

6th CUTS-CIRC Biennial Conference on Competition, Regulation and Development

MAKING COMPETITION AND REGULATORY REGIMES MATTER IN INCREASINGLY ONLINE DEVELOPING WORLD

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Interface between Competition Regime and Sector Specific in Online Economy: Challenges and Opportunities in Developing Countries

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Agenda

1. Introduction
2. Issues for consideration
3. Challenges face by developing countries and transition economies
4. The role of UNCTAD
5. Conclusion



1. Introduction (UNCTAD Model Law Chapter VII – v. 2017)

- Advocacy role of competition authorities with regard to regulation and regulatory reform
- Definitions of Regulation and Sector Specific Regulation
- Competitive impact of regulation
- Compensating market failure
- Regulatory barriers to competition
 - Creating administrative hurdles, such as complex and lengthy authorization procedures, for the establishment of new market players;
 - Requiring compliance with uncommon norms and standards amounting to barriers to market entry;
 - Preventing foreign firms from competing in national markets;
 - Privileging certain market players, for example national champions, and thereby awarding them a competitive advantage; and
 - Arbitrary public procurement and state aid decisions which distort competition.



2. Issues for Consideration: different approaches to ensure coordination and policy coherence between sector regulators and the competition authority

- to combine technical and economic regulation in the sector specific regulation and leave traditional competition law issues, such as the prohibition of anti-competitive conduct and merger control, to competition law
- to combine technical and economic regulation in the sector specific regulation and include as well some or all traditional competition law aspects (eg. Mexico)
- to combine technical and economic regulation in the sector specific regulation and include as well some or all traditional competition law aspects, while ensuring that the sector regulator performs its functions in coordination with the competition authority
- to organize technical regulation as a stand-alone function for the sector regulator and include economic regulation into general competition law
- to rely solely on competition law enforced by the competition authority (integrated model: Spain, Peru and The Netherlands)



3. Challenges face by developing countries and transition economies

Offline world:

- Jurisdictional conflicts due to lack of clarity of the competences (in laws) between the competition authority and the sector regulators
- Overlap of competencies between competition authorities and sector regulators (e.g. Namibia)
- Lack of inter-agency cooperation through formal and informal settings (e.g. Mauritius)
- Lack of consistency between the rulings of sectoral regulators (exclusive powers) and competition agencies (e.g. Uruguay)



3. Challenges face by developing countries and transition economies (II)

Online world:

- increasing dominance of global digital platforms and their control of data accentuate increasing inequalities in the global economy.
- Require thinking outside the box to find alternative configurations of the digital economy that could lead to more balanced results and a fairer distribution of the gains from data and digital intelligence.
- Need to ensure inter-agency cooperation with telecom and data protection sector regulators: e-commerce authorities? (traditional cooperation)
- And other (non-traditional) sectoral regulators: Financial, Energy and Media
- Lack of overall inter-agency cooperation and coordination (cf. the EU Directive on E-commerce)



4. Role of UNCTAD

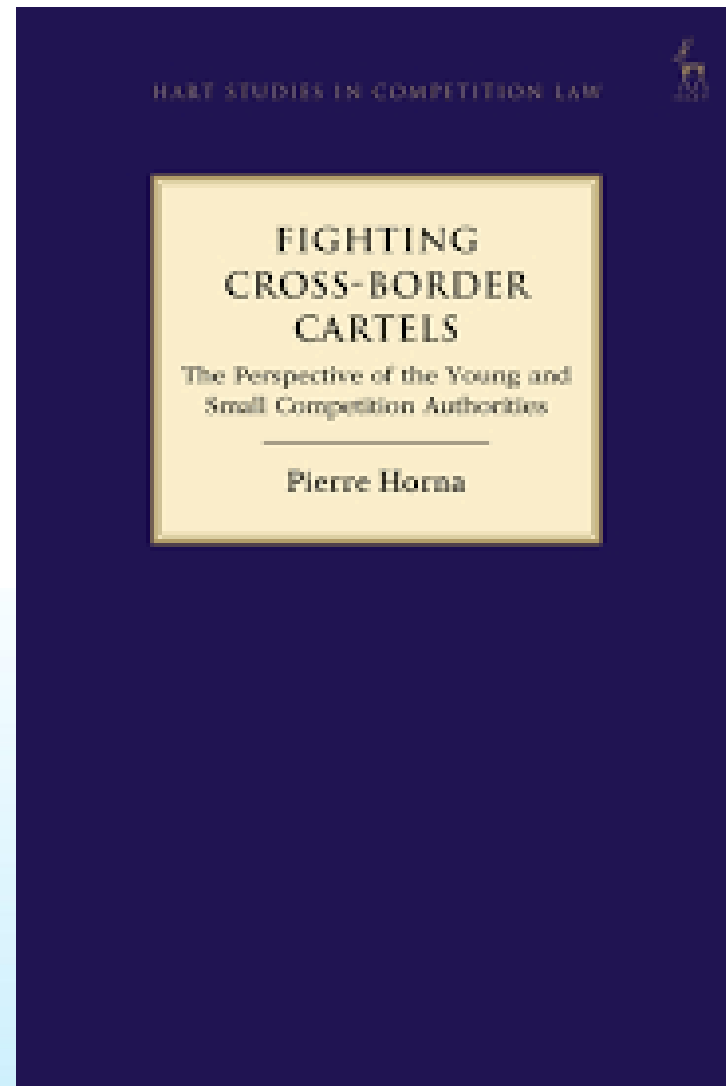
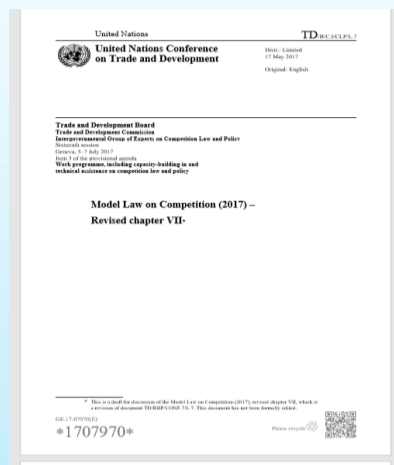
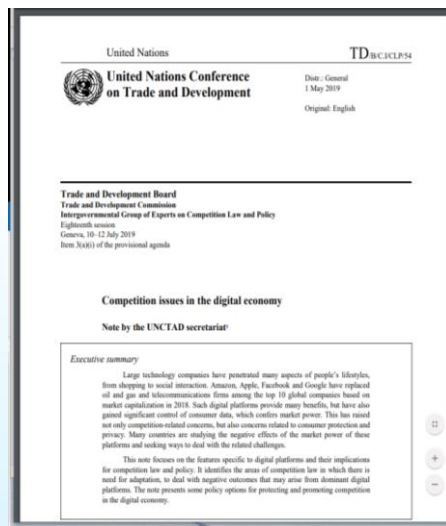
- Support and advise developing countries and transition economies in devising the necessary capacity and institutional framework to address the challenges faced by the online economy
- Support opportunities for enterprises in developing countries to benefit from digitalization: (e.g. using global digital platforms in productive ways, developing local or regional platforms, promoting digital entrepreneurship and the digitalization of existing companies, especially MSMEs).
- Support government interventions in a number of policy areas relating to digitalization will be needed to secure outcomes that can support efforts to achieve the SDGs
- Further assistance should seek to reduce the digital divides, strengthen the enabling environment for value creation in the digital economy, build capacity in the private and public sectors, and enhance trust by supporting the adoption and enforcement of relevant laws and regulations (UNCTAD Digital Economy Report 2019)



5. Conclusion

- The interface between Competition and Sector Regulation is a difficult issue to achieve in both, the offline and the online worlds.
- Besides the traditional challenges faced in the offline world, policymakers in developing countries need to be better prepared to address the challenges in the online world.
- Addressing the challenges of the digital economy can help the attainment of the SDGs.
- UNCTAD can support effectively developing countries in addressing these challenges provided there is readiness and political willingness of the key policymakers and businesses.

Thank you very much
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