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Competition Principles Under Threat

Co-Sponsored by the International Development Research Centre (IDRC, Canada) and the Swiss Competition Commission (Comco).

Summary

On 2 June 2009, academic experts and practitioners from competition authorities from all over the world gathered at the IDRC pre-ICN forum to share experiences and discuss ways of reinstating competition principles in current circumstances. The three *Sessions* were structured as follows: (i) competition policy in a crisis, (ii) competition issues in food markets, and (iii) competition enforcement beyond the national level. In the *First Session*, the speakers agreed that the crisis will be made more costly, the greater the laxity that is shown towards competition principles. Nevertheless, the historical record shows that competition principles are usually set aside in times of war and crisis. The charge that the current crisis, originating in the financial sector, was attributable to excessive competition was rejected. Even so, the banking sector and the real economy have to be treated differently in terms of competition policy in times of crisis, because a banking collapse has dramatic consequences both within and beyond the financial sector, with extremely high social costs The *Second Session* showed that competition in the food sector matters because the nature of competition both horizontally and vertically determines the transmissions of shocks between consumers and upstream producers. The key importance for policy making is how to weigh the interests of farmers and consumers. The extent to which the buying power of downstream firms in the food sector negatively affects farmers in poor countries is unresolved and warrants more discussion. The *Third Session* emphasized the importance of innovative ways of cooperation among competition authorities; the powers that the national competition authorities need to have in order to be able to implement decisions taken; and finally, the importance of sharing information and building up capacity in new agencies. The meeting ended with a plea from the final discussant for attention to be paid to the level of preparedness of the community of competition authorities for non-routine crisis. "Best practices" for such situations need to be defined, as do recommendations as to how they are to be implemented, particularly in the face of political pressure in developing countries.

Introduction and Opening Session

The credit crisis and the global downturn in the real economy seem to have weakened many governments' commitment to competition policy. Both developing and industrialized country governments have been forcing mergers, bailing out failing firms, rolling back procurement rules, requiring banks to allocate credit preferentially to domestic firms, and authorizing new state aid with apparent abandon. The implementation of these measures will reverse decades of slowly-won support for competition norms. Conversely, some competition authorities in developing countries find themselves under increased pressure to deploy competition policy instruments in order to protect consumers in the new era of increased food prices.

On 2 June 2009, academic experts and practitioners from competition authorities from all over the world gathered at the IDRC pre-ICN forum - entitled "Competition Principles Under Threat" - to share experiences and discuss ways of reinstating competition principles in current circumstances. The workshop was organized by the International Development Research Centre (IDRC, Canada) and co-sponsored by the Swiss Competition Commission (Comco) as hosts the 2009 Annual Conference of the International Competition Network (ICN) that began the following day.

In his welcoming speech, **PROF. DR WALTER STOFFEL** (Chairman of the Swiss Competition Commission, Comco), examined the significance of the title "Competition Principles under Threat". This presupposes that (i) we know what competition principles stand for and that they should stay, (ii) there is an attack and that it is basically unfounded, and (iii) we can fight it off. Commenting on the first supposition, he argued that the right competition principles cannot be known definitively, although we have certain convictions drawn on past experiences. Despite - in a side remark - questioning whether the current crisis is a crisis at all, PROF. STOFFEL stressed his conviction that competition principles are particularly important in times of crisis. Referring to Schumpeter's "creative destruction" thesis he argued that crisis is the time where the foundations of the next period of prosperity are laid down, new business ideas come up and new institutions are erected at the expense of old ones. Regarding the second consideration, MR. STOFFEL argued that the biggest puzzle at this time is probably the "unprincipled" way in which support measures like saving the banks and rescuing other industries have so rapidly been put into place. Finally, he noted that the third presumption, that we can "fight it off if we do it right", refers to the need to make legitimate distinctions between saving the banks, where failures can bring about widespread disruption to other industries, and saving particular producers in those other sectors; between short term interventions and long lasting state ownership, where temporary interventions are clearly preferred; and between helping failing industries and helping share-holders or failing management.

PROF. STOFFEL'S opening speech was followed by **SUSAN JOEKES'** (IDRC) remarks that the pre-ICN Forum is intended to complement the technical discussions of the ICN conference in three ways. First it opens up the debate by considering the particular interests, perspectives and challenges that developing countries are facing when trying to establish a competition regime. She suggested that the fundamental importance of the issue is that competition policy lays out the framework enabling the private sector to meet its full potential for contributing to development, prosperity and reduction of poverty in poorer economies. Secondly, the Forum helps understanding of the magnitude of the task facing newly established competition authorities in developing countries. And finally, the Forum attempts to open up space for discussing challenges and uncertainties caused by the current global economic situation**. ANDRÉS RIUS** (IDRC) closed the opening session by giving special thanks to the Swiss Competition Commission (Comco) for co-sponsoring the event and to the International Competition Network (ICN) for continued collaboration in realizing this forth annual meeting on competition and development.

First Session: Competition Policy in a Crisis

The discussion on how to think about competition policy in times of crisis was started by **PAUL SEABRIGHT'S** (Professor of Economics at the University of Toulouse, France) presentation focusing on the role of the banking crisis in the current global economic downturn. **DANIEL A. CRANE** (Professor of Law at the Benjamin N. Cardozo School of Law, Yeshiva University, New York, USA) then surveyed competition policy enforcement in the US from a historical perspective. They were followed by two speakers who focussed on current challenges to competition policy in the automotive sector. **MICHAL PETR** (Director of the Section of Legislation and International Affairs, Office for the Protection of Competition, Czech Republic) and **ANTHONY BLACK** (Professor at the School of Economics, University of Cape Town, South Africa) spoke from the perspective of the Czech Republic and South Africa respectively.

PAUL SEABRIGHT discussed the following four issues: (i) whether crisis makes competition policy irrelevant; (ii) understanding the origin of the crisis; (iii) how banking is different from other sectors; and (iv) implications for policy. He based his presentation on a recent paper for the European Commission[1]. On the issue of ***competition policy relevance in the current crisis***, he started by asking whether competition policy is just "rearranging the deck-chairs on the titanic" and whether the interventions made so far to aid the process of recovery constitute the necessary and urgent surgery that the world economy needs? The answer to these questions is No. The crisis is very costly and a poor resolution will make it even more so via continued and increased indeed risk-taking, ill-considered mergers and a massive diversion of fiscal resources, which will place a severe burden on the world's most vulnerable people. He dismissed the argument that too much competition had existed prior to the crisis and was a contributing factor to the collapse. The banks had made extremely high profits before the crisis and excessive risk-taking had been taking place for a series of reasons that were not about margins being squeezed by excessive competition. The "herd instinct" of financiers was due to individuals' fear of losing their job, or not being promoted if they did not take these (excessive) risks. It was a result of too little – not too much –

[1] **Bailing out the banks: Reconciling stability and competition:** An Analysis of State-Supported Schemes for Financial Institutions, report submitted in May 2009 to the European Commission DG-Competition by Thorsten Beck, Diane Coyle, Mathias Dewatripont and Paul Seabright

competition: people were being rewarded for doing the same as others, not for being innovative.

The speaker briefly explained the ***origin of the crisis,*** referring to a recent paper by Gary Gorton as giving an excellent and extended overview[2]. The traditional view of banking is as the mechanism that permits borrowing short and lending long, resting on the important and very central fiction that not everybody is going to withdraw all his or her lifesavings at the same moment. This problem has been managed for retail investors by means of the deposit insurance put in place after the crisis during the 1930s. By contrast, in the current crisis professional investors panicked in a part of the system - known as the shadow banking system - that nobody had thought to be vulnerable. In the shadow banking system, large corporations also deposit their cash, insuring these cash-deposits through collaterals rather than government guarantees. In 2007 and 2008, a sudden and correlated loss of confidence in the shadow banking system caused by the failure of some asset prices, notably real estate prices, to continue an unsustainable rising path led to the start of the current crisis. This has had huge real costs in asset write-downs, government guarantees and bail-outs in the banking sector and real economy supports. And despite all these measures, the assessment of risk has now become so cautious that the costs to corporations of accessing cash have risen to extraordinary levels. The discount rate on securitized paper (the "Repo haircut") has risen from 5% in autumn 2007, before the crisis, to 15% in 2008 and to almost 50% in 2009. This indicates an astounding increase in the transaction costs of using the banking system, which is now not performing its function of channelling real economic resources from those who have them (but don't need them) to those who don't (but need them to do something productive). Such "frozen lending" is an obstacle to the efficient functioning of the world economy.

With respect to the third point ***how banking is different from other sectors***, PAUL SEABRIGHT outlined four main differences between banking and other sectors (in particular the car industry): (i) in a crisis, supply falls much faster than demand in the banking sector while the reverse is true in other sectors. In the car industry supply has to be adjusted downwards, but the supply of banking services has to be assured in order to keep the whole economy functioning; (ii) when banks are bailed out, most competitors benefit because of reciprocal obligations between banks. In the car industry there is less room for competitors when a firm is bailed-out; (iii) banks' leverage responds much faster to their economic conditions than that of other firms; and (iv) the social costs of bank bankruptcies can be much higher and much harder to calculate.

Commenting on the ***implications for policy***, the speaker first reiterated the point that the appropriate competition policy principles are different for banks than for the rest of the economy. Secondly, competition policy needs to work hand in hand with regulatory reform, because there were, for example, too many risk-taking opportunities in the banking sector. Moreover, the burden sharing of bank bailouts – for example between creditors, taxpayers and shareholders – should be very different from others sectors. He noted with regret that there has so far been an unwillingness of policymakers to consider making creditors take a

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[2] Gorton, Gary. B., Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007 (May 9, 2009). Available at SSRN: http://ssrn.com/abstract=1401882

significant loss when a bank goes down. In conclusion PROF. SEABRIGHT said that the crisis is proving extremely costly and ***that putting competition policy on hold any further could cause great and lasting damage.***

By way of introduction to the rest of the session on the effect of the crisis on the real economy, especially the automotive sector, **DAVID LEWIS** (Chairman of the Competition Tribunal of South Africa and Chairman of the ICN) underlined the fact that it is clear that a financial crisis would spill over to the real economy. Given the importance of the automotive industry with respect to technological externalities, exports and employment, it was inevitable that these producers would raise the alarm and demand state assistance.

The panel discussion started with the historical perspective given by **DANIEL A. CRANE'S** presentation "Antitrust Enforcement During Financial Crises and Wars". Describing the US history of economic crises, wars and competition policy developments since 1890 the main lessons he drew were that ***antitrust enforcement is a luxury*** for times of relative peace and prosperity and that regardless of whether the political administration in office was Democratic or Republican, ***antitrust enforcement*** has always been one of the first regulatory programs ***to be put on hold during times of financial crisis or war***. Three examples, among the many he cited are: (i) before World War I, developments regarding the anti-trust movement looked promising with Woodrow Wilson campaigning on his pledge to invigorate antitrust enforcement in 1911-1912 and with the subsequent formation of the Federal Trade Commission (FTC) and the coming into effect of the Clayton Act in 1914. However, the Wilson Administration suspended all major antitrust cases for the duration of the war in 1918; (ii) in 1933, after the great depression, President Franklin Roosevelt promised a dramatic change in anti-trust enforcement, but he effectively suspended antitrust enforcement all together and replaced it with cooperative industry cartelization under the National Industrial Recovery Act; (iii) with World War II, after a brief period when antitrust was dramatically reinvigorated, antitrust was put on hold again; and (iv) even during the post war period, there were still instances where antitrust enforcement was suspended, such as the 1950 suspension of the price-fixing case against Big Oil in exchange for help in boosting Iranian production, the allowance of industrial mergers during the Vietnam War and finally antitrust immunities given in response to terrorism. Referring to the most recent crisis, PROF. CRANE argued that it is too early to give an assessment, but there is already a certain tendency towards more lax antitrust enforcement, such as the U.S. Treasury Department pushing bank mergers as a solution to credit and solvency problems, and generally increased market concentration.

PROF CRANE suggested the following ***policy considerations***: some consolidation is unavoidable during periods of crisis. Anti-trust law is in fact somewhat of a luxury, meaning that it shouldn't be the top regulatory priority. However ***anti-trust law does provide internal mechanisms to deal with crises*** - e.g. the failing firm defence in merger law - and should not be abandoned all together. Finally, structural conditions that create or enhance market power can deepen and prolong recessions through raised prices and reduced output by monopolists. In this respect lax anti-trust enforcement will certainly prolong the crisis. He concluded by noting the Obama Administration's pledge not to repeat the errors of the

Great Depression by abandoning anti-trust enforcement and invited participants to keep a sceptical eye on events in this regard.

Challenges to competition policy enforcement due to the crisis in the automotive sector were discussed by **MICHAL PETR (**Office for the Protection of Competition, Czech Republic). As a small and emerging economy, the Czech Republic is particularly affected by protectionist measures implemented by other countries. The Czech car industry represents 10 percent of GDP and 20 percent of exports. Moreover, it involves about 1,000 companies, which are highly internationalized, and creates approximately 150,000 jobs. MR. PETR noted that the crisis has already led to a 25 percent decrease in car production and to a massive reduction of almost 60 percent in truck output in the Czech Republic. As a result unemployment has been increasing steadily. Foreign workers from Asian and African countries that had been enticed to come during good times are the first ones to be laid off.

On the question of responses to the recent developments, MR. PETR argued that measures like car scrapping schemes have proved to work for big economies, but their effectiveness for small exporting economies is uncertain. None have so far been introduced in the Czech Republic. He openly criticized the French President's stance of introducing protectionist measures in the car sector to support the French economy, which came at the explicit cost of the Czech economy, among others. Although the Czech Republic had previously somewhat reserved its position with regard to European integration, MR. PETR explained that the Czech Prime Minister, who at that time also held the EU presidency, had stated that the ***same rules should apply to all EC member countries*** and that, especially in times of crisis, the principle of a ***single European market*** should not been abandoned, but ***promoted***. Even though not every country will benefit similarly, the crisis should not be misused to restore protectionism. The speaker noted that subsequent to the negotiations at the European Council, the story ended "happily" for the Czech Republic. However, he warned of potentially protectionist new actions in the future (e.g. it has been announced that Renault's production plant in Slovenia will be moved back to France).

With respect to competition enforcement during crisis, MR. PETR recommended being ***"firm on principle, flexible on procedure"***. Competition agencies should react promptly, using instruments such as the failing firm defence.

The first session was completed by **ANTHONY BLACK** (Professor at the School of Economics, University of Cape Town, South Africa) focusing on competition in the automotive sector from the perspective of South Africa. He briefly gave an ***overview of recent international developments*** pointing to generally sharp falls in output, profitability, employment and trade flows. During the boom years emerging countries around the world, such as Asia, South America, Eastern and Central Europe and Africa, have seen rapid growth in the auto sector, whereas traditional car producers in North America, the EU and Japan didn't grow much or even shrank. Hence, structural change in the industry had begun before the crisis. Giving an answer to why the car industry receives so much attention, PROF. BLACK argued that the industry is very large, companies themselves are large, the sector is highly cyclical, the workforce and the firms are highly organized, production is regionally concentrated, it has a long history of state support, and the industry is currently going through major adjustments with the shift to low cost countries and environmental/technological developments. Thus, governments have used a wide variety of protectionist measures to protect their auto industry, such as subsidies, procurement provisions, licensing requirements, import bans, anti-dumping, and market support , although with notable differences in the use of tariff protection, which has declined in the developed but remains very significant in the developing world.

PROF. BLACK reported that despite pledges by G-20 countries to avoid protectionism, most have introduced measures – which he called ***"subsidy contagion***" - that limit trade at the expense of other countries. For the auto industry, subsidies are linked to maintaining national production. This is a major problem because ***developing countries may face a disproportionate share of cutbacks***. Car exporting countries such as Mexico, the new EU member states or South Africa, whose competitive advantage is based on lower labor costs and whose production is marginal to global production, are at risk. The worst-case scenario is that developing countries become suppliers only in peak periods of global production and face difficulties in selling/exporting their cars when demand falls. Focusing on the South Africa automotive industry, the speaker noted that last year's policy review gave greater bargaining power to multinational firms, and, that following declines in global sales, bailout support to the auto sector has been increased since the last election.

Given the weakness in the global auto sector, will further consolidation take place in an industry already dominated by relatively few firms? PROF. BLACK was doubtful, arguing that the auto industry has a weak record of mergers, that new firms, for example from China, India and Russia, will enter the market and that cases such as Opel will recur, where a new firm effectively emerges. He also argued that technological change will continue to affect the nature of production and that the continued liberalization of international trade rules, the emergence of more FTAs and the expansion of global supply chains all give greater influence to exporters. These factors may not be enough to mitigate the threat of more protectionism resulting from this severe crisis.

In conclusion, PROF. BLACK argued that governments could support the auto industry by ensuring expansionary macroeconomic policy for general economic stimulus, a smooth flow of credit and selective non-protectionist policies (e.g. encouraging new vehicle purchases). By contrast, governments should definitely not use recovery-delaying protectionist policies such as subsidies or trade barriers.

Starting the ***discussion***, **DAVID LEWIS** (Chairman of the Competition Tribunal of South Africa and Chairman of the ICN), as chair of the panel, wondered what responsibility merger regulation bears for banks that become "too-big-to-fail". Should antitrust authorities have treated mergers in the banking sector differently from those in other sectors? PROF. SEABRIGHT'S response was that many bank mergers have been catastrophically inefficient. He gave the example of the Lloyds-HBOS merger that had actively been encouraged by the government and may haunt the UK economy for decades to come. He stressed that competition authorities are not doing enough in the area of ***competition advocacy*** in order to make it clear to other branches of government that forcing ill-considered mergers is not the right way to run a stable banking system.

Referring to PROF. CRANE'S claim that competition policy is always relaxed in crises, PIERRE JACQUET (Chief Economist, Agence Française de Développement, France) suggested that this should be taken as a given. Having in mind that governments have to ensure employment, he asked whether we could consider relaxation of competition policy practice during a crisis as unavoidable, without relaxing the principles in the long-term. PROF. SEABRIGHT argued that it is wrong to say that governments hesitating to bailout specific sectors do not care about employment – there are alternatives such as macroeconomic policy measures, which are certainly essential. The ***issue is whether financial support to one sector comes at the expense of others***, as has often been the case in fact. By contrast it is possible to use stimulus packages for a wider range of industries. PROF. BLACK added that ***subsidies*** (e.g. to car firms) are ***worse than a zero-sum-game*** because they maintain excessive capacity. There exists a hierarchy of what appropriate measures could be. Exploring alternatives to antitrust enforcement during crises, PROF. CRANE suggested that governments, for example the US government as an owner of GM, should think of how to save brands and make the market more competitive, whereas competition agencies should support the governments by ***competition advocacy***.

PETER D'SOUZA (Economic Adviser, Department for International Development, UK) asked PROF. SEABRIGHT what the short and long run implications of the current downturn are for the financial sector in developing countries. This question was extended by another comment from the floor by PRADEEP SINGH MEHTA (CUTS International, India) inquiring whether PROF. SEABRIGHT has also looked at the counterfactuals of countries (like Canada, India and China), where the banking system was not affected by the crisis because they did not invest in toxic assets. PROF. SEABRIGHT answered that there exists no model for what went wrong in the banking system (e.g. shadow banking in the US vs. universal banking investments into toxic assets in Germany). He was sceptical whether there exists a single model for what went right in countries where banks are in rather good shape: he argued that the banking system in India was definitely slower to develop and the use of credit for driving industrial growth has not been such a feature as in the US. However, one should not draw the conclusion that countries that remained protectionist were the ones now in a strong position. India's industrial growth that during recent years has largely been driven by the relaxation of old protectionist policies.

The last two comments from the floor came from MONA YASSINE (Egyptian competition authority) noting that countries in which competition law enforcement is only at the beginning have actually been shielded from the crisis by being rather protectionist; and secondly from VLADIMIR KACHALIN (Russian Federal Antimonopoly Service) who argued that the difficulty of judging bank mergers is that the sector is highly non-transparent. Closing the session, MR LEWIS emphasized the importance of collaborations on a multilateral level, such as the ICN, to tackle issues concerning trade, social policy, and competition.

Second Session: Competition Issues in Food Product Markets – International Challenges, National Interventions

Introducing the panellists to the second session on competition issues in food product markets, **PIERRE JACQUET** (Executive Director, Agence Française de Développement, France) raised three important challenges: (i) future population growth in poor countries that will put continued pressure on food security; (ii) the importance of intermediate services responsible for the transmission of food products from the producers to the consumers, and (iii) competition policy's role in these intermediate sectors is to continue to apply best practices, thereby maximizing consumer and total welfare. The first speaker, **PROF. STEVE MCCORRISTON** (Professor of Economics at the University of Exeter, UK), gave a brief overview of food sector characteristics and focused on general competition policy issues in the food sector. He was succeeded by **ELIZABETH FARINA** (Professor of Economics at the University of Sao Paolo, Brazil), **KHELIFA TOUNEKTI** (Directeur Général, Ministère du Commerce et l'Artisanat, Tunisia), and **SIMON ROBERTS** (Chief Economist at the Competition Commission of South Africa) discussing the challenges to food security from a competition policy perspective in Brazil, Tunisia and South Africa, respectively.

According to **PROF. STEVE MCCORRISTON,** the main characteristics of the food sector are volatile prices, declining terms-of-trade, the declining role of agriculture in the economy, the importance of subsistence agriculture in many developing countries, pervasive government intervention in the sector and perhaps by extension the fact that it has proven a continued sticking point in WTO negotiations. With respect to recent real and nominal food-price hikes, he noted the immediate responses to price crisis such as food riots in about 30 countries, government interventions and fiscal and balance of trade difficulties. His outlook for the future was that commodity prices will remain high over the short to medium term, as a result of structural factors including income growth in emerging economies and government policies including bio-fuel policies. Prices may become more volatile due to "thin" world commodity markets. Furthermore, PROF. MCCORRISTON stated that food security is a longer-term concern high on the political agenda for both developing and developed countries as well as for international institutions like the World Bank or the IMF.

With respect to ***why competition in the food sector matters***, he advanced the argument that the nature of competition both horizontally and vertically determines the transmission of shocks between consumers and upstream producers. Developments in the structure of the food chain are important and will be controversial given the different interests of consumers and farmers. He argued that there has been a significant change – mainly in the downstream sector – with higher levels of concentration at successive stages (in processing and retailing; and in developed and developing countries), associated with vertical coordination of the food chain. Increased buyer power is a special feature of such restructuring. Showing some schematic illustrations of the food market chain, he noted that not only are farm/commodity prices different from retail food prices but so also is price behaviour after shocks in the upstream market. The key importance for policy making is how to weigh the interests of farmers and consumers. Other issues that are potentially important for competititon policy are globalization (e.g. through FDI, merger and acquisitions), de-regulation and governments' direct involvement in the food sector.

The presentation by **ELIZABETH FARINA** further developed the debate on competition issues in food markets. She noted that regrettably in the aftermath of the price increases of food commodities since 2005 national leaders have lost their trust in international trade as a basis for food security instead of taking this as an opportunity to improve poor countries' or rural areas' income. For example, Brazilian wheat producers asked for a reintroduction of import tariffs to protect the domestic market. The financial crisis has led to a general distrust in market forces that has aggravated the difficulty of guaranteeing food security. PROF. FARINA called for strong intervention by competition agencies in the food market.

Describing Brazil's 1994 liberalization and de-regulation program for the food market, which began in 1994 and included all sorts of instruments to promote market mechanisms, she showed that food prices have steadily decreased since the implementation of the program. Referring to the issue of different prices at the two ends of the food chain, she noted that consumer food prices have increased in Brazil since 2007 but that, after a short increase, farmer prices are now back at pre-crisis levels. Reasons for continued high consumer prices could be market power, but also factors such as rising transportation or storage costs at intermediate levels of the chain. Despite these increases the volume of food sales has steadily increased. Brazil, as a net food exporter, has benefited from increased prices prior to the crisis. But since the beginning of the financial crisis, Brazil's food exports have decreased due to lack of export-credits and a declining external market. By contrast, the inelasticity of demand, as well as government policies such as aggregate demand support and credit provisions (including working capital), have helped to keep domestic demand fairly stable.

The speaker saw the ***financial weakness of some firms, low asset prices and certain government incentives as the big challenge for competition policy*** because these factors can induce mergers and acquisitions and give incentives to cartelization. As a ***"new chapter"*** of this history MS FARINA conjectured that for example land and production outsourcing by developed countries, new regulations, new kinds of land colonisation and creation of limits to foreign investments could be ways to solve the issue of food security. From a competition point of view, these forms of foreign investment would need to be addressed anew.

In addressing the role of the Tunisian competition authority in food markets, **KHELIFA TOUNEKTI** remarked that the spectacular food price hikes had not been predicted even by experts. Increased prices have led to considerable destabilization of many economies and social disturbances particularly in developing countries. He underlined that in both developed and developing countries the food price crisis has had complex consequences. ***Food security has taken on a new character*** for the following reasons: (i) limited capacity of countries to produce all essential products domestically, (ii) limited availability and access to products in the market, especially for the poorest people in developing countries and (iii) uncertainties affecting the ability to build up domestic food stocks. Similarly to previous speakers, he noted that the severity of the food price crisis had led to increases in government subsidies.

Outlining the Tunisian government's response to the crisis – which caused high inflation, disequilibrium in the balance of trade and payment deficits – the speaker noted that food subsidies are an essential element in Tunisia's political economy and its social policy. The Tunisian state guarantees food security and protects the purchasing power of its citizens. The short-term principles that need to be respected in Tunisia are transparency of action and prevention of social disturbances. In this connection there needs to be confidence in global market equilibrium. With regard to competition policy reforms, the relevant ***agency*** – of which MR. TOUNEKTI is general director – ***can act relatively independently***, for example to enforce competition by supply improvements (e.g. decreasing tariffs, easing import procedures, and other forms of liberalisation) or by reforms of the compensation system (e.g. reduction of subsidies to certain products) in order to reduce wastage of budget finances.

According to MR. TOUNEKTI, agriculture in Tunisia faces multiple challenges. It is too protected (as in many other other countries), it suffers from droughts and from insufficient R&D investments. He concluded that the trend in Tunisia towards ***openness to competition is not at risk*** due to ongoing reforms and the honouring of FTAs with the EU and Arab economies.

In the third and last country case regarding food markets and competition, **SIMON ROBERTS** (South African Competition Commission (SACC)) presented the example of South Africa. Similarly to Brazil, South Africa had completely liberalized the agricultural sector in the 1990s. However, by contrast real food prices have not fallen. The speaker attributed this to anticompetitive practices in the market such as concentration and cartelisation. He discussed potential reasons for this outcome for three product areas. In grain production, including the different downstream procedures, the SACC has discovered that the four main firms active in grain milling control approximately 90 percent of the market and that they have been cartelized and have fixed prices since liberalisation in 1996. In the area of dairy, where the concentration level is high especially in processed products, the agency has also found cartelization cases harming both consumers and farmers. Finally in the area of fertilizers, the speaker pointed to a long-running cartel, to local monopolies in the main inputs and to proposals for anticompetitive mergers (which were blocked by the Competition Commission).

Finally **MR. ROBERTS** argued that cartel investigations and other cases usually take a very long time to be completed. As a result, competition authorities face the ***challenge not only of explaining the importance of competition to the public***, but also the inertia of competition law, which cannot be administered swiftly. Therefore, for example, prices do not fall immediately after a cartel has been uncovered. Hence, the new challenges are to defend competition and the operation of Competition Authorities in terms of achieving more competitive outcomes. Towards this end, the South African agency is proactive in areas where no complaints have been posted and in which it is difficult to bring to trial well-resourced companies, such as supermarkets.

The first reaction from the floor to the panellists' presentations was that the issue of food security looks rather different from the point of view of a developing compared to a developed country. In the developing world the availability, the access and the affordability of food matter hugely. Underscoring the problems that developing countries have in assuring food security, KHELIFA TOUNEKTI pointed out that poorer countries are all price takers in world food market.

Another intervention referred to the existence of monopsonistic use of dominance for example by supermarkets, whereby farmers may be exploited. Elaborating on this, MS.

ELEANOR FOX (Professor at New York University School of Law , US) argued that the way in which mergers are evaluated today, does not – or at least not sufficiently – consider the fact ***that mergers induce an increase of buying power***, which then negatively affects farmers in poor countries. She used the example of a Nestlé-Kraft merger in Africa, which was judged as legitimate by the relevant competition authorities as it did not harm consumer welfare. But no agency took into consideration the significant increase of buying power that harms farmers. She wondered whether ICN should rethink the way in which mergers are evaluated. DAVID LEWIS recalled the fact that commodity prices in developing countries are also depressed by developed country farm subsidies that distort the global market for agricultural products. So the issue is more an international than a single country competition problem. PROF. MCCORRISTON did not fully agree with this view and stated that even if subsidies were to disappear, high concentration would still be a problem. Hence, competition policy also matters. SIMON ROBERTS added that we should be very careful in evaluating how buying power really harms farmers as they may have access to alternative product markets. MR LEWIS called for caution regarding the inferences that have been made regarding concentration ratios and competition in the distribution sector. Even though concentration in the sector of grocery stores may be high, competition tends to be rather intense. PROF. FARINA provided some evidence for this argument by describing the case of Brazil, where small local supermarkets are sometimes even cheaper than big consolidated ones. She added that the problem of buying power of supermarkets is also limited insofar as first, small businesses have not disappeared and secondly that supermarkets buy only vegetables and fruits directly from the farmers. However, it remains difficulty to evaluate the issue of buying power. Similarly, PROF. MCCORRISTON mentioned the supermarkets case in the UK, where high concentration is accompanied by intensive competition – but where, even so, the issue of buying power of these supermarkets has also in fact been flagged.

A question from an UNCTAD representative was addressed to MR. ROBERTS asking what impact cartels uncovered in South Africa have had on neighbouring countries such as Malawi, Lesotho and others. His response was that the problem of cartels – or competition enforcement in general – is in fact a regional issue. Producers and supermarkets are often international firms that may have fixed prices in one country but not in another.

Referring to the growing wedge between producer and consumer prices, SUSAN JOEKES (IDRC, Cairo) mentioned that processors and distributors might defend this gap firstly by arguing that their economic size serves to reduce volatility in consumer prices and secondly that they have improved the quality of the products. She wondered how competition agencies would approach those kinds of defensive arguments and which are the tools to be used.

Third Session: Competition Enforcement in Testing Times: Beyond the National Level

After some introductory remarks from the Chairperson **DUANE SCHIPPERS** (Deputy Commissioner, Competition Bureau, Canada), **FREDERIC JENNY** (Professor of Economics at ESSEC and Judge Cour de Cassation, France) started the debate on why competition enforcement at a national level is not – or not always – sufficient in developing countries. As practitioners in the field of competition agency cooperation, **JAIME BARAHONA** (Deputy National Economic Prosecutor, Chile), **BARBARA LEE** (Executive Director, Caricom Competition Commission), and **AMADOU DIENG** (Directeur du Département du Marché Régional du Commerce, de la Concurrence, et de la Coopération, UEMOA, Burkina Faso) then presented experiences from their respective viewpoints.

PROF. JENNY based his presentation on the evolution of the African beer industry. He spoke to the case of South African Breweries (SAB). SAB expanded to other African countries during the 20th century by building joint-ventures with local firms eventually obtaining monopoly status in some countries. This evolution was illustrated by the case of Tanzania and Kenya. SAB gained market power in Tanzania and then engaged in severe price competition with the local brewery in neighbouring Kenya. In 2002, Kenya Breweries (now East African Breweries, EAB) and SAB came to an agreement that included a halt to the operations of SAB in Kenya and to EAB's engagement in Tanzania. As a result prices went up and restrictive practices (e.g. quantitative forcing or exclusive dealing) came into force. The competition authorities faced difficulties in intervening because it is impossible to compel a firm to operate in another market.

He then outlined the case of Castel, a French brewery highly heavily involved in the West African market. Castel's strategy was to get or retain a monopolistic position; the company stated quite openly that it would leave a particular market as soon as it could no longer operate as the sole producer. In due course, when SAB started to explore the West African market, Castel and SAB agreed to the same kind of market division agreement as SAB had reached with EAB in East Africa.

PROF. JENNY drew some ***important insights*** from these examples for small emerging economies: (i) national markets are small and there is room for only a few players; (ii) the role of multinational firms will be crucial, (iii) multinational firms tend to be more efficient than domestic firms, which have difficulties competing with them; (iv) in any individual market, foreign owned oligopolists (monopolists) established in other countries nearby are often the only, certainly the main, source of potential competition to local producers; (v) competition will be further weakened by the fact that in case of a competitive attack on a dominant multinational firm in one country, the attacked firm can retaliate in a number of other national markets in the region; (vi) strategic barriers to entry are high because of the vertical restraints that incumbent oligopolists or monopolists can impose on the retail sector and because of their connections with the political leadership; (vii) regional oligopolists are aware of the fact that there is no trans-national competition law and that they can divide national markets between themselves; and (viii) national competition authorities have a limited ability meaningfully to enforce their domestic laws as they do not always have full knowledge of the relevant events taking place outside the country, and do not have control over them. In the final analysis, ***only cooperation between national competition authorities, such as COMESA and UEMOA, and/or the development of regional approaches to competition law enforcement can address the situation***.

The importance of inter-agency cooperation was addressed by **JAIME BARAHONA'S** presentation on the Chilean experience. With respect to capacity building, he first mentioned that international fora such as the OECD, the ICN, or UNCTAD are important for Chile in order to learn "best practices" for the analysis of competition issues and the implementation of competition law. He welcomed recent support from foreign authorities through cooperation agreements and/or experiences with Canada, the US, Mexico and Brazil. Secondly, Chile's focus with regard to cooperation in competition enforcement lies in having contacts with other agencies when dealing with similar investigations. Still, the priority of enforcement is given to conducts that have national effects. Praising ICN for the help in adopting "best practices", MR. BARAHONA announced recent activity in cartel enforcement and the first cartel settlement in the drug market in Chile dating from March of this year. He also explained reforms to the competition act passed in 2009 by the Congress which conferred stronger cartel enforcement powers on Fiscalia Economica and supported immunity and leniency programs. He concluded by noting the recent decision taken by the new government to introduce a bill before Congress proposing criminal sanctions for cartel activities.

Continuing the discussion on possible modes of cooperation across borders, **BARBARA LEE** introduced the Caricom Competition Commission, the new cross-national competition agency in the Caribbean region (established in 2008) whose goal is to ensure that benefits expected from the deregulation and liberalization of markets are not frustrated by anti-competitive business conducts. The law under which Caricom operates is the 8th Chapter of the Treaty of Chaguaramas, which sets the Rules of competition and a system whereby those Rules are to be enforced. Under this Treaty, the Caricom Competition Commission has been established for the implementation of the Rules.

She presented the different functions of the Agency, underlying the fact that it has the power to operate across borders and to investigate and impose penalties on conducts that have cross border effects. Among the different tasks, the Caricom Competition Commission has to promote and protect competition law, monitor anticompetitive practices in the Caribbean region, investigate and arbitrate cross boarder disputes; review and advise on policy, promote the establishment of institutions for the harmonised enforcement of competition policy to achieve uniformity at the administration level, cooperate with all the competent authorities in the region, and support the member states in promoting consumer welfare.

The agency faces big challenges in conducting its investigations in accordance with applicable national laws. Some countries within its territory do not have a competition law and others do not have a competition agency. Moreover, cooperation with institutions such as the Council for Trade and Economic Development (COTED) for establishing appropriate competition policies, or the Caribbean court of Justice (CCJ), is part of the Commission's obligation. "Political leadership" is owned by COTED in setting competition policy while the role of the Caricom Competition Commission is to advise on and review those policies. Describing recent anti-competitive or protectionist developments in the financial and the food sector, MS LEE has also emphasised that in relation to enforcement of competition policy, the Commission needs to adopt a clear and strong cooperative approach with national governments in the region.

In order to illustrate the aim of the mandate and the objectives of West African Economic and Monetary Union (UEMOA) regarding competition enforcement across countries, **AMADOU DIENG** described competition cases from the modern services sector in which UEMOA has been involved. For example, with respect to the audiovisual sector the speaker explained that the company CANAL OVERSEAS markets a product bundle across most French speaking African countries, in which two distributors are active. One of these, the MMDS distributors, did not have access to all channels and therefore complained of abuse of dominant position by CANAL. The case has shown that UEMOA as a regional authority had proved to be more effective than the national authorities due to the regional dimension of the case to be defended.

Mr DIENG drew several lessons from analyzing these cases. It is important that competition principles are applied in developing countries at the national as well as the regional level. But in developing countries the competences and resources of the disposal of competition agencies at the national and regional level are weak, and ways to improve these capacities have to be found. He concluded that in order to foster cooperation, workshops with international agencies from the developed world should be organized over a longer than normal duration in order to control and implement good anti-trust practice. Moreover, the exchange of information between competition agencies through databases has to be improved.

In conclusion the Chairperson **DUANE SCHIPPERS** summed up the content of the session stressing the importance of multi-jurisdictional super-national authorities to be able to take competition law enforcement, the importance of the powers that the national competition authorities must have in order to be able to implement the decisions taken, and the importance of cooperation among competition policies for enforcement and for information-sharing and the need to build up capacity in new agencies.

Final Session: Discussants' Comments and General Discussion

In some final remarks PROF. **ALLAN FELS** (Dean of the Australia and New Zealand School of Government, Australia) focused on **networks** and **advocacy**.

Reminding the audience that **networks** had been mentioned in all three sessions, he argued that networks play an extremely important role in competition policy enforcement and indeed in defining the interpretation of competition law. Instead of trying to define a "world competition law", a more productive way for countries to work together is through networks. The academic definition of networks as "sets of direct interactions among subunits of different governments that are not controlled or closely guarded by the cabinets or chief executives of those governments", fits well in the area of competition. He explained the difference between horizontal (in case of linkage between officials cross-boarder power), and vertical (in case of linkage between government officials and supranational authorities) networks. Furthermore, he presented different types of networks: networks focusing on enforcement; those helping capacity building and technical assistance in developing countries; and finally, governmental and parliamentary networks. All of them can have substantial effects in achieving convergence, compliance and cooperation, which are all key objectives in competition law. However networks also have problems such as the lack of accountability, transparency and representative inputs (imbalance of roles within networks). Thus it may be worth, for example, thinking how to organize these networks more effectively.

In respect of **advocacy**, PROF. FELS pointed to two different models, both with weaknesses. In the USA the competition agencies do not get consulted for policy decisions taken. In the European model, by contrast, the Competition Commission is part of the cabinet where decisions are made. Three main problems arise in engaging with government at this level: describing best practices; dealing with politics, which is a crucial point especially in developing countries; and implementing best practices in management and operations.

The issue of networks was commented on by PROF. JENNY saying that – although networks at the international level widely exist (e.g. UNCTAD, ICN) – the benefits of regional networks are not sufficiently explored. He further suggested that providing a common information system, like that of the European Competition Network, to discuss common or similar cases can be extremely valuable and can help put peer pressure on member countries.

MR. FELS then argued that **advocacy** is a sign of weakness of the competition agencies, as (anti-competitive) decisions are often made without consultations. The European model, whereby the competition director is directly involved when decisions are made, is a better starting point.

Referring to the earlier discussion on mergers in the financial sector, he suggested that if prudential mergers are necessary, one basic requirement should be that they are well explained, publicly available and in written form. In opposition to this argument PROF. FARINA suggested that this might serve to increase instability.

The meeting closed PROF. FELS urging further discussion of the level of preparedness of the community of competition authorities for non-routine crisis. ”Best practices” for such situations need to be defined, as do recommendations as to how they are to be implemented, particularly in the face of political pressure in developing countries.

This report was drafted by Martin Wermelinger, Swiss Institute for International Economics and Applied Economic Research, University of St. Gallen, Switzerland, with Susan Joekes and Miriam Ruscio.