

## CUTS INTERNATIONAL, GENEVA

### REPORT OF THE SEMINAR ON WORLD COMPETITION DAY

5 DECEMBER, 2016

#### Background

CUTS International, Geneva in cooperation with the WTO Intellectual Property, Government Procurement and Competition Division, organised a seminar event to commemorate the World Competition Day on 5 December 2016. The event was held under the theme “linkages between competition and intellectual property” in Room W of the WTO.

The event was chaired by Brusick, former Head of the Competition Policy and Consumer Protection Branch at the United Nations Conference on Trade and Development (UNCTAD) and President, CUTS International, Geneva General Assembly. Ambassador Yi Xiaozhun, Deputy Director-General of the WTO gave the high level opening address. The speakers included: Teresa Moreira, current Head of Competition Policy and Consumer Protection Branch at the UNCTAD; Robert Anderson, Counsellor and Team Leader for Government Procurement and Competition Policy at the WTO Secretariat; and Giovanni Napolitano, Consultant at the World Intellectual Property Organisation (WIPO) for Intellectual Property and Competition Policy Division.

Setting the context for the seminar, **Philippe Brusick** noted that under Resolution 35/63 on 5 December 1980, the UN General Assembly adopted The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, which were later renamed the “Set of Principles and Rules on Competition” (The ‘UN Set’). The UN Set resulted in the UN dedicating promotion and protection of competition policy one of the fundamental roles of the UNCTAD. The UN Set are a recommendation to Member States of the UN to have transparent, accountable, fair and legally sound processes to deal with matters that affect competition in trade and commerce. These include monopolisation and abuse in markets, cartels at domestic or international level. The UN Set affirmed the need that measures adopted by States for the control of restrictive business practices should be applied fairly, equitably, on the same basis to all enterprises and in accordance with established procedures of law.<sup>1</sup>

He pointed out that UN Set remains the only multilaterally agreed set of principles to date on this subject. This has paved the way for enormous progress on consumer welfare. He highlighted that competition has been integral part of trade related discussions since 1946 and several subsequent discussions at the UNCTAD. Despite being well understood and remaining an undercurrent theme, competition policy has not been able to garner the attention it should have at other multinational forums.

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<sup>1</sup> Competition Authority of Botswana, *Commemoration of the UN Set of Principles and Rules on Competition*, available at <http://www.competitionauthority.co.bw/commemoration-un-set-principles-and-rules-competition>

Philippe hoped that perhaps Members could consider reviving the discussions on competition at the WTO. He stressed that having such discussions maybe more important now than ever, in light of emerging global political economic environment, wherein free trade and liberalisation are facing a backlash, and there is a need to reiterate the benefits of free trade with fair competition.

**Ambassador Yi Xiaozhun** noted that the idea of World Competition Day originated from CUTS International and thanked CUTS International for its useful contribution towards development of understanding on competition issues. This day reminds us of the important role competitive markets play in economic development, prosperity and growth. Noting the interface between competition policy and intellectual property, he pointed out that none exists in vacuum, and both are important to promote innovation and growth. The importance of competition is already recognised in trade related intellectual property agreements, including the WTO Agreement on Trade-Related Intellectual Property Rights..

He also mentioned that the interface between competition and intellectual property is becoming increasingly prominent and important in emerging areas such as the digital economy, and the public health sector. Ambassador Xiaozhun concluded with emphasising the usefulness of such informal discussions involving organizations like UNCTAD, WTO and WIPO and facilitated by knowledge inputs provided by civil society organisations like CUTS International.

In his presentation, **Robert Anderson** detailed some of the important linkages between competition and intellectual property which could be deduced from existing trade related intellectual property agreements. He noted the role that developing countries had played in bringing such issues to the forefront for discussion. He discussed select articles in TRIPS agreement which have in-built provisions to protect competition, and suggested that such agreements provide more scope for application of remedial measures than is sometimes thought. For instance, Article 8 recognises 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 Articles 31 and 40, with the latter recognizing the potential adverse trade effects of licensing practices or conditions pertaining to IPRs which restrain competition and the possibility of applying remedial measures.

He noted that competition policy is often under-recognised and underrepresented in government policies despite more than 130 countries now having functional competition regimes. Informal discussions such as the one today are important to recall the importance of competition and its relation with different sectors of the economy.

Robert added that it was important to understand that the goals of competition and intellectual property are broadly compatible with each other, as both create conditions for welfare, growth and prosperity. He, however, noted that intellectual property related practices such as blocking patents, killer portfolios etc could pose a real threat to competition in particular cases. Several national competition authorities are applying competition principles in intellectual property rights related cases and are targeting instances of alleged abuses of intellectual property. Most experienced in these regard

appear to be the United States (US) and European Union (EU). He pointed out there is a need to look beyond US and EU and building capacity of competition authorities in emerging economies.

**Giovanni Napolitano** highlighted the initiatives taken at the WIPO on competition related issues. These include providing a forum wherein experiences could be exchanged, developing guidelines or indications on pro-competitive licensing, and providing technical assistance to developing and least developed countries. It was noted that memoranda of understanding between national intellectual property agencies and competition authorities are also being encouraged to exchange know how.

He pointed out that while discussions on interface between competition and intellectual property in different markets have been common, the role of intellectual property in creation of markets should not be forgotten.

In her address, **Teresa Moreira**, highlighted the importance of competition for growth and development. She noted that trade and competition are part of the solution and not the problem, especially in light of increasing backlash that multilateralism was facing. She noted that while intellectual property aims to encourage innovation by rewarding investment, research and development, the exercise of intellectual property rights 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 settlements. Such cases need to be cautiously tackled.

### **Question and Answer Session**

The panel discussion was followed by a lively interaction with audience. Queries were raised with respect to ownership of intellectual property jointly developed by government and private sector, especially in health and pharmaceuticals sector, and used for life saving purposes, in light of increasing importance of sustainable development goals. The impact of such collaborations on competition and possibility of crowding out investment from the private sector was also questioned. It was pointed out that there were no straight answers to such issues which merit examination of questions like beneficiaries from commercial endeavors, extent of transfer of knowhow, et al. Limited availability of evidence of interface between competition and intellectual property in emerging economies and potential conflict of interest issues like abuse of intellectual property by government owned organisations, being examined by government departments/ agencies were also discussed. It was pointed out that to avoid such conflicts, principles such as competitive neutrality and independence of regulators were critical.

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.

## **Conclusion and Way Forward**

**Rashid S Kaukab**, Executive Director, CUTS International, Geneva delivered the vote of thanks and acknowledged the participation of speakers and others in making the seminar successful. He specially thanked WTO for facilitating the seminar. He also highlighted the need to continue the tradition of organising such informal thought provoking sessions on competition related issues, and hoped that such efforts will help disseminate importance of competition among all relevant stakeholders.

### **About World Competition Day**

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.

CUTS International, a non-government, non-profit global economic policy research and outreach organisation, 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.

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.