

The Wrong Forum: Competition Policy in the WTO

Advocating negotiations on the „Singapore issues“, investment, competition and government procurement, the European Union and its Member States repeatedly stressed that including competition policy into the new round of trade talks would serve developing countries interests as well. Several papers prepared by the European Commission dealt with the „development dimension“ of competition policy and law. One of its communications submitted to the WTO gives several examples of TNCs restrictive business practices and their harmful effects on developing countries.

A Pakistani corporation, for instance, issued an international call for tender for the purchase of electrolytic tinplate. Having received bids by six foreign firms, the Pakistanis realised that the three lowest bids by firms located in the UK, Germany, and Japan exactly matched the required quantity of 4.600 tons of tinplate. Suspecting a price-fixing cartel the Pakistani competition authority initiated an investigation, but couldn't gather enough evidence because of lacking cooperation with British, German and Japanese competition authorities. The European Commission concludes that establishing a competition agreement within the WTO „would give competition authorities of developing countries direct access to an extensive network of competition authorities to whom they could address requests for assistance on specific enforcement cases“ (WTO 2000: 9). This argument isn't convincing at all. Why shouldn't Northern antitrust authorities be able to cooperate with their counterparts in the South, independently of a possible competition agreement in the WTO?

If industrialised countries really had an interest in tackling the impacts of international cartels they could have done so already. Yet, in 1998 OECD members couldn't reach agreement on banning so-called „hard core cartels“. Instead, OECD countries merely agreed on a set of non-binding recommendations against these severe abuses of market power (OECD 2001: 54). Furthermore, certain malpractices like export cartels are explicitly exempted from most OECD countries' competition laws. While ignoring their negative impacts on foreign markets, export cartels tend to be perceived as valuable export promotion measures. As long as they don't restrict competition at home, Northern governments deny any reason to act.

Developing countries, on the other hand, suffer huge losses from such conspiracies. A report commissioned by the World Bank suggests that in 1997 developing countries imported US\$ 81 billion of goods which had been affected by price-fixing cartels. These goods represented 8,8% of total imports in the poorest countries. According to that report, the real amounts maybe even higher since only a small fraction of cartels can be revealed. In 1999 the US Department of Justice unveiled a spectacular conspiracy, the vitamin cartel, involving several pharmaceutical companies from Switzerland, Germany, France, Japan, and the US. During nine years this cartel allocated markets and fixed prices for global vitamins sales, which in 1999 reached US\$ 2 billion. Since then, dozens of lawsuits have been filed and, for instance, Hoffman-La Roche was convicted to pay US\$ 500 million, the largest criminal fine in the US. Although importers and consumers in developing countries have also been affected by that cartel, EU and US antitrust officials never shared their findings with colleagues in the South (Levenstein/Suslow 2001).

It seems unlikely that a competition agreement in the WTO could help overcoming Northern governments unwillingness to prosecute export cartels or to share information with developing countries antitrust authorities. On the contrary, the proponents of multilateral competition rules primarily aim at further market access opportunities. As the World Bank experts, Bernard Hoekman and Peter Holmes, put it, „efforts to put competition-related issues on the WTO agenda are largely driven by classic producer interests in major OECD countries. (...) To oversimplify, trade officials from exporting countries want to force competition officials in importing countries to assist in opening markets“ (Hoekman/Holmes 1999). Additionally, the overarching WTO objective of removing trade barriers undermines main aims of competition policy, such as shielding „infant“ industries from unfair competition by powerful transnational corporations. Therefore, anti-competitive behaviour should be regulated outside the WTO.

References:

- Hoekman, Bernard/Holmes, Peter, 1999: Competition Policy, Developing Countries, and the World Trade Organisation. Trade, Development Research Group, The World Bank, October, Washington.
- Levenstein, Margaret/Suslow, Valerie, 2001: Private International Cartels and their Effect on Developing Countries. Background Paper for the World Bank's „World Development Report 2001“, Washington.
- OECD, 2001: Trade and Competition Policies. Options for a Greater Coherence. Organisation for Economic Co-operation and Development, Paris.
- WTO, 2000: The Development Dimension of Competition Law and Policy. Communication from the European Community and its Member States, 8. Juni, WT/WGTCP/W/140, Genf.

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