

The Gender Dimension in Competition and Trade Policies

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I Competition and competition policy – general effects and objectives in a development context

1. Competition policy is concerned with preserving and promoting competition, both by enforcing competition law against restrictive business practices (RBPs) by firms,¹ and by influencing other governmental policies or measures affecting competition, including trade policies; under many competition laws, competition authorities are provided with the mandate to advocate that competition criteria be taken into account in the design or implementation of other governmental policies. The key benefit – and the common aim everywhere — of competition policies is to promote economic efficiency and consumer welfare by encouraging entrepreneurial activity, market entry by new firms, and more enterprise efficiency and competitiveness.² The two main types of efficiency promoted by competition are static efficiency (optimum utilization of existing resources at least cost) and dynamic efficiency (optimal introduction of new products, more efficient production processes and superior organizational structures over time). Competition also ensures that cost savings are passed on to consumers, who would benefit as well from greater product quantity, quality and variety — for this purpose, consumers include business users of intermediate inputs, whose product quality and cost structure would be improved by competition among their suppliers, as well as Governments undertaking public procurement. Many developing countries' markets are characterized by high concentration of market power, company management and/or ownership of resources in relatively few hands (including both established domestic firms and foreign investors). Inefficiency of transport and communications infrastructure may also limit competition in many countries. Thus, developing countries in particular would have a lot to gain from the introduction and application of competition policies.

2. Competition may result in individual losses as some producers lose market share and possibly exit from the market, while even consumers in individual product markets may lose, at least temporarily, as resources are reallocated to more productive uses in other product markets — hence the emphasis of competition policy on keeping market entry barriers low to allow new entry of producers. Overall, the economy would gain, at least if in the long term. However, many of the benefits of competition may be lost in the absence of supply capabilities to take advantage of the new opportunities it can create – although competition can play a key role in promoting the creation of such supply capacities. Thus, import competition may boost the structural efficiency of industry by giving domestic firms greater access to inputs which are unavailable or more costly in domestic markets, and may also impose pricing

¹ These may be sub-divided into different types of: horizontal restraints among competitors or potential competitors in the same market; vertical restraints up or down the chain of production and distribution; abuses of dominant positions of market power; and anti-competitive mergers, joint ventures or interlocking directorates.

² See UNCTAD, Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development (TD/B/COM.2/EM/10/Rev.1), at www.unctad.org/en/docs/c2emd10.pdf. Apart from such goals, competition policies may also aim in different jurisdictions at other objectives such as: promoting competitiveness of national firms; ensuring freedom of economic action or fairness, controlling concentration of economic power, or promoting market opportunities for small firms; safeguarding the public interest (which may include maximizing national production or exports, or employment concerns); or market integration (in regional integration groupings).

discipline and improve technical efficiency – but gains from these may, at least in the short term, be offset by income and adjustment losses from the shrinking of domestic industry.

3. The key role that competition can play in supporting development efforts has been appreciated by many developing countries, and this shift in perceptions has contributed to widespread deregulation, price liberalization, demonopolization, privatization, removal of subsidies, liberalization of trade and foreign direct investment policies and, in many cases, the adoption or reform of competition laws and policies to try to ensure that private restraints do not replace governmental restraints. This is in line with the Set of Multilaterally Agreed Equitable Principles and Rules of the Control of Restrictive Business Practices,³ which calls upon States to adopt, improve and effectively enforce competition legislation for controlling RBPs (art. E.1). The actual content and application of competition law and policy, and its relationship with industrial and trade policies, have varied among different countries at different times, as countries have sought with different degrees of success to promote the technological capacity and international competitiveness of their industries, compensate for the effects of market failures or ease structural adjustment.

4. Competition laws are sometimes being applied by developing country competition authorities to control RBPs in their markets, but often with limited success, given deficits in terms of resources, information and expertise. Such deficits may be linked to the weakness of the "competition culture" in many of these countries⁴ so that, for example, there may be:

- under-estimation by policy-makers of the importance of the work of competition authorities, reducing resources allocated to them;
- limited response by Governments to advocacy efforts by competition authorities urging reduction of regulatory entry barriers to markets;
- little attempt by the Government or by academics to collect data relevant for competition policy purposes;
- half-hearted compliance efforts by businesses;
- efforts by trade or professional associations to limit competition through: cartelization (by fixing prices or allocating customers, sales or production quotas or product or geographical markets); restricting their membership; providing for rules which disfavour new entrants (e.g. by restricting advertising); or lobbying against the grant of more business licences by regulatory authorities (e.g. taxi licences);
- difficulties in detecting or proving the existence of secret cartels in an environment where there is no social consensus that cartels are really reprehensible; and
- lack of initiative by consumer groups or the public to come forward and make complaints.

³ Adopted by General Assembly resolution 35/63 of 5 December 1980 (TD/RBP/CONF/10/Rev.2), at <http://r0.unctad.org/en/subsites/cpolicy/docs/CPSet/cpset.htm>

⁴ See International Competition Network, Capacity building and technical assistance – Building credible competition authorities in developing and transition countries, June 2003, at www.internationalcompetitionnetwork.org/Final%20Report_16June2003.pdf; Consumers International, Consumers and Competition, at www.consumersinternational.org/document_store/Doc319.pdf; and CUTS, Pulling up our socks – a study of competition regimes of seven developing countries of Africa and Asia under the 7-Up Project, <http://cuts.org/pulling.pdf>.

II Some gender implications of the application of competition policies

5. From the above general considerations, it is possible to identify some respects in which the gender dimension may come into play in the application of competition policies. These may be broken down into the overlapping roles of women as: (a) consumers; (b) entrepreneurs; and (c) workers. Under each category, some implications as to how competition policies might be applied to better factor in the gender dimension are suggested.

6. As consumers, since women have the main responsibility for household expenditure, particularly on day-to-day basic needs such as food, clothing or utilities, they clearly have a strong interest in the consumer welfare benefits that competition policies can bring. Thus, in determining how enforcement or advocacy efforts might be directed and resources allocated, a high priority might be provided by competition authorities to those product markets with which most women are most involved, as well as to vertical restraints and/or abuses of dominance linked to distribution networks. Since these would include utilities such as electricity, telecoms, water, etc., competition authorities and/or the competent sectoral regulators would necessarily have to pay attention to any RBPs by enterprises responsible for such utilities, particularly where they have exclusive rights. Appropriate advocacy efforts might also be undertaken to promote demonopolization, including through involvement in the design of privatisation programmes. The involvement of women as consumers should not only be seen in passive terms — given the difficulties mentioned above in collecting data relevant for competition policy purposes, in inducing businesses to comply with competition laws, or in detecting or proving cartelization, efforts might be made by competition authorities to encourage women to "blow the whistle" about the existence of RBPs and to provide relevant evidence. This could be done either by women in an individual capacity or as members of consumer or women's associations. A further step might be the involvement of women's associations in lobbying policy-makers about competition problems. For women to play such active roles, of course, appropriate pedagogical efforts would need to be undertaken by competition authorities.

7. As producers, while women continue to work in agriculture and fisheries, they have also become increasingly involved in micro-, small and medium-sized enterprises (SMEs) and, in some cases, have become more dominant in the expanding informal sector — but women's enterprises are the smallest among SMEs in LDCs. There is substantial data indicating that women's participation in economic activity is hampered by limited access to capital, land, production inputs, new technologies, or business premises and, because of such factors, when opportunities emerge with new markets, women are slow to take advantage of them. Thus, as existing or would-be entrepreneurs, women would be assisted if competition authorities were to:

- Generally take action against RBPs hampering market entry, such as abuse of dominant positions linked to discriminatory pricing or terms or conditions in the supply or purchase of goods and services;
- Identify and take action in respect of "strategic bottlenecks" to competition hampering entrepreneurship, such as RBPs hampering access and/or raising

the cost of essential business services, including financial and banking services; and

- Distinguish between those practices by trade or professional associations reasonably necessary to maintain standards and protect consumers and those practices having an unjustifiably anticompetitive effect, and undertake enforcement efforts against such RBPs (or appropriate advocacy efforts where regulatory restrictions are also involved).

8. Such action by competition authorities for the purpose of facilitating entrepreneurship, including by women, should cover not only the formal sector, but should also attempt to deal with the informal sector, despite the difficulties in this respect – taking into account that, even in countries that have a large modern sector, a significant percentage of women workers are in non-contractual employment. In any event, action against entry barriers in the formal sector would enable it to grow and thus better absorb informal operators. Any action by competition authorities in respect of RBPs or regulatory restraints hampering female entrepreneurship would need to be taken on the basis of specific and detailed data – again underlining the importance of women making complaints to the competition authority and providing facts to support their complaints.

9. At the same time, the application of realistic economic analysis by competition authorities in enforcing competition laws would help to avoid unduly discouraging women entrepreneurs in SMEs. A variety of different types of exemptions which often overlap may be utilized for this purpose, including *de minimis* exemptions for transactions involving firms with turnover or market share below a certain threshold, or personal exemptions relating to some activities of small and medium-sized enterprises or agricultural co-operatives (such as where a number of small sellers are combining forces in dealing with a powerful buyer). Competition policy controls upon discriminatory terms or conditions should also not be applied in a manner which would impede the operation of "affirmative action" policies in procurement, for example. Even in the absence of legislative exemption powers, such issues may be handled through the inherent "prosecutorial discretion" involved in individual case decisions.

10. There may often be an overlap between action helping women in their capacity as consumers and as entrepreneurs seeking to enter or expand in the market and keep their business costs low: for example, action against RBPs linked to distribution networks, utilities or banking services would help women both as consumers and as would-be entrepreneurs. In general, both consumers and entrepreneurs would benefit from action by competition authorities to address the supply side constraints in developing countries, including by upgrading developing country firms' incentives or abilities for productive investment, acquisition of technology, supply capabilities and competitiveness, as well as by helping to develop developing countries' infrastructure. Increased competition through trade liberalization may also be beneficial for both consumers and entrepreneurs — to the extent international trade increases the incomes, returns and employment opportunities of women, provides cost-quality competitive food, consumer goods and services or presents new and exciting avenues for harnessing their talents and entrepreneurial spirit, there is a possible positive sum relationship. Conversely, RBPs practised in foreign markets or emanating from overseas may adversely affect the

interests of all parties within developing countries. It has been estimated, for instance, that over the last ten years or so, international cartels have cost consumers, exporters and Governments in the developing world billions of dollars every year.⁵ Market concentration in some commodity and agro-business markets, in large distribution networks, and in some dynamic sectors or industries which are of major importance for developing countries may both hamper market entry by developing country producers and exporters, negatively affecting their competitiveness, and adversely affect developing country consumers.⁶

11. However, tensions and dilemmas may sometimes arise, particularly where the processes of trade liberalization and consequent structural adjustment in developing countries impose hardship, loss of income, employment, and purchasing power and difficulties in competing with larger foreign enterprises and products. Such concerns may be particularly acute in the case of women entrepreneurs as their enterprises may often be concentrated in a limited number of traditional sectors. Thus, in many African countries, women-owned enterprise are grouped into a limited number of economic sectors (textiles, handicrafts, agriculture, small-scale retailing and services), and there is a tendency of redundancy in women-owned enterprises and identical products, leading to market saturation, over capacity and surplus supply, which in turn impacts margins and prices.⁷ Women mostly engage in small-scale trade and primary production with barely any value added to their products. This increases the level of competition within the local market for such products and the potential for failure, while liberalization further exposes them to competition, in which they are comparatively at a disadvantage compared to competitors, both from more developed economies and within the domestic market.

12. Similar trade-offs may be experienced if one considers women in their capacity as workers. On the one hand, competition should be good for economic growth in the long term, thus increasing employment possibilities for women. On the other, competition would also necessarily result in some job losses as some firms go out of business. This dilemma has come into increasing focus in the context of greatly increased global competition, which has promoted increased sourcing of lower cost products from developing countries and substantial increases in the share of women workers employed in the manufacturing labour force; in developing countries, formal sector manufacturing employment opportunities for women in developing countries are now concentrated in production for exports, and trade-related demand for female labour has also grown within the informal sector, through subcontracting links with the formal sector.⁸ However, global competition has also sometimes adversely affected developing country producers and workers; many documented cases of

⁵ See S. Evenett, Can developing countries benefit from WTO negotiations on binding disciplines for hard core cartels?, UNCTAD consultant report, UNCTAD/DITC/CLP/2003/3

⁶ See UNCTAD, Market entry conditions affecting competitiveness and exports of goods and services of developing countries: large distribution networks, taking into account the special needs of LDCs (TD/B/COM.1/EM.23/2), and Report of the Expert Meeting on Market Entry Conditions Affecting Competitiveness and Exports of Goods and Services of Developing Countries: Large Distribution Networks, Taking Into Account the Special Needs of LDCs (TD/B/COM.1/66 , TD/B/COM.1/EM.23/3).

⁷ See Leyla Khaïat Constraints on women-owned SMEs in lesser advanced countries of Africa, in UNCTAD, Trade, sustainable development and gender (UNCTAD/EDM/Misc.78), at pp. 319-326.

⁸ See UNCTAD/EDM/Misc.78; UNCTAD, Expert meeting on mainstreaming gender in order to promote opportunities - Note by the UNCTAD secretariat (TD/B/COM.3/EM.14/2); and Nilüfer çığatay, Trade, Gender and Poverty, UNDP.

employment displacement relate, for example, to the African context, such as the loss of local market share in baskets and other artisanal products by Kenyan small producers.⁹

13. Increased global competition may also put pressure on working conditions, since even firms that are successful competitors may do so by cutting back on costs related to their workforce. In this respect, much appears to depend upon both the skills required and the degree of competition. Comparatively favourable employment conditions for women workers appear to prevail in the production of high-end, technology-intensive products that rely on consistent quality and reliability in their production, or where it is necessary for affiliates of transnational corporations or domestically owned firms to retain skilled workers by paying commensurate wages, or to protect their reputations and brand names; moreover, in some countries, customized, higher skill-using business services such as software design, computer programming and financial services, as well as high-income personal services such as banking and insurance are echoing the gender impact of expansion in the export sector of manufacturing, perhaps at a higher point in the wage scale.¹⁰ On the other hand, in industries producing standardized products where there is strong global competition for markets, and hence for the investment and employment related to them, product prices and hence wages are subject to far more pressure.

14. These trends relating to manufacturing should be seen in context; in developing countries, the major part of the labour force remains outside of the manufacturing sector, and women continue to constitute the majority of the rural poor. They carry most of the responsibility for food production and family food security, and where trade expansion has led to increased production of traditional cash crops, women's labour has been mobilized without proportionate monetary reward. In parts of Latin America, Africa, and South Asia, a new form of "industrialized" agriculture for exports is emerging which is drawing some women into wage employment in rural areas. But case studies suggest that trade liberalization in agricultural economies can disadvantage women or benefit them less than they do men, even when traditional export crop production increases.¹¹ Moreover, all the problems of the commodity sector trade tend to be visited upon women, and there is a direct connection, for example, between low value retention and value chain participation by developing country producers and declining terms of trade, on the one hand, and the condition of women, on the other. Market concentration within such sectors as food processing, the commercial seed industry, commodity trading or large distribution networks may contribute to such problems; in the farming inputs sector, for instance, it was estimated in 1997 that 10 companies controlled 40 per cent of global sales in commercial seed, while three multinationals controlled 70 per cent of the seed market in Asia and, as a result of mergers and acquisitions the continent had effectively two competitors in the commercial corn seed market.¹²

15. If developing country entrepreneurs and workers, including women, are to diversify out of such low value added sectors which often involve poor working conditions, market entry barriers into higher value added sector would need to be

⁹ See çâgatay, *op. cit.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² See TD/B/COM.1/EM.23/2),

lowered. Yet again, in the travel and tourism sector, for instance, it appears that market concentration among tour operators and restricted access to computerized airline and hotel reservation systems is contributing to the low retention within destination countries of the revenue generated by tourists; as a result, even developing countries enjoying tourism booms often derive limited benefits in terms of foreign exchange earnings, employment, income generation, and long-run contribution to economic and social development.¹³

¹³ See P. Evans, Recent developments in trade and competition issues in the service sector: A review of practices in travel and tourism, UNCTAD Series on Issues in Competition Law and Policy, 1999)..

III General conclusion and recommendations

16. Clearly, such issues cannot be dealt with in the context of competition policy alone, but competition authorities might make a key contribution in the formulation and implementation of appropriate economic policies. While fulfilling their role of advocating the application of competition principles to other governmental policies or measures, competition authorities might not just recommend liberalization, but also how, when and in what stages it might be undertaken so as to minimize costs and maximize benefits, as well as advise upon how legitimate economic goals (such as the protection or promotion of sectors with high female employment) might be attained through less competition-restricting measures. Effective enforcement against RBPs might be combined with an economically realistic approach to cooperation and concentration, which fully takes into account efficiency, questions and assesses markets in a dynamic manner. In the context of developing countries, flexibility in applying competition law and policy may be particularly necessary in order not to impede efficiency, growth or development goals (as provided for in the Set of Principles and Rules), and coherence would need to be ensured between competition policy and other policies aimed at promoting development. This would facilitate the achievement of the structural changes required for economic development and help to promote dynamic sectors or industries (which, as noted above, often have a high percentage of women in their work force), while providing some protection for weaker sections of the population (including women) from the vagaries of the market.

17. Given the data indicated above relating to women's participation in export trade, dynamic sectors or industries and agriculture, special attention might be paid by competition authorities to market foreclosure by large distribution networks in the premier export markets of developing countries, as well as concentrated structures or anti-competitive practices in dynamic sectors or industries of major importance for developing countries (such as travel and tourism, pharmaceuticals, information technology, or creative industries), as well as in commodity and agro-business markets at the international level. However, many of such issues cannot be addressed solely through national action, but would require a strengthening of international cooperation in this area.