

International Competition Policy: The Role of Technical Assistance

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Competition policy is a recent issue in most countries. In 1989, for instance, only 11 developing economies¹ and 20 OECD members² had competition laws. In 1997, about a half of the 135 members of the World Trade Organization were yet to pass such laws in their territories (see WTO, 1997). Some Latin American countries such as Argentina, Brazil, Chile, Colombia and Mexico have had competition laws that remained ineffective for many decades while those countries were pursuing import substitution industrialization policies. Thus, in virtually every developing and transition economy the culture of competition is still in its infancy and the antitrust agencies would need to enhance their enforcement capabilities both for domestic and international reasons, as I argue below.

International cartels and anti-competitive practices of transnational corporations are time honored subjects in the economic literature, but only in the present decade they became relevant topics on the foreign policy agenda of some industrialized countries. To reach cooperation mechanisms that would curb such practices governments must face two types of obstacles. First, as these practices often imply significant flows of monopoly rents across countries, the national interests are not always convergent, even when the competition policies of all participating countries are committed to productive efficiency and consumer welfare. Second, and more importantly, the effectiveness of any international arrangement on restrictive business behavior depends upon the enforcement capabilities of national agencies. As Janow (1998) pointed out, the domestic character is a defining feature of antitrust law. So, international cooperation at any level (bilateral, regional, plurilateral or multilateral) is only feasible as a complement to not a substitute for unilateral action.

When a group of countries signs a mutual assistance agreement on antitrust, eventual conflicting interests may be settled through several ways. Two important mechanisms are the principle of reciprocity -- whereby each country is prepared to forgo current inflows of monopoly rents in exchange for expected gains in symmetrical situations -- and the promotion of market transparency, which facilitates the distinction between national welfare and special interests. In many instances both mechanisms may be complementary, as in the case of an export cartel that generates trade surpluses at the expense of domestic distortions that may be hindering the competitiveness of other industries.

While the obstacles originated from diverging national interests can be circumvented through the natural dynamism of international cooperation, there is no alternative solution for the lack of domestic antitrust laws. Thus, nowadays the international aspects of competition policy are been discussed everywhere (WTO, OECD, UNCTAD, APEC, EU, CER, FTAA, ANDEAN COMMUNITY, CARICOM, MERCOSUR, NAFTA, etc.), but, besides the European Union and the Australia-New Zealand Closer Economic Relations Agreement (CER), the only existing binding mechanisms for dealing with cross border anti-competitive behavior are the bilateral agreements between national antitrust agencies. The ongoing discussions at the other forums may eventually lead to effective instruments in the future, but they are not yet ready to be

applied at this moment. However, bilateral agreements have two evident limitations: they do not curb anti-competitive actions originating in third countries and they ignore the interests of the rest of the world.

Thus, setting up competition policy institutions in developing and transition economies goes beyond the national interest of these economies and meets a crucial need of the current multilateral trading system. For this reason, some industrialized countries -- particularly the United States and the European Union -- and international organizations such as the OAS, OECD, UNCTAD and the World Bank have been active in the provision of technical assistance for antitrust institutional building. Such assistance includes: conferences, workshops, training courses on antitrust enforcement, internships, review of draft laws and regulations, preparation of manuals and textbooks, inventories of national laws and jurisprudence, and advice on the operational routines of newly created agencies.

In Latin America and the Caribbean, the current state of competition policy regimes can be classified into four levels of development: [a] Countries with no institutions and no public debate on this issue, such as most Caribbean countries and some smaller economies in South America, such as Ecuador, Paraguay and Uruguay; [b] those that are in the drafting process of a new law, such as Bolivia, Dominican Republic, El Salvador, Honduras, Guatemala, Nicaragua, and Trinidad & Tobago; [c] those with recently established agencies, such as Costa Rica, Jamaica and Panama; [d] those that have had agencies for more than eight years, such as Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela.

For the first group of countries, an eventual role to be played by international cooperation could be the production of substantive information on two topics. The former would be a comparative study, based on recent data from selected countries, showing that anti-competitive behavior is not related to the size of the economy but to some characteristics of the competition process, especially asymmetric information, entry barriers and market power. The latter would be an elaboration of the former, focusing on the international dimension of competition policy through quantitative case studies on the flows of monopoly rents that can be extracted from small countries by international cartels, mergers and acquisitions through foreign direct investment and the growth strategies of transnational corporations. A common point to be stressed in both studies is that in the absence of antitrust institutions such facts seldom become objects of public scrutiny. Once completed, these studies could be used as background material for regional seminars, training courses, pamphlets and other means of communication that could attract public opinion in those countries.

In fact, economy wide studies on conditions of competition should be a priority for all Latin American and Caribbean countries. As I noted elsewhere (Tavares, 1999), the analytical knowledge about the existing domestic entry barriers in the region is practically null. So, while the advice to promote market contestability became a platitude in the discussion about competition policy in developing countries, it has been useless thus far, at least in Latin America, because nobody has the relevant information about the existing entry barriers and their economic consequences.

From a governmental viewpoint, there are three important questions to be asked about the current conditions of competition: [1] Do they impose enough discipline on the established firms, thereby protecting the public interest, or leave open space for unfair practices? [2] Do they allow domestic producers to follow the international rhythm of technical

progress? [3] Are the regulated industries meeting the international levels of productivity? The typologies of entry barriers suggested by Salop (1979) and Singleton (1997) are useful starting points for a study focused on these questions. Salop distinguishes an *innocent* entry barrier, which is unintentionally erected as a side effect of successful innovations, from those *strategic* obstacles purposely invented to avoid potential competition; while Singleton highlights the importance of government-generated entry barriers. In policy oriented research, it is convenient to introduce two additional subdivisions: *temporary* versus *long-lasting* restrictions; and *regulatory* versus *protectionist* barriers. The former subdivision provides a time dimension for the competition policy agenda, and the latter separates the governmental measures that are imposed to protect the public interest from those actions that respond to special interests.

After identifying the relevant barriers across the economy, the next step is to analyze their consequences, which consists essentially of inquiring whether the affected sectors are following the international patterns of productivity, profitability and product differentiation. With the information gathered through this exercise the antitrust agency will be, at last, prepared to foster market contestability in some selected areas of the economy. The exercise may also include a cost benefit analysis of each entry barrier, indicating the firms, social groups and geographic regions affected by that restriction. This would allow the development of a competition advocacy program at a national level, mobilizing other public and private institutions in a collective effort to overcome the existing market distortions.

The forms of international cooperation for the aforementioned studies will vary according to the degrees of diversification and experience of each country's academic community. The relevant point to be stressed is that this type of knowledge is essential for promoting the culture of competition in a region that remained during great part of the twentieth century under the belief that protectionism was a sound strategy of economic growth. Thus, in the absence of accurate information about the ongoing anti-competitive practices in the country and their welfare consequences, the newly created antitrust agencies will probably be reduced to an additional device for rent-seeking activities.

In sum, competition policy will stay for a long time on the multilateral agenda because it implies institutional changes and collective learning processes in about one hundred countries. Indeed, for the reasons pointed out in the preceding paragraphs, only after these accomplishments the multilateral trading system would be able to provide convenient instruments for dealing with the contemporary patterns of innovation and competition. As there are no feasible shortcuts in this journey, any superficial attempt to avoid the current challenges would be damaging not only to the multilateral institutions, but particularly to the smaller and less developed economies.

References

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Footnotes

¹ These economies were: Argentina (since 1919), Brazil (1962), Chile (1959), Colombia (1959), India (1969), Ivory Coast (1978), Mexico (1934), Pakistan (1970), Korea (1980), South Africa (1955) and Thailand (1979). See OAS, 1997; WTO, 1997.

² Among the 22 members of the OECD in 1989, only Italy and Turkey did not have competition laws (see OECD, 1990).