

UNCTAD's work in the fields of

Competition Law and Policy

&

Intellectual Property

Agenda

- **Part 1: Presentation of UNCTAD's work in the field of Competition Law and Policy**
- **Part 2: Presentation of UNCTAD's work in the field of Intellectual Property**

Rationale for UNCTAD's work in the field of Competition Law and Policy (1/2)

Competition Law and Policy considered as:

- important pillar for a thriving market economy,
 - wherein competitive pressure hones productive efficiency and
 - stimulates product and process innovation fundamental to international competitiveness and economic growth;
- tool for consumer access to a wider range of cheaper and better products;
- means to ensure that benefits from trade liberalisation are passed on to the consumers.

Rationale for UNCTAD's work in the field of Competition Law and Policy (2/2)

Global dimension of conviction of benefits of competition:

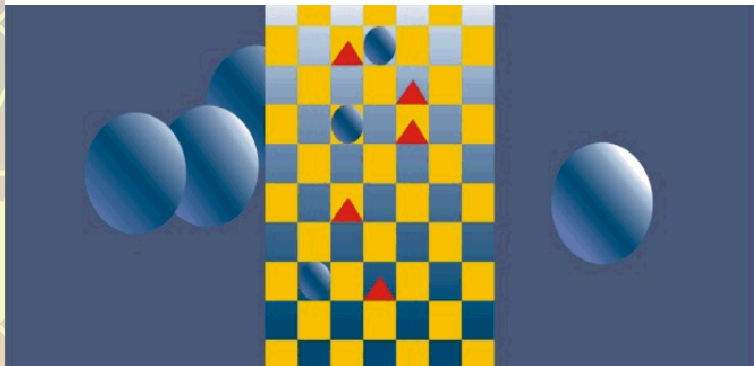
- In 1980, less than 20 countries had a competition law;
- Today, more than 100 countries and regional organisations have adopted a competition law regime;
- Competition law and policy have become a matter of interest for many developing countries;
- Large number of developing countries have adopted competition laws and policies or are currently in the process of doing so.

Basis for UNCTAD's work in the field of Competition Law and Policy

THE UNITED NATIONS SET
OF PRINCIPLES AND RULES
ON COMPETITION



UNITED NATIONS



Adopted in 1980, the “Set”:

- sets out equitable rules for the control of anti-competitive practices addressed to companies and states;
- recognizes the development dimension of competition law and policy; and
- provides for a framework for international cooperation and exchange of best practices.

Three Pillars of UNCTAD's work in the field of Competition Law and Policy

Consensus Building

(Intergovernmental Machinery)

Research

Technical Assistance

UN Set of Principles and Rules on Competition of 1980

Consensus Building

- Every 5 Years: Conference to review the Set and its implementation by member States
 - Next UN Review Conference: 8 to 12 November 2010 in Geneva
- Every year: Intergovernmental Group of Experts on Competition Law and Policy (IGE)
 - Last IGE: July 2009

➔ **Forums to exchange experience in the field of competition law and policy**

Research

- Comparative research as preparation for intergovernmental meetings:

In the field of competition and IPR: Paper on

“Competition Policy and the Exercise of Intellectual Property Rights”

- Technical Series on Competition Policy
- Research within specific technical assistance projects, e.g. market studies for competition advocacy

Technical Assistance

Policy

- Formulation of competition policy, including advice on how to design interface between competition policy and IPR
- Design and implementation of competition advocacy programmes

Legislation

- Drafting of competition legislation, including advice on how to draft provisions dealing with the interface of competition law and IPR
- Revision of existing competition legislation

Enforcement

- Workshops and trainings for personnel of competition authorities
- Conferences for judges
- UNCTAD Peer Review of Competition Law and Policy

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**UNCTAD approach re the interface of
Competition Law and Policy and IPR when
advising on design of competition laws**

Complementary between Competition Law & Policy and Intellectual Property Laws (1/2)

Common objective:

Stimulating innovation to the benefit of consumers

Different tools/methods of functioning

Competition law

- ⇒ Prohibition of anti-competitive agreements,
- ⇒ Prohibition of the abuse of market power
- ⇒ Merger control

Intellectual Property Rights

- ⇒ Reward of innovations by granting exclusivity rights

Complementary between Competition Law & Policy and Intellectual Property Laws (2/2)

Competition law

Substantial market power /dominance not prohibited!

Competition concerns related to substantial market power addressed through:

- ⇒ Prohibition to abuse dominant position, and
- ⇒ Merger control.

Conceptual tensions?

Intellectual Property Rights

Exclusivity rights are an important tool to stimulate innovation.

- ⇒ However, through exclusivity, IPRs may allow their holders to acquire substantial market power.

UNCTAD approach based on member States' experience/legislations

Model Law

Chapter 2 (Definitions and scope of application)

"II. Scope of application

(a) Applies to all enterprises as defined above, in regard to all their commercial agreements, actions or transactions regarding goods, services or intellectual property."

Commentaries

"19. The reference to intellectual property is consistent with virtually all antitrust laws, which treat licences of technology as "agreements" and scrutinize them for restrictions or abuses like any other agreement, except that the legal exclusivity granted by the State to inventors may justify some restrictions that would not be acceptable in other contexts."

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**However, remember
UN principle:**

No size fits all!

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UNCTAD Mandates on IP and Development

- Paragraphs 103 and 153, Accra Accord
- Rec. 40, WIPO Development Agenda
- 2008 WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property

UNCTAD's IP Programme: Interface of IP and Competition

Approaching question from IP angle allows wider lens than question of whether competition law violation has taken place.

PRODUCTS

- Policy Briefs, Issue Papers, Books
- Advisory Reports based on requests for technical assistance from developing countries

Work is coordinated with Competition Branch.

Representative Outputs

TRIPS provisions, Arts. 31 and 40

- Resource Book (2005)

Generic competition and the pharmaceutical industry

- Negotiating Health (2006)

Thailand – advisory study on interface between competition and IP law (2009)

IP Regime and its Impact on Competition

Competition regimes in many developing countries often not well equipped to handle IP cases

IP regimes can be structured to help ensure a better balance between exclusive rights and fair competition



Further information available at:

<http://www.unctad.org/competition>

and

<http://www.unctad.org/ddip>

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Thank you!