

INTERNATIONAL EFFECTIVE MARKETS REGULATION

COLLABORATION AMONGST ASIA PACIFIC COUNTRIES IN CONSUMER AND COMPETITION REGULATION

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INTERNATIONAL EFFECTIVE MARKETS REGULATION - COLLABORATION AMONGST ASIA PACIFIC COUNTRIES IN CONSUMER AND COMPETITION REGULATION.

The 1946 UN Economic and Social Council resolution proposing an international competition regulatory body, the International Trade Organisation, might be an idea whose time is at last coming. Moves through the World Trade Organisation (WTO) for a Multilateral Competition Agreement seem to be gaining ground and an International Competition Network (ICN) has been established.

Mario Monti (2002), European Commissioner for Competition Policy, argues: "In the absence of a specialised world-wide competition organisation and in view of the complementary relationship between trade and competition policy, the World Trade Organisation is the institution best suited to house an International Competition Agreement. The WTO possesses the advantages of a very broad membership and a tradition of enforcing binding rules."

The ICN is not an intergovernmental body, but rather an inter-agency entity set up by national competition agencies themselves to enhance their capacity to cooperate and collaborate in dealing with cross-border, regional and global competition regulation. Agencies from about 70 countries have joined. A number of developing country agencies have joined, but as all agencies must fund their participation active involvement by developing country agencies might be somewhat limited, though given the commitment at Doha to technical assistance, it is reasonable to expect that such help should be forthcoming.

SOME BOTTOM UP EFFORT NEEDED FOR AN INTERNATIONAL COMPETITION REGULATORY REGIME TO SUCCEED

One of the criticisms that can be levelled at the Bretton Woods institutions is their original western world orientation, but more than this they were very much top down initiatives even as far as the citizens of the west were concerned. Arguably the WTO would be in a better public place than it is today if more ground work had been done in its establishment. It would seem smart then not to repeat the mistakes of the past in the development of any international competition regime. The Memorandum setting up the ICN (International Competition Network website) specifically commits it to working closely with business and civil society and provides for representatives of business and civil society to be included in its working groups and is involving them in its first annual conference. The WTO has recently taken significant steps to involve business and civil society in its decision-making processes including on the proposed Multilateral Competition Agreement. But much more is needed.

First, the easier it is for citizens of the world to understand that an international competition regime is in their interests as consumers the easier it will be to sell the idea to their governments. How the idea is "branded" is important.

Recognising that competition regulation is the basic instrument for making markets work effectively for consumers, Australia and a few other countries have appreciated that there are significant benefits in coupling it with the other consumer protection regulation. Benefits lie in the synergies of one agency being able to deal with the range of regulatory interventions, both to do with countering anti-competitive conduct and to do with countering asymmetry of information problems, which might be needed to make a particular market work effectively.

But perhaps more significantly a single agency is able to develop a much more effective public profile and to garner much greater public support. The Australian Competition and Consumer Commission is invariably referred to as "the consumer watchdog" in the media whether the story is about a competition regulatory action or about correcting misleading advertising. It seems likely therefore that in countries with single agencies there is a greater public appreciation of the consumer benefits of sound competition regulation and thus greater public support for it.

Transferring this thinking to the international arena it seems likely that a comprehensive consumer protection-competition regime would be widely seen in a much more positive light than would simply a competition regime. With the UN Guidelines on Consumer Protection, the international community has already laid the groundwork for the consumer protection side of such a regime.

Secondly, much needs to be done to develop a wide enough understanding of the benefits of competition regulation. While most developing countries have enacted consumer protection legislation based on the UN Guidelines, a significant number have yet to enact comprehensive competition legislation and a great many have a long way to go to put in place an effective regulatory regime. Effort is needed to communicate the benefits of competition regulation initially at the national level and then at the international level.

Mario Monti, (2002) in arguing for an international competition regime observes: "For many citizens, this global dimension of economic activities has become a target for scepticism and criticism. Their concern is often focused on fears that so called global players may manage to escape any sort of government control, and may behave as they please."

The risk is though that without developing a sound understanding of the proposed regime many will not accept that its purpose would be to level the playing field to give small enterprises and especially those from developing countries a better chance of competing in globalising markets. Instead they will decide that it is being set up to "facilitate and accelerate the higher and higher concentration of global market power by a few giant corporations, whose oligopolistic grip on almost all key products and services is already intensifying through mergers" (Kohr 1999).

An old Chinese proverb goes: "Tell me, I forget; Show me, I remember; Involve me, I understand". Involvement of communities can be done effectively through civil society organisations in each country. A first step might be a conference which brings civil society leaders together with government and business people from each country. Following this education programmes, especially through civil society organisations, on the benefits of consumer and competition regulation and the need for an international regime should be undertaken. While this education would be needed in all countries needs might be greater in developing countries and assistance with multi-lateral or bilateral aid would be required.

This education would have to be persuasive on the domestic benefits of competition regulation especially the contribution it can make to wealth distribution and thus alleviation of poverty. It would need to communicate the benefits to developing economies that harmonising competition regulation and participating in an international regime would have in terms of getting the full value from comparative advantages their communities have. As Sinoussi (2001), in reporting the work of Hoekmann *et al*, notes the benefits of trade liberalisation can be significantly curtailed in the absence of effective competition regulation. Drake-Brockman (2002) observes that national consumer and competition regulatory inadequacies represent the major obstacle to realising the benefits of trade in services. It follows that without harmonisation of regulation should developing countries will not be able fully engage in the international services markets and realise the comparative advantages in this sector they surely have.

It would also need to help people understand that "While in the past, cartels or mergers were often national or regional in scope, they now often encompass several continents and fall under the jurisdiction of several competition authorities applying different rules." (Monti, 2002) and that therefore an international regime is needed to effectively regulate for competition.

It is not necessary to mount education campaigns on these matters for whole communities, but rather to target key opinion leaders in whom communities generally repose confidence.

But as the work of the work of Hall and Soskice (2001) shows the form of competition policy is significantly influenced by national socio-cultural, economic and political circumstances. The same applies to consumer policy. To achieve the major gains harmonisation is necessary, but this does not mean complete uniformity. So it will be necessary to assist each community to develop the characteristics of consumer and competition policy that will work for it, but will harmonise sufficiently with international norms. It will be important to work to minimise the sense in which certain countries or groups see themselves as what Braithwaite and Drahos (2000) call "law-takers" as opposed to "law-makers".

THE NEED FOR A REGIONAL APPROACH AND A REGIONAL AGENCY WITHIN AN INTERNATIONAL SYSTEM

Drake-Brockman and Drysdale (2002) make a strong case that the cost-benefit for countries in achieving multilateral trade liberalisation is greater than that for developing bilateral or pluri-lateral/regional agreements. Achieving an international consumer protection/competition regime would clearly bring much wider benefits than bilateral or pluri-lateral/regional harmonisation. However, while the effort directed to developing bilateral or pluri-lateral/regional agreements either adds nothing to the development of multilateral trade liberalisation or indeed actually detracts from it, working for development of consumer protection/competition regulation at the regional level is not the same thing. Much of the effort in this area at the bilateral or regional level would be highly complementary to the development of an international regime. It is the case that there are significant differences between countries in consumer protection and competition legal regimes. A comprehensive international regime would have to ultimately iron out the major differences in legal principles, in critical legal processes and in many standards for goods and services. But most of the work described above can proceed notwithstanding these differences.

While the WTO might well be the forum in which to develop the agreement for an international regime it might not be the agency to administer it on a continuing basis. In line with the earlier argument, this agency should have a comprehensive consumer protection/competition role. It is too early to say just what would be involved in administering an international consumer protection/competition regime. It could be little more than a clearing-house for information. It could be to settle arguments about the application of internationally agreed principles. It could be one of investigating practices and actions by companies and assisting national agencies to work collaboratively in regulatory action. Such action might be parallel legal action in two or countries. In the longer term an international tribunal could be contemplated and action could be taken through it. With these possibilities it would seem that establishment of an "International Consumer and Competition Organisation" (ICCO) as a sister organisation to the WTO would be much more acceptable than trying to expand the role of the latter.

While there are good arguments for the WTO to be less remote and inaccessible especially to developing countries that cannot afford to maintain a continuing presence in Geneva there are much stronger arguments for an ICCO to be very regionally accessible. Just as the work of the EU Directorate General for Competition is largely related to internal EU matters, so much of the work of an ICCO will be regional in nature. Such an organisation should therefore have a strong regional presence through regional offices.

The groundwork for this can be done now. Countries of each region, with financial assistance from the developed countries, could work together to establish regional Consumer and Competition Facilities. For the Asia-Pacific

(western rim) region, the developed nations (Australia, Japan, South Korea, New Zealand) could provide financial assistance, perhaps through the Asian Development Bank, for the establishment of an Asia-Pacific Consumer and Competition Facility (APCCF). The boundary for the region for this purpose need not be fixed and countries could opt in as they saw fit. There would of course be some wariness about such a proposal. To help to overcome this it would be important for the proposal to involve a governing body for the facility with representation from each participating country. It would also be important to build in mechanisms for effective participation by civil society and business.

The main role of an APCCF would be helping to build up capacity for consumer protection/competition regulation policy development and the institutions needed to implement that policy. It could initially convene a regional conference of government officials, business and civil society leaders from each country. It could support subsequent education efforts in each country including projects to involve and develop understanding amongst civil society organisations. As consumer protection/competition agencies develop it could provide training of officials and it could assist in research and analysis of particular consumer protection and competition matters.

It would be a possibility for an APCCF to evolve into something like the EU Directorate General for Competition plus the EU agencies responsible for consumer protection. There might well be significant efficiencies involved in putting effort into the development of a regional institution rather than building comprehensive institutions in each country. Each nation will have to have its own agency, but each would not necessarily have to have the full range of competencies in its agency. And, moreover a regional agency could undertake the regulatory action needed for cross border matters. An analogous situation might be entry of the eastern European countries in to the EU. They will be able to make use of the services of the EU Directorate General for Competition and other relevant EU bodies rather than individually developing their own fully-fledged agencies. (With the proposed EU reforms, either EU law or national law will apply to any particular situation – not both so below a certain threshold, only national law (and agencies) will be involved.

The longer-term role of an APCCF would depend on the characteristics of any international regime. In due course it might be that an international regime has a role that would at least in part duplicate that of an APCCF and the latter could be scaled down. This could be appropriate as long as the international regime involved regional offices and their governance arrangements were satisfactory to countries of the region.

Appendix

ASIA PACIFIC CONSUMER AND COMPETITION FACILITY APCCF

Background

There is a growing international consensus and recognition of the important role of consumer and competition policy and regulation in making markets work efficiently and equitably.

The mission of the APCCF would be to strengthen the institutional, organisational and technical capacity of countries in the region to implement effective consumer protection and competition regulatory regimes that are compatible where possible, with the overarching goal of achieving economic welfare, efficiency and social stability, but which also meet the specific requirements of individual economies.

The APCCF would provide focus for development activities, reinforce networks, exchange information on best practice and build technical and organisational capacity. The need for such a facility is highlighted by the following factors:

- Resources in the region generally tend to be insufficient to attack problems independently, which may result in the development of barriers to trade and investment between countries.
- Resulting need for deeper cooperation in the region.
- Existence of a large number of inconsistent, poorly framed laws across the region.
- There is currently considerable scope for increased coordination of technical assistance activities in the region. Assistance is being provided by a range of sources and duplication of efforts appears to be occurring. Such a facility could ensure that development and technical assistance efforts are not duplicated or wasted.
- Scepticism about the benefits of competition and unfounded fears about the effects of competition law and policy, particularly in relation to the implications of foreign ownership.

Goals

The goals of the facility would be to:

- Assist in sharing of specific technical skills for enforcement;

- Assist in education and technical training of people in policy development and regulatory agencies, business, the legal and other professions, academia and, most importantly civil society organizations – especially consumer organisations;
- Assist in development of effective national frameworks for consumer protection and competition regulation which, while not necessarily the same' are broadly compatible with each other;
- Assist in implementation or revision of consumer protection and competition regimes, as appropriate, so that they cover conduct such as:
 - monopolies, mergers, price fixing, horizontal and vertical restraints; and
 - food and product safety, scams such as pyramid selling and multi-level marketing schemes, misleading and deceptive conduct, including in relation to the misleading promotion of drugs;
- Assist in the process of deregulation and privatisation;
- Develop mechanisms to facilitate access to information in the region about consumer protection and competition regulation;
- Provide guidance on best practice policy development and administrative structures and processes in consumer protection and competition regulation and related governance areas;
- Assist in capacity building of civil society consumer organizations

The scope of operations of the resource centre could be expanded over time to include other areas of responsibility and to cover other economic activities that are being subject to privatisation or structural reform, including for example:

- Strategies to facilitate the detection and control of corruption.
- Consideration of economic governance issues.
- Economic reform of natural monopolies such as in gas and electricity distribution, telecommunications, ports, airports and railways.

In the longer term this facility could evolve into a body with a role similar to that of the European Directorate-General for Competition and could deal with regional, cross border problems.

Outputs

The functions of the facility would be to:

- Coordinate and implement meetings

- Provide education and training programs and skill development and augmentation directed at government officials responsible for both policy and administration, members of the judiciary, academics, business associations and civil society consumer groups such as:
 - scholarships for university study;
 - training courses;
 - staff exchange programs between agencies;
 - study visits to other countries;
 - work attachments with other agencies; and
 - short term technical assistance programs.
- Collect information and maintain of a central register of laws and regimes applying in countries in the region and of laws of other countries and of relevant scholarly material;
- Provide short term consultancies for specific work requirements;
- On request, assist in development of bilateral or multilateral cooperation arrangements
- Provide a forum for legislation review and assessment processes, with the overarching goal of promoting harmonisation of laws and practices in competition, consumer protection and utility regulation; and the promotion of market access and reduced barriers to trade; and
- Research into common marketplace problems to implement market focused solutions.

Membership and Governance

Membership could be open, but it would seem appropriate to focus on the East Asia and western Pacific region.

It would seem appropriate for the facility to be governed by a board comprised of representatives of the participating countries plus some representatives of business and civil society consumer organizations.

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