

“Trade, Competition and Consumer Protection”

Dr. Supachai Panitchpakdi, Secretary-General of UNCTAD

The contribution of CUTS to the multilateral trading system is not in a way that we can see easily and clearly in terms of negotiations, or market access opening up, but in noting that the results of our work at the WTO in terms of opening up markets and setting up good rules that could be used in a fair manner, in a way that would guarantee that consumers would really have the choices, the quality and the standards to the products and that the market powers would not be abused. Because by liberalising the market powers you cannot always have full control of what kind of impact would finally be produced, particularly on the consumers.

We at UNCTAD greatly appreciate this work that CUTS has been contributing. The work that we have been doing together in the areas of competition, consumer protection policies, investment agreements and other areas has been geared towards liberalising trade so that capacities can be built and a kind of fairness could be guaranteed for the consumers at large.

CUTS is celebrating its 30th Anniversary, and next year UNCTAD will be celebrating its 50th anniversary. It's a long time that UNCTAD has been around, and in the last 8 years on my watch we have always been working very closely with CUTS. It is surprising to see that in three of the four areas of the so called Singapore issues that have been intensively debated before it was decided to pick one up, have been covered by the activities at UNCTAD and actually under my watch I hope that it results in more intensive work in these three areas. You might be surprised that if you look at the areas of investment, competition and trade facilitation, we have fairly well covered these three areas. This has been achieved jointly with the WTO particularly, in certain areas of negotiations where we have been advising and supporting the processes.

The evolution of the thought processes in the last 30 years provides a number of lessons to be learnt. Back in the 1990's, you might recall that we were witnessing a series of mega mergers like Boeing, McDonnell Douglas, General Electric, Honeywell and also Microsoft. In those days we were concerned because competition agencies around the world had difficulties. Those that existed were having different interpretations of how to deal with these mega mergers. At the same time, we were seeing Europe move into a single market entity where the theme of competition was predominant. A lot of people in the GATT and WTO in those days were thinking that some of these rules on competition and competition policies could have some implications, particularly for market access. There might be dominant powers on the market that could move the market around, there could be some powers that would limit participation in the markets or single out parts of the market to be parceled out for different companies or groups of companies to be predominating over those markets etc. So, quite a number of people were thinking, I think justifiably, along that line. When you have trade liberalisation and more market access, whether you would need flanking measures along the line of protection of consumer interest and at the same time to make sure that the gains that we have through liberalisation would not be negated because people go into anti-competitive practices.

Of course, some of us were thinking, by looking at the practices of the WTO and the GATT in different areas, that there were already some implications coming out of the way WTO functions. If you look at anti-dumping, the trade remedial policy, it is about how to counter unfair practices of below cost prices that

would actually distort the market and help to corner the market in one way and try to exploit the market later on. These kinds of predatory practices have already been recognised in the way anti-dumping practices have been resorted to more frequently. If you look at the TRIPs agreement, it actually allows the kind of the patent obligations that could be validated by governments, giving actually some sort of anti-competitive practices. Yes, because it gives something like proprietorship to only those who own the IP. But with a fervent wish, that this would lead to more innovation and more benefits for investment and trade in the future. The sense of having this IP and also some of the anti-competitive practices was there, which actually restricts contestability in the markets with the logic that those restrictions could promote larger degree of innovation which in turn could lead to more competition.

We have seen in the GATS agreement, article VIII, that there is a provision that prohibits monopolistic policies to limit the entry or violate the national treatment. Thirty years ago, there were those proponents of including competition into the framework negotiations for more market access and for rule making exercise.

Now on the other hand, there was also legitimacy in the way that some of us have been saying "of course we might need competition policy but won't this kind of policy restrict us in the way that we would have the need to have policy space, to adopt certain anti-competitive policies for example in the area of the infant industry agreement or in the area of industrial policy that is now making a return at the moment". In those days in the 1990's, a lot of countries in Asia for example, the new Tigers, were using industrial policies with a bit of the anti-competitive policies in the background to promote some of this policy space.

There were others in those days who were saying "you cannot work on this one-size-fits-all kind of agreement". If you look at investment, for example, you cannot have a uniform investment agreement. You have seen the efforts at the OECD, the multilateral agreement on investment; which has been eventually been dropped. So you cannot think of doing this with competition because countries have different background, different sizes of companies in different countries. In some countries, one huge company may not imply dominant power but in some other economies with smaller size of the companies, they can imply dominant power as well. So there were legitimate objections to the one-size-fits-all kind of agreement that could actually be accepted as general rules. And of course there were some economists who were saying in those days that you shouldn't spend too much time on this kind of rule-making exercise. There are much more urgent policies to be carried out in terms of market reform. In and prior to the 1990's, governments were much involved in interventionist policies. In those days, economists were saying that you don't need to go all the way looking at cartels, whatever kind of collusive actions but just look at the way that government is driving policies forward. There have been all sorts of arguments in favour and against taking up competition rules at the multilateral level.

If you now look at the thought process, there is proliferation of competition rules as they are being adopted throughout the world. In the 1990's there were less than 50 countries that knew about setting up competition rules. During the negotiations in the first WTO meeting in Singapore in 1995, there were countries that just rejected it outright because they didn't know anything about it so they didn't want to bother themselves. Since then driven by work at UNCTAD and CUTS the number of countries having these competition rules in use last year went up to 122. We still need to grapple with effective implementation of these rules. This is another problem that we would have to think through in the future.

This is a change and an evolution of thought processes that I appreciate. It is the way UNCTAD has been working with CUTS to maintain the interests in some of the areas that could not have been subjected to

some of the intricate negotiations at the WTO. There would be ways that we could apply some of these competition rules in different settings. We have people looking at the principles and joining us from time to time every year with our governmental expert group as we try to harmonise competition rules and consumer welfare protection policies. It is also very pleasing to see that countries in transition have emerged as market-oriented economies. They are finding market-oriented economies to their benefit in the liberal market system but at the same time need to supplement this market liberalisation process with some form of competition authorities. And this afternoon, Frederic will chair the session on the policy review that we have recently conducted for Ukraine. And you would be surprised to see that in Ukraine the powers that are vested in their competition authorities are quite significant. Much stronger than what I have seen in some economies that are more liberal, more market oriented. Many of these countries in transition are just really looking forward to dealing with their own economies which are infested with a sizeable, what they call, shadow economy. In some of the economies in transition, shadow economy is more than 50 per cent.

We are seeing the rise of transnational corporations (TNCs) involving themselves mainly in the global value chains (GVC). Eighty per cent of the global trading volume is now going through GVCs operationalised by TNCs, through their international investments spree. Everybody seems to be part of some chain or the other. But at the same time by making these investments, and having sizeable TNCs participating in the international trade, countries around the world are pointing at some forms of anticompetitive infringements because of the size of the TNCs, and the way they group together to work in some markets. Sometimes they come together to strengthen the buying power, to render small economies more dependent on a limited group of buyers so that they can control the markets. Sometimes they use their power to limit the competition from domestic companies. We have seen in Africa in the last 20 years the process of de-industrialisation. Some of us think that it is because of the invasion of the sizeable foreign investors. People are saying that there is a crowding out effect of some of the domestic investment because of the foreign direct investments.

If you look at the way the poor will be affected, SMEs have not always been granted easy access. We would see that the poor are not always afforded the best prices because some collusive efforts resulting in unjustified high prices for some essential products. If you look at food or pharmaceutical products, medicines which are all essential products, you will question sometimes “why are the prices so high?” It is not because of fundamental changes in demand and supply all the time. We need to address that, not by just more market access negotiations alone, but by taking care that the rule making exercise which probably will be the future of the way we look at the multilateral trade system.

The first thing is that when you look at the need to promote competition and when you have the rules and regulations that are being set up, competition rules and the economic rules will need to be compatible. The problem is all these policies are not always in the hands of the competition authorities. Governments have to step in as they would have to take care of the whole economic management policy. Many times you could see governments stepping into different areas like investment policies, economic policies in general. Government becomes assertive because, for example, to be able to evolve green economy, they would have to put in more rules and regulations. Most of the time they have restrictive effects on competition. So while we are becoming more enthusiastic about putting all the rules and regulations to maintain health care, food safety nets etc., we have to make sure that they are not really evoking the anti-competitive policies at the same time. There must be some balance between economic regulation, enabling state and the need to enhance competition.

The second area which we are seeing very frequently these days is the so-called sectoral policies that are emerging for example in areas such as electricity, water, IT, transportation, carbon dioxide emissions, etc.

All these sectoral policies will need regulatory bodies to supervise fair implementation of the rules. At the same time you have the sectoral policy, sectoral regulatory body, co-existing with national competition policies. Because of different jurisdiction of the different sectors, they are not always in harmony. So in some cases you see clear conflicts. For example, in the banking sector, the central bank may control the number of banks and interest rate policy but they may not have the authority to watch over bank clients. So the consumers of banking services are not always well protected. Sometimes they are in the hands of the competition policies which don't always have the same policies as the central bank. This is where banking policy could be better harmonised.

We have seen more cross-border anti-competitive actions in the cross-border mergers and acquisitions. TNCs have been gaining in terms of size and activities around the world. There is, therefore, great need for national policy makers to be working together. But this is not always the case because national competition committees have different rules and regulations, particularly the confidentiality of relevant information. It is always a question whether we can really have the kind of policy harmonisation that we need. UNCTAD has been working to try to reconcile all those differences, facilitating different jurisdictions to exchange information and have joint meetings. Now we are trying to make things happen by putting information online. There is now an effort to do what we call a collaborative information platform. This is an online databank, a virtual forum wherein competition authorities around the world can share information, particularly on investigation. The authorities can learn from each other as investigations are being conducted sometimes along the same line in the same sectors. These are some of the cooperative efforts that would be more needed in the future when clashes between competing policies can be avoided by a better information system.