

COMMUNICATION FROM ROMANIA

The following communication, dated 16 March 2001, has been received from the Permanent Delegation of Romania with the request that it be circulated to Members.

International Cooperation on Competition Policy within WTO Auspices

Competition law is essential for developing the market economy, for strengthening the private sector as an engine of growth and development and for prohibiting any restrictive practices by undertakings, which may be shaped as agreements or abuse of dominant position. The competition law's objectives can be observed only if the national legislation covers all anti-competitive practices which affect the national market. Having in view the globalization process and the fact that undertakings are more and more involved in international operations, the competition authorities are to have the power to ask these undertakings operating on various markets to observe their national competition laws.

The necessity to develop antitrust laws covering international cases and establishing extraterritorial competencies is becoming a major issue also for developing countries and for transition countries in the Central and Eastern Europe. In the competition area, the cooperation relations between developed countries such as the United States and the European Community and its member States should serve as an example when trying to set the basis of the cooperation relations between developing countries. Consequently, when applying the competition law, the objectives followed by the national competition laws should be established and the difficulties entailed by the exertion of extraterritorial competencies should be assessed.

Anti-competitive practices imposing international cooperation

When analyzing the way in which a multilateral framework for cooperation in the competition area is to be designed, the variety of anti-competitive practices affecting more than one country is to be considered. To this end, the following main types of anti-competitive practices with impact on the international market have to be taken into account:

- *Anti-competitive practices with a similar impact on several markets and on world markets, such as international cartels which may affect the trade of developing countries through price and/or quantity fixing and market allocation among few multinational companies;*
- *Anti-competitive practices affecting market access, such as import cartels, abuses of dominant position, certain forms of vertical agreements, cases in which under general jurisdiction*

principles, only the importing country would normally be in a position to apply its competition law;

- *Anti-competitive practices whose effect is primarily in a different market from that in which it was conceived*, such as export cartels which may involve multinational companies abusing their dominant position or undertaking other anti-competitive practices, particularly when such practice is implemented in a developing country.

In order to address such anti-competitive practices in an effective manner, there is a need for both enforcement of domestic competition policy and for enhanced international cooperation at bilateral, regional and multilateral levels.

Advantages of a multilateral framework on competition policy

An important element to be considered for taking part in a multilateral framework on competition policy would be the existence in the developing and other countries of competition policies and effective competition authorities having a well-suited institutional capacity. Since the reality confirms that competition agencies within such countries face difficulties in enforcing the competition policies and especially in dealing with complex cases having international dimensions, a multilateral cooperation forum would offer the opportunity to get in touch with more experienced countries and to benefit from their experience.

A multilateral framework on competition policy would have to be characterized by:

- *progressivity* in any commitment relating to the introduction of a domestic competition law regime;
- *flexibility* as regards the diversity of national approaches to competition law and policy, taking into account the differences in both the competition laws of WTO Members and in the institutional procedures for the enforcement of such laws.

WTO fundamental principles of *transparency and non-discrimination* are also to be the basis for a multilateral framework on competition policy.

A multilateral framework in the competition area would aim at ensuring that the developing countries and their competition agencies could benefit from cooperation relations within this framework.

Cooperation benefits in fighting against restrictive business practices could be obtained through several modalities such as:

- availability of information on cases involving anti-competitive practices;
- consultations among competition agencies in order to better address anti-competitive practices of common concern and to manage the jurisdictional conflicts (application of comity principles);
- new procedures for the exchange of national experience and perspectives on competition policy (such as peer review). As for the exchange of national experience among the national competition agencies, particular attention should be given to the exchange of confidential information.

On the other hand, a multilateral competition framework could play an active role in enhancing the results of technical assistance on competition issues (i.e. assistance for drafting competition laws, strengthening the institutional capacities to deal with complex cases, etc). Within this framework, the technical assistance programmes could be more focused on the needs of recipient countries due to the fact that a closer cooperation among WTO Members could allow a coordinated approach addressing the demands of recipient countries.

The Romanian Competition Council's experience in the field of international cooperation

(i) Bilateral cooperation

International cooperation materialized in the participation in conferences and seminars on competition issues within the framework of the bilateral cooperation agreements to which the Romanian Competition Council is a party, in other workshops organized in the neighbouring countries with whom cooperation agreements have not been concluded, and in the exchange of information with competition authorities although a legal framework for such cooperation did not exist yet.

In 2000, the Competition Council has continued the cooperation with the competition agencies from Bulgaria, Czech Republic, the Russian Federation, Belarus, and Georgia on the basis of the existing agreements.

Although a cooperation agreement is not concluded yet, cooperation relations with the Monopoly Authority (within the Ministry of Economy) of Macedonia have been developed and materialized in the participation in a conference organized by the Macedonian Monopoly Authority with foreign assistance.

During 2000, the Competition Council has also collaborated with the Hungarian Office for the Protection of Competition in resolving several competition cases on the tobacco market, the cement market and the market of health care services (pharmacy services). During the investigations on the mentioned markets, information was exchanged also with the competition authorities of Czech Republic, Bulgaria, Poland, Germany and Belgium.

(ii) Technical assistance programmes

The Competition Council was the recipient of assistance granted by the European Commission and will benefit, beside the Competition Office, from the project entitled "Strengthening the Administrative Capacity to Manage the Acquis in the Field of Competition and State Aid" financed through 1999 PHARE budget.

Direct contacts with experts from the European Commission by participating in a series of annual conferences on competition policy for associated countries, organized by DG Competition, allowed the exchange of experience and addressed various competition issues of mutual concern.

The Council also benefited from technical assistance granted by the United States Government through the United States Agency for International Development that consisted of long-term and short-term missions from the U.S. Federal Trade Commission and U.S. Department of Justice. At present, a special advisor from the U.S. Federal Trade Commission assists the Council staff in dealing with competition cases.

Within the multilateral assistance programme granted by OECD to Central and Eastern Europe countries, the Competition Council experts benefited from a series of seminars focused on

various topics such as abuse of dominant position, vertical agreements, mergers, horizontal agreements, the interface between competition and economic regulation, de-monopolization.

A multilateral framework in the competition area within WTO auspices would be an effective tool for promoting a competition culture, for generating benefits in terms of exchange of experience for developing countries having in view that trade and investment policies are complementary to the competition policy, and for addressing complex competition cases having international impact.
