

---

## **Competition and Competition Policy in a Globalised World**

At the end of the Uruguay Round, the European Commission (EC) urged that competition be included in the WTO negotiating agenda. A working group on Trade and Competition Policy was created in 1996 and was active from 1997 to 2004. In July 2004, the General Council of the WTO decided that the interaction between trade and competition policy (in addition to investment and transparency in government procurement) would no longer form part of the Work Programme set out in the Doha Ministerial Declaration and therefore, no work towards negotiations on any of these issues would take place within the WTO during the Doha Round.

The reasoning behind the European Commission proposal was that the effectiveness of trade liberalisation measures taken by WTO members can be defeated if private operators engage in practices that recreate barriers to trade or reduce competition in world markets.

From the beginning, Pradeep Mehta offered unconditional and enthusiastic support to the idea that trade and competition issues were linked and had to be looked at in conjunction with the context of the Doha Development Round. This was particularly courageous and foresighted on his part since the benefits of competition law and policy were not well understood in developing countries and were even considered with suspicion by those who thought that the EC Commission proposal was a Trojan horse designed to facilitate the penetration of developing country markets by big businesses based in developed countries.

In spite of the elimination of competition from the work programme of the WTO, the idea that there is a need to ensure that globalised markets remain competitive and that a multilateral competition policy is a necessity, has not gone away.

On the contrary, the proliferation of bilateral or regional agreements with competition clauses since the mid 2000s shows that trading nations have become increasingly aware of the link between trade and competition. As a result, a great number of developing countries that did not have a competition law in the early 2000s, have since adopted such a law and are now more familiar with the role of competition policy for economic development. Again, Consumer Unity & Trust Society (CUTS), under the leadership of Pradeep Mehta, played a crucial role in promoting the adoption of competition law in developing countries and in offering them technical assistance.

In addition, the fact that the focus of competition law enforcement in developed countries shifted to enforcement against international cartels helped focus the attention of policymakers on the importance of the costs which such cartels can impose on developing countries. This was not entirely new as a number of studies of individual international cartels (such as the study by Prof Newfarmer on the international heavy electrical equipment cartel in the early 1980s, or the study by Prof Stiglitz on the aluminium cartel in the early 1990s) had pointed to the potential cost for developing countries of transnational cartels based in developed countries. But the increased focus on such international cartels led to more work being done on the costs imposed by such cartels (for example by Prof Connor, Prof Suslow and Levenstein and myself).

The liberalisation and deregulation movements of the 1990s and 2000s, often suggested or imposed by international donors on developing countries through conditional subsidies or bail-outs, also increased the awareness of competition issues in developing countries. Consequently large segments of domestic industries in developing countries came under the control of foreign multinationals. Indeed, in a number of instances large foreign firms were the only ones that had sufficient capital to invest in the

purchase of privatised assets and to become dominant players. As a consequence of this movement, a number of developing countries became more dependent than they had previously been on decisions made by dominant multinationals outside their borders. The cement industry in Latin America or Africa provides vivid examples of this phenomenon.

Public officials in developing countries came to realise that they were losing operational sovereignty over parts of their domestic industry and that the regional or continental strategies pursued by dominant multinational firms operating within their borders were frequently designed to prevent or restrict competition. This increased their awareness of the necessity to develop domestic tools to fight transnational anticompetitive mergers and/or abuses of dominance. Development in the beer and soft beverages industry in both Africa and Latin America are typical examples of this.

Another issue, which has received increased scrutiny over the last few years—thanks to the wide swing in the prices of commodities—is that of transnational export cartels. There is less consensus at the international level about what is the proper treatment of such cartels since developing countries can, depending on their endowment in natural resources, be either on the winning side or on the losing side of such cartels. But what has become clear is that the existence of such cartels can conflict with the goals of trade liberalisation and that only a multilateral agreement on how they should be treated could bring relief from their deleterious effects.

Thus, the awareness of the potential damage of transnational anticompetitive practices or transactions for developing countries has risen and so has the awareness of the fact that while bilateral or even regional solutions may bring some relief, they are insufficient to deal with all the problems.

In particular, it has become obvious that voluntary bilateral or regional cooperation agreements on competition have not allowed small developing countries that have adopted a competition law to exercise their national sovereignty over transnational anticompetitive practices or transactions, which impose costs on

them. Indeed, developed countries are reticent to sign bilateral cooperation agreements with small developing countries because they fear that they will bear all the costs of the bilateral cooperation, whereas the developing countries party to such agreements will get most of the benefits since there are likely to be more complaints that firms located in developed countries have abused individually or collectively their market power or have entered into transactions that are detrimental to developing countries interests than vice versa.

As a result, the distrust of developing countries toward competition policy and law enforcement has largely abated since 2003, and they now more widely accept the necessity to find a multilateral solution to the issue of the competitive governance of world markets.

What is not yet clear is the context in which the exploration of possible options for a multilateral agreement on competition could be reopened. The WTO would be suitable because it is logical to consider trade and the competition issues together. However since 2003, the negotiation of the Doha Development Round has achieved no significant progress. One possible reason is that multilateral trade agreements no longer bring sufficient benefits to the negotiating countries to give them an incentive to offer the concessions, which would allow negotiations to be successful.

One of the ways to increase the benefits of trade agreements is precisely to ensure that their goals are not defeated by anticompetitive practices or transactions in globalised markets. Thus the exploration of the issue of trade and competition policy in the WTO, which was considered a hindrance to the completion of the Doha Development Round in 2003, may now have become the best hope to save the Round.

There is little doubt that Pradeep Mehta, who has recently been appointed by the Director-General of the WTO to a high-level panel set up to identify 21<sup>st</sup> century trade challenges, will keep this perspective in mind in thinking about the future of the multilateral system.