

World Competition Day Celebrations Discuss Interface with Intellectual Property

December 5, 2016. Geneva, Switzerland.

"Today couldn't be a better day to celebrate the World Competition Day", said Philippe Brusick, Former Head of the Competition and Consumer Protection Policies Branch at UNCTAD and the President of CUTS International, Geneva, General Assembly, today in Geneva while speaking at a roundtable discussion organised by CUTS International in celebration of the World Competition Day.

"Indeed, on 5th of December 1980 the United Nations adopted the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices which to date remains the only multilaterally agreed instrument on Competition Policy and paved the way for enormous progress on consumer welfare", he added.

He was joined by Ambassador Yi Xiaozhun, WTO Deputy Director-General who, in his welcome address, recalled that it is indeed fitting and appropriate to celebrate the UN Set milestone on this day. *"I am happy to celebrate with you the World Competition Day, which is intended to remind us of the role competitive markets play for people",* he said.

This year, celebrations addressed the theme "Linkages between Competition and Intellectual Property." The two areas share the same goals of economic efficiency and consumer welfare, and should therefore not only be seen as compatible but also complementary. Nevertheless, it was acknowledged that challenges sometimes arise when they seem to clash in certain circumstances.

According to Teresa Moreira, the new Head of UNCTAD's Competition Policy and Consumer Protection Branch, *"While intellectual property aims to encourage innovation by rewarding investment and R&D, the exercise of IPRs occasionally gives rise to competition concerns, e.g. in cases of refusals to license, infra-technology restrictions, patents and standards setting processes, and pay for delay settlement."*

The discussion reminded that the interface between the two issues is already recognized in existing WTO agreements, particularly the TRIPS agreements where Article 8 recognizes that appropriate measures may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

"Other relevant provisions include TRIPS Articles 31 and 40, with the latter recognizing the potential adverse trade effects of licensing practices or conditions pertaining to IPRs which restrain competition." said Robert Anderson, Counsellor and Team Leader for Government Procurement and Competition Policy at the WTO Secretariat.

Exploring avenues for harnessing the complementarities between the two disciplines, Giovanni Napolitano, Consultant at WIPO for the IP and Competition Policy Division, indicated that WIPO facilitates MoUs between IP Offices and Competition authorities for them to exchange know-how and better engage with each other.

The discussions highlighted the need for greater documentation of cases from developing countries where competition authorities have successfully used competition tools to tackle IPR abuses. While some case examples exist, such as the Refusal to License Patents in AIDS medications in South Africa, more systematic identification of relevant cases could help developing countries overcome the challenges they face at the interface of the two issues.

International Days are observed to draw the attention of the society at large on issues that are extremely important for human development in the present and particularly for the future.

Competition Policy falls into this category, and this is why a global movement led by CUTS International at the initiative of its Secretary-General Pradeep S. Mehta has been celebrating and calling for the adoption of a World Competition Day on 5th December, date of the adoption of the first-ever Set on Competition Policy by the UNGA 36 years ago. *“I do remember when Pradeep Mehta first advocated the idea of a World Competition Day, which was a new and innovative idea to stimulate interest and giving rise to discussions on the role of competition around the globe.”*, said Mr. Anderson.

In 2012, UNCTAD also joined CUTS in the promotion of the World Competition Day which since then has swiftly gained popularity amongst Competition Authorities worldwide. Currently, 24 countries have supported the call including the United Kingdom, Russia, Sweden, Austria, Afghanistan, Tanzania, Spain, Gambia, etc.