

Speech

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**EU Co-operation and Capacity Building with Third Countries and
Regions in the Field of Competition Policy:
*Sharing Experiences, Success Stories and Lessons Learnt.***

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* The views expressed are those of the authors and do not necessarily reflect those of DG Competition or the European Commission

Ladies and gentlemen,

We are now in the second day of this conference and we have had the opportunity to hear from some very interesting speakers and debate many important questions. Now I wish to turn my attention to EU co-operation and capacity building with third countries and regions in the field of competition policy. In particular, I would like to focus my remarks on the importance of capacity building and sharing experiences in all aspects of competition policy. You will hear about the experiences the EU have had in sharing expertise, best practices, the success stories and lessons learnt.

Competition Policy, Co-operation and Capacity Building

I. Internationalisation of Competition Policy

Competitive markets are powerful devices that, within the right parameters, work to yield great benefits to society and its consumers. Competitive markets provide an incentive for firms to perform at their best, produce high quality products, innovate and lower prices, thus efficient allocation of resources is attained by this "natural" process, but markets can also fail. Market failures can result from anti-competitive practices such as cartels and the misuse of market power. National competition law allows competition authorities to take actions against such conduct within its territory.

With the globalisation of economies, today the realities of our markets are that there is an intense presence of companies operating cross borders. Anti-competitive practices exist in both domestic and international trade; National Competition Authorities are faced with ever complex and multi-state anti-competitive practices. For instance, cartelistic behaviour can exist and indeed thrive in international context. In particular, Developing countries are susceptible to international cartels, this is for the reason that the multilateral dimensions are usually outside their effective control.

Put in a few words, the cost of cartels is very high and the effects of international cartels on developing countries are significant. For instance, studies by the World Bank in 2003 evidenced that some six international cartels overcharged developing countries a cumulative total of 3 to 7 billion USD in the 1990s. Other studies suggest this is a commonality in international cartels, one particular example is brought to mind, a paper written earlier this decade estimated that some 16 international cartels overcharged developing countries some 32 billion USD in one year alone, however, once the cartels were broken up, prices fell as much as 40%.

Many countries now recognise the benefits that competition policies can provide the development process. Supporting this is the increased enactment of such laws around the world; more than 100 countries have now implemented such policy. It is true that competition policy has now become a global phenomenon; this combined with the realities of globalisation has made international co-operation and capacity building ever so important.

With more than 100 competition authorities around the globe, seeking to enforce competition rules, more often against companies with cross-border presence, one may easily understand the necessity and the benefits from an effective international co-operation. Considering the example of international cartels, companies involved in this type of behaviour, are present in different jurisdictions, these companies coordinate and cooperate cross-borders, for competition laws to be effective, competition authorities must respond accordingly to such practices. For successful enforcement, the authorities in the different jurisdictions must, at an early stage, work together in investigating, coordinating enforcement activities and exchange information. These types of co-operation between authorities in various countries result in that enforcement is made more efficient. Companies will be reminded of the increased costs and risks when engaging in cross-borders anti-competitive practises. Thus, the deterrence factor will be greater.

II. European Co-operation

In the European Union, competition policy has been a cornerstone of Europe's single market; it has worked very well for 50 years – for the Member States, for Europe and for our consumers. Indeed, much of the prosperity of the EU is owed to the single market and the effective competition law enforcement we have. The two cannot be separated. However, the single market would not work if the Member States use different rules and do not unite in combating anti-competitive practices which have detrimental effects on the single market. Therefore, the EU has responded with several types of co-operation. First, we have the European Competition Network, which ensures an efficient division of work and an effective and consistent application of EC competition rules throughout the Union. Secondly, outside the EU, we cooperate on two different levels, one being on a bilateral level with competition authorities of main trading partners and second, on a multilateral level, where we work in international fora to encourage convergence of competition law.

(i) The European Competition Network

The obvious place to start is the European Competition Network (ECN). Simply stated, this forum was established to facilitate discussions and co-operation of European competition authorities in cases where Articles 81 and 82 of the EC Treaty applied. The national competition authorities of the 27 Member States and DG Competition are frequently engaged in this forum, both in policy work and competition law enforcement.

The network ensures the efficient distribution of work and the effective, consistent application of EC competition rules. The ECN operates very effectively, even more effectively, than was originally anticipated. The dialogue between the members and DG Competition has developed very well. The members inform each other of new investigations, envisaged decisions and there is a consistent flow of information exchange within the network. The national competition authorities assist one another with the case work to foster a common competition culture.

In particular, the ECN has done very well allocating cases to the appropriate competition authorities by means of informal discussions within the network. Institutional dialogue well-functioning can be demonstrated by numerous cases which have been referred to DG Competition for investigation where the anti-competitive practice has a European dimension.

(ii) Bilateral Co-operation

Beside co-operation within the European Union, DG Competition cooperates with several foreign jurisdictions outside the Union. For these purposes the European Commission uses different types of instruments, tailoring these to the particular requirements of each relationship. For example, with a relatively few number of jurisdictions we have concluded dedicated competition agreements, the so called formal intergovernmental agreements. With other jurisdictions, we may and have concluded inter-agency arrangements, which provide a broad framework of co-operation, with closer and more regular contact, for instance, the Memorandum of Understanding with Korea is such an instrument. With China, we have agreed on Terms of Reference thereby structuring our dialogue and assist them in the process of drafting and implementing a competition regime.

Within the European continent, we have the so called "association agreements", this instrument is rather unique and targeted at potential accession candidates. Such instrument is very specific and seeks to

further integrate the partners' market and harmonise competition laws and practices a head of a possible accession with, or association to, the Union. Finally, I will mention that with some important partners we actively cooperate in the absence of a formal agreement, for example, with Australia.

(iii) Multilateral Co-operation

At the wider international level, DG Competition participates actively in a number of multilateral forums, to name few, the ICN, OECD, WTO and UNCTAD. These forums have had different levels of successes and employ different approaches, for examples, work driven by consensus, soft law and binding rules. Here, I would like to focus my remarks to the first two forums, the ICN and OECD.

International Competition Network (ICN)

The ICN, a virtual network established by competition authorities in 2001, is the only body of its kind exclusively dedicated to competition law enforcement. The remit of the Network is to facilitate discussions on a range of practical competition enforcement and policy issues, with the purpose of sharing experiences, exchange views and improving international co-operation on competition issues. Over its relatively short life, the Network has made significant successes, the collaboration between the various working groups have led to enhanced convergence. The guidance and best practices recommendations on merger control and cartels attracted many countries to amend its rules so to be in line with the Network's guidance.

OECD

A lot can be said about the successes of the OECD's Competition Committee, since its existence, the OECD has provided a valuable forum for policy analysis and exchange of experience through discussions amongst its members. With its regular competition sessions and quality of work, the OECD attracts serious engagement of its members and agencies. The OECD has produced a range of recommended practices on several topics, for example, the recommendations for formal exchange of information between competition authorities in hard core cartel investigations.

These various international networks and co-operation have had measurable successes. The engagement has allowed us to learn from each

others' experiences, we have been able to inform and teach others of our approaches and best practices to competition law enforcement. This has resulted in better substantive convergence, increased efficiency as knowledge is exchanged and results compared, all to the benefit of the participants.

III. Capacity Building

As one would expect, fifty years of competition law enforcement combating countless anti-competitive practices and cartels, have left the EU with a particularly mature competition policy regime. Besides our involvement in various international forums and co-operation with foreign competition authorities, we constantly carry out internal reviews, assessments so to improve our investigative and enforcement tools to ensure a healthy single market. These constant processes of exchanging knowledge and sharing best practices have helped in making us what we are today.

As I previously mentioned, the globalisation of competition policy and economies has made it necessary to co-operate and continuously learn and find ways to do things better. Today many jurisdictions with newly established competition regimes and authorities are striving to implement an effective competition policy. These authorities, more often, look at models already tried and tested overseas; they seek guidance in drafting legislation, training their staff to equip them with the necessary skills, and to learn how to efficiently enforce competition rules. To this end, DG Competition, although a pure enforcement agency has sought to assist in capacity building and to provide technical assistance to the extent its recourses permit.

European assistance can be divided into two categories, capacity building and technical assistance. Although the terms are interrelated, these entail distinct phases for a competition authority. Technical assistance is "easier" to provide as it involves the transfer of "know-how" from one jurisdiction to another; it is a task of external support. Whereas, capacity building is more resource-consuming as it involves the putting into place, at the national level, a functioning competition policy framework and process. Through our experience, we are aware that newly established and young competition authorities see a greater need for future assistance, i.e. capacity building.

That said, DG Competition's international activities are focused on competition law enforcement; it does not have a budget for technical

assistance. However, such projects are funded by various EU assistance programmes. These programmes provide a range of assistance instruments, to name few, funding of workshops and conferences, study visits to European Competition Authorities and Courts, the hire of experts to assist in drafting legislations and guidelines, provide training to staff and internships. The direct involvement of DG Competition is limited due to obvious reasons. Nevertheless, our officials participate in workshops and conferences; we offer advice on drafting, implementation and enforcement of competition law, and a number of internships at DG Competition in Brussels.

IV. Lessons Learnt

Taking into consideration that competition policy is a cornerstone for Europe's single market and the extensive experiences of DG Competition, as one would expect, international co-operation, technical assistance and capacity building activities have been indeed countless.

As the Union expands more competition authorities are introduced to the Network and more often, these are in need of capacity building and technical assistance. For instance, the European enlargement in 2004 posed an enormous challenge for the European Commission as some of the new members required extensive assistance as they had to put into place a competition regime from scratch. This experience further enhanced our expertise in the field and indeed we have learnt many lessons from the EU enlargement, our international co-operation and other activities abroad.

First, to successfully implement a technical assistance program, active collaboration and strong engagement is required between the receiving party, the donor and the provider of the assistance. Secondly, the program needs to deliver a lasting effect on the recipient; this is best achieved by long-term assistance projects. Thirdly, the assistance project must take into consideration the prevailing local legal frameworks, institutional and socio-economical conditions as its starting point, thus, tailoring the program to the local needs. Finally, the providers of the program must be knowledgeable and be experienced in application of competition law, yet, the program must evolve in line with the absorption capacity of the agency.

Furthermore, the participation in international forums, such as the ICN and OECD, especially in the case of developing countries, cannot be

emphasised enough. These forms offer an exceptional knowledge exchange on competition policy, best practices and enforcement.

Ladies and Gentlemen with this I turn to my concluding remarks.

V. Conclusions

Competition law regime, no matter how small or big and complex, is vital part of global economy. In the last two decades we have witnessed a wave of competition law being enacted across the globe as governments recognise the benefits of competition policies.

A thriving private sector is vital for economic growth; trade liberalisation can bring tremendous benefits through increased competition, however, without competition law in place, there is no promise that maximum benefits of competition will result. An effective competition law regime furnishes the market with innovative and competitive new entrants, something so vital in the development process. Another attractive benefit of competition law is that it makes bribery and corruption less possible, this combined with a transparent and well-regulated economy, will serve as a heaven for investors, domestic and international alike, thus encouraging investments and development in emerging markets. Therefore, competition laws and effective enforcement of such rules is important and beneficial to all countries, whatever their level of development.

Accordingly, in order to respond to the globalisation of economies and to increased number of the complex cross-border presence of companies and multi-nationals, divergence of law and policy remains significant. The realities of globalisation make it necessary, and indeed desirable, to co-operate and improve international activities where best practices in policy and enforcement are shared between countries. Where competition authorities co-operate the resulting effects are clear, as we have witnessed by the European Competition Network, enforcement becomes more efficient, duplication of investigations is avoided, resources are allocated more efficiently thus freeing other resources to take on more cases. Deterrence becomes evident.

With these positive messages I would like to conclude my speech today. Thank you very much for your attention.