
Developing Future Competition Disciplines and Implications for the GATS

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Structure

1. Review 'ideal situation'
2. Interpretation of Principles
3. Applying the Principles
4. Costs and Benefits
5. Competition policy and the WTO
6. Global Competition Rules?

The Ideal Situation

"A contestable economic environment that induces business investment, technological innovation and long-term economic growth".

"Competition laws and policies go beyond the market access principle and comprise the set of measures and instruments used by governments to promote and protect the "conditions of competition" in domestic and international markets...in order to enhance efficiency and increase consumer welfare".

The APEC Competition Principles

- **Comprehensiveness**
 - broad application
 - all member economies, markets and sectors
 - throughout markets
- **Non-discrimination**
 - competitive neutrality
 - embodies national treatment principle
 - goes beyond MFN
- **Transparency and Accountability**
 - effective governance of processes

Comprehensiveness

A truly competitive process will depend on the scope of the competition policy:

- Trade and Investment Policy
- Appropriate domestic regulation
- Competition law
- Protection of property rights
- Privatization/concessions

Non-discrimination

- Cross border
- Consumption abroad
- Commercial presence
- Temporal movement of persons

Transparency and Accountability

- Transparency:
 - Publications of domestic laws
 - Notification of measures
 - Contact points
- Accountability
 - Competition policy authority
 - Services providers

Main Costs and Benefits

■ Benefits

Competition policies promote efficiencies and welfare over time

■ Costs

- Transitory unemployment of resources
- Reforms absorb resources in time and money when designing, planning and maturing
- Costs in developing human capital

Competition policy and the WTO

- Current GATS
 - a. Trade and Investment policy
 - b. Transparency
 - c. Regulation
 - d. Recognition
 - e. Antitrust

- Doha mandate

GATS improvements

- National Regulations provisions (Art. VI)
 - Explicit public policy objectives
 - Limit scope to what is necessary
 - Use market-based incentives
 - Encourage self-regulation
- Antitrust provisions (Arts. VIII and IX)
 - Reinforce consultation provision
 - Encourage elimination of anticompetitive practices
 - Make scope general

Doha mandates

“...we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations”.

“...further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building...”

Global Competition Rules?

- (i) non-binding vs binding/negotiated rules
- (ii) Reciprocity via negotiations vs reciprocity via concerted unilateralism over time
- (iii) “principles” vs “rules” approach
- (iv) Trade vs competition objectives
- (v) Government measures vs private conduct
- (vi) Developed vs developing
- (vii) Top-down rules vs national flexibility
- (viii) Per se rules vs case-by-case analysis
- (ix) Supra-national vs national enforcement