

**Closing Address**  
**at the**  
**Competition Policy and Pro-Poor Development Symposium**

**Geneva - 19/02/2003**

Ladies and Gentlemen

- Thanks for being invited to Pradeep Mehta of CUTS India. Congratulations for this initiative.
- Short reflection on 7-up Project :

Note that there are obvious synergies between the 7-up projects, and the ICN Capacity Building WG – the issues looked at are similar, and from what one can say so far, some of the tentative conclusions point into the same directions. Therefore, hope that CUTS will continue to co-operate with the ICN Capacity Building WG

- In particular, one common conclusion stands out: when designing the competition regime, and especially the appropriate competition authority, for an economy in development or transition, one needs to take good account of the local political, economic and possibly even cultural context. There can be no one-size fits all solutions.
- Today: focus closing address on two sets of issues:
  - a) From the competition enforcer's point of view: how competition policy implementation can contribute to development
  - b) As co-chair of WG: presentation of state of play of ICN Capacity Building WG

**A. The case for competition policy as a support for sustained economic development**

Many developing countries are today in the process of introducing broad economic reform and restructuring packages. The main benefits they expect from this

- is a greater competitiveness for their economy – in terms of an increased "international comparative advantage" -,
- the smooth integration of their economies into the global economy,
- and a more sustainable and equitable development which would boost their social and consumer welfare.

However, a key question for many countries applying more liberal trade and investment policies, or in the process of deregulation, is to what extent these policies need to be supported by the adoption of competition policy structures. This question is crucial for developing countries, since competition policy may require additional resources to set up new administrative capacity and structures.

### *1. Assistance in enhancing competitiveness*

Many people think that competition policy can also in developing countries assist competitiveness. Some of the key arguments that are put forward to support the introduction of competition policy in developing countries can be summed up as follows:

Competition policy helps to ...

- to defend their markets and consumers (and their economy in general) from anti-competitive practices targeting them;
- to avoid the capture of industrial policy by lobbies or bureaucracies;
- to safeguard against rent-seeking industrial policy interventions that are not really in the public interest;
- to complement and enhance the positive effects of trade liberalisation, privatisation and deregulation;
- to avoid transferring monopoly power from the public sector to the private sector with no performance gains, a risk inherent in instances where privatisation is carried out in the absence of competition policy.

In addition, competition can help to keep some of the dangers at bay which can be created by the globalisation of the marketplace. Beyond the advantages of this process (increased competition among corporations, a wider choice of goods for consumers, lowering of prices where markets are contestable, etc.), there can be a risk that anti-competitive practices are extended beyond national borders. In the absence of effective competition laws and policies, anti-competitive practices are likely to reduce the benefits that have been obtained through trade liberalisation and regulatory reforms.

More concretely, developing countries' trade may be adversely affected by three categories of anti-competitive practices with an international dimension:

1. Those practices that affect international markets, such as international cartels, mergers and abuse of dominant position. The harmful effect of such practices is likely to be further accentuated by the fact that developing countries only have a few multinational corporations among their corporations.
2. Those practices that affect market access for imports, which would include import cartels allocating national markets among their participants, exclusionary abuses of dominant positions, obstruction of parallel imports, control over import facilities, and certain vertical restraints that foreclose markets to outside competitors. Many anti-competitive practices in developing countries involve the supply of intermediate products purchased by other businesses as opposed to goods purchased by the final consumers. As a result of this, competition policy is more likely to assist firms in such countries in enhancing their competitiveness internationally. Moreover, as new entrants, developing country producers may also be particularly vulnerable to anti-competitive practices foreclosing access to third country markets.
3. Those practices that have a differential impact on the domestic markets of a given country: for example, a merger may only have insignificant impact in one market but detrimental knock-on effects in another market. This would include a situation where a merger between two corporations would only increase the market share of the new entity in a larger market marginally, whereas a more dominant structure between its subsidiaries may be created in the developing country or countries where they also operate.

The merit of a competition policy and an enforcement structure is obvious in such cases. However, we should also note that even if a competition authority has been established in the country, it may find it difficult to effectively apply domestic competition law in the absence of cooperation from the authorities in the home country of the foreign corporation.

## *2. Sustaining the benefits of deregulation and privatization*

The deregulation and privatisation policies that are being pursued in many countries are often far-reaching, ranging from telecommunications, energy and postal services to airlines and other forms of transport. The success of these policies, as well as their acceptance by the public at large, will depend on the ability of governments to inject and uphold sound competition once the market has been liberalised. This will often require the application of competition law and pro-competitive regulatory regimes. In particular, these policies are essential to avoid developing countries becoming the subject to anti-competitive practices resulting from the privatisation of a former government monopoly or the control of the market by an oligopoly.

Furthermore, there are sectors in the economy of every country that may remain, to a degree, unaffected by trade and investment liberalisation, such as for example services that are not traded internationally and may depend on national qualifications. For these sectors competition policy can be a good instrument at hand to guarantee effective competition so that benefits of policy reforms accrue to consumers.

### *3. Competition and inward investment*

Foreign companies, when considering investment options in different markets, will often place a premium on the country that has the most developed legal system in terms of allowing access and protection of the investment, reducing administrative burdens and addressing distortions of the competitive process. A stable framework of competition rules is likely to attract foreign investment by strengthening the regulatory fabric of the economy and confidence in the stability of policy. In this sense, competition policy can be an essential complement to certain reforms that include investment liberalisation.

Investment, both foreign and domestic, can take a number of forms, such as through a greenfield investment or through a merger or acquisition. The effect on competition may be different in each case: while a greenfield investment will generally increase the number of competitors, in case of a merger or acquisition efficiency advantages may have to be weighed against a reduction in the number of suppliers or the strengthening of a dominant position. Here again the advantages of effective supervision by a well-functioning competition authority may be crucial to support healthy competition in the economy.

#### **B. ICN's new Working Group on Capacity Building and Competition Policy Implementation**

- With these reflections of a more general nature, I would now like to move on to brief you on the latest developments at the level of the International Competition Network – or ICN - , and its “Capacity Building WG” in particular.
- As you will know, the ICN is a virtual forum for informal cooperation between most of today's existing anti-trust authorities. One of ICN's trademarks is the high-profile participation of agencies from developing and transition economies in its projects. Indeed, out of today's 76 ICN Member agencies, the majority comes from economies that we would not yet consider as “industrialized”.
- In view of this composition, ICN is particularly responsive to the needs and priorities of young agencies from developing and transition economies. In order to establish a dedicated forum that can address these priorities in a coherent and systematic way, ICN Members created, at their Annual Conference in Naples in September last, the Capacity Building WG. It is co-chaired by David Lewis from the South African Competition Tribunal, and myself.
- Where are we today with this project?
- Just last week, the working group held its first – and only - face-to-face meeting in Paris; otherwise, the working group meets “virtually” by way of conference calls, and communicates by email.
- I have to say that for being a global enterprise that involves anti-trust practitioners from all continents, all this is working surprisingly well. I can only see this

smooth functioning as yet another confirmation that the global anti-trust community speaks, despite all local peculiarities, a common language, and shares a common vision.

- The ICN capacity building working group has over the last months canvassed all ICN Members on a number of issues pertaining to capacity building and technical assistance. We have by now received replies from just under half of ICN's membership. Although I understand that some more replies are still in the pipeline, already now I can say that some of the information provided leads to some interesting reflections.
- We intend to present the key findings of this survey to ICN's forthcoming Second Annual Conference in Merida, Mexico, in June this year.
- So far, one of the most striking findings, at least in my perspective, is how little communication there is in many jurisdictions, up to this day, between the donors of aid programs, and their national or regional competition enforcement bodies. This is certainly an area where we can improve our mutual relations, so as to make best use of the scarce resources that are available for technical assistance in the competition area.
- Another reflection that is occupying our minds right now is the question of where to find the training facilities for the future competition officials that the new and emerging enforcement agencies will need soon. I think that it is safe to assume that several thousands officials will be needed until 2010. But where shall all these competent and well-trained people come from?
- The mature competition authorities have already in the past played a key role in this training process, by seconding staff, and by receiving interns for in-house on-the-case traineeships. However, in the face of our own human resources constraints, these activities cannot be expanded endlessly.
- Turning to the receiving end of technical assistance, I could see also a key role that emerging anti-trust authorities in developing and transition economies may well consider taking upon themselves, and even more vigorously than so far: from my time as Director-General of the Commission's development aid department, I know – and appreciate – that successful technical assistance needs to be demand-driven.
- It is our view that only those aid projects that enjoy the full commitment of the recipient country are likely to make the most sustained contribution to development. As a practical consequence, only those programs that are formally endorsed by the national government will be eligible for funding with many donors.
- And this is where the national competition authority could usefully enter the stage: when deciding on its priorities for requests for assistance, a government will have to make a difficult choice between many worthy causes. There will always be, and rightly so, proponents of investing in, for example, social or transport infrastructure.

- This means that there is some competition for a government's attention when it comes to determining the national development priorities. In order to succeed in putting competition-related projects sufficiently high on the governments agenda, we need targeted advocacy efforts of the national competition authority.