



Intergovernmental Group of Experts on Competition Law and Policy

15th Session, 19 to 21 October 2016, Geneva, Switzerland

Round Table on “Enhancing legal certainty in the relationship between competition authorities and judiciaries”

Thursday 20 October 2016 (10:00 - 11:30)

Palais des Nations, Room XVII (First Floor)

Legal certainty is considered a fundamental principle recognized by most jurisdictions around the world. This element of the rule of law constitutes a requirement for the operational necessities of the economic actors interacting in a given market, thereby addressing their legitimate expectations. Therefore, enhancing legal certainty in the relationship between competition authorities and judiciaries requires that the decisions reached by competition agencies (with adjudicative functions) and judges be consistent to secure an effective competition law system, and more importantly, provides the legitimacy of that system vis-a-vis market participants. Challenges are identified in young competition regimes. The significant challenges facing new competition regimes identified include: the need for the judiciary to develop a more comprehensive understanding of both competition law and the policies underpinning it, and the need for new competition agencies to better understand the relevant legal processes and to present complex economic evidence in a manner that can facilitate its assessment from non-economic experts evaluating it. UNCTAD's work on competition law and policy is focused on assisting young competition regimes to overcome these challenges.

The role of judges in the application of competition rules differs markedly depending on the standard of judicial review in competition cases and the way the institutional setting has been designed in a given jurisdiction. No -one-size-fits-all approach should be established as a benchmark in this regard, although the legitimate expectations for a law practitioner is there to use as a basis for the enhancement of the principle of legal certainty and how could be achieved to foster an effective and productive division of labour that will guarantee a smooth relationship between judges and competition agencies.

In any case, whether the competition regime is young or mature, the judiciary should play an important role in developing competition law as it could prompt improvements in agency analysis and decision-making as well as improve the interaction of competition authorities and the judiciary being most effective when all judicial procedures are followed, and the reasoning of authority's decision is based on clear and sound legal and economic analyses.

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Moderator: Mr. Saadaki Suwasono, Japan

WORK PROGRAMME

10:00 to 10:10

Introductory presentation by UNCTAD secretariat

10:10 to 10:25

Keynote speech

- Prof. Ariel Ezrachi Director of the University of Oxford Centre for Competition Law and Policy

10:25 to 11:10

Panel discussion

Panellists

- Judge Mira Raycheva, Magistrate of the Supreme Court of Bulgaria
- Judge Ricardo Vinatea, Magistrate of the Supreme Court of Peru
- Ms. Sukarmi Sukarmi, Commissioner, Commission for Supervision of Business Competition, Indonesia
- Mr. Russel Damtoft, Federal Trade Commission, United States

11:10 to 11:30

Interactive debate

Including contributions by:

Moldova, South Africa, European Court of Justice and Turkey

Questions raised by the secretariat background note for further discussion on the topic:

- How to better assess an effective competition regime whereby competition agencies' rulings are robust and sound with solid economic and legal concepts and judges are not in full capacity to deal with competition cases? Would it be possible to include a system of a single court dealing with competition cases such as the case of the Netherlands?
- How to improve the level of understanding of economic concepts by judges whereby the principle of deference is such that they are no longer obliged to deal substantively with competition cases? Would it be necessary?
- Would a first instance review before a specialised judge, with the possibility of appeal to a specialised tribunal be subject of positive solution for those countries wishing to streamline the judicial review from the mere control of the legality to a more comprehensive review of the legality and technical assessment of the case such as the case of Mexico? Whether the suggestion to include the topic of “law and economics” in the service exam for a judge is a real option for young competition regimes?
- In any case, if a given jurisdiction opts for specialised tribunal that deal with economic issues, the revisions to the judicial review process will create undoubtedly the opportunity for efficiency improvements, in this regard, what would be risks associated to that particular policy option?

Delegates wishing to speak during the session are invited to inform the UNCTAD secretariat accordingly by contacting Pierre Horna (pierre.horna@unctad.org).