

Finally, while advocating in favour of reviving the debate on the linkages between trade and competition policy and recognising the possible legitimacy of the WTO in hosting such discussions, several panellists pointed out that several other IGOs might be ready to take this issue on board (e.g. UNCTAD, OECD) and that the WTO may not be the most appropriate forum for enforcing competition law provisions given the current difficulties. Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO, said that Australia could certainly be ready to participate in such discussions, whatever the forum.

Nevertheless, it was suggested that the WTO and UNCTAD could jointly host such a forum, as UNCTAD has been highly active in promoting the interaction between trade and competition. In fact, Mr Qaqaya recalled that UNCTAD gives support to developing countries in developing their competition regimes.

During the ensuing discussions and comments from the floor, several participants reacted to the proposal for a multilateral set of rules on competition. While concern was raised about the fact that one-size-fits-all rules may not suit all countries depending on their level of development, Mr Perez-Motta recalled that there are already informal standards that most domestic competition laws already follow, as they are divided into the three standard elements of merger control, abuse of dominance and cartel sanctions.

However, several speakers made clear that it is not yet time to plan for such rules but rather to seek a renewal of discussion to see what are the areas of complementarity between trade and competition policy. It was also pointed out that these discussions about competition should not forget the central importance of the consumers' interest, as it is their welfare that is eventually sought and they are also business people.

Mr Mehta concluded the session by reiterating that the world has changed in the last 15 years and there are now better prospects as well as greater need to explore multilateral disciplines for competition which could be done through a joint UNCTAD-WTO Forum.