

SYNTHESIS OF THE POLICY OPTIONS

No.

4

**COMPETITION POLICY
AND TRADE IN THE
GLOBAL ECONOMY:
TOWARDS AN
INTEGRATED APPROACH**

Competition Policy and Trade in the Global Economy: Towards an Integrated Approach

Synthesis of the Policy Options*

January 2016

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NOTE

The policy options presented in this synthesis are the result of a collective process involving all members of the E15 Expert Group on Competition Policy and the Trade System. It draws on the active engagement of these eminent experts in discussions over multiple meetings as well as an overview paper and think pieces commissioned by the E15Initiative and authored by group members. Eduardo Pérez Motta was this author of the report. While a serious attempt has been made on the part of the author to take the perspectives of all group members into account, it has not been possible to do justice to the variety of views. The policy recommendations should therefore not be considered to represent full consensus and remain the responsibility of the author. The list of group members and E15 papers are referenced.

The full volume of policy options papers covering all topics examined by the E15Initiative, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting at Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade.

E15 INITIATIVE

Jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate a credible and comprehensive set of policy options for the evolution of the global trade and investment system to 2025. In collaboration with 16 knowledge partners, the E15Initiative brought together more than 375 leading international experts in over 80 interactive dialogues grouped into 18 themes between 2012–2015. Over 130 overview papers and think pieces were commissioned and published in the process. In a fast-changing international environment in which the ability of the global trade and investment system to respond to new dynamics and emerging challenges is being tested, the E15Initiative was designed to stimulate a fresh and strategic look at the opportunities to improve its effectiveness and advance sustainable development. The second phase of the E15Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

For more information on the E15Initiative:
www.e15initiative.org

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OBJECTIVES AND OUTPUT

The E15 Expert Group on Competition Policy and the Trade System had three objectives

- Examine the key challenges at the intersection of competition and trade policy regimes emerging in the current context of ever more globalized enterprises and trade flows.
- Assess opportunities for harnessing greater cooperation/convergence between competition and trade policy disciplines to respond to these new realities.
- Recommend options for policies and trade rules that could facilitate better interactions between the domains of competition and trade policy, and explore potential avenues for deeper collaboration between the two policy communities.

Overarching questions and issues the Expert Group was tasked to consider

- Identify areas of mutual interaction between international trade and competition, including how competition policy and enforcement decisions affect trade.
- Assess whether the current trade agenda remains consistent with competition principles, and identify specific trade instruments that may be inconsistent.
- Explore the inclusion of competition policy related provisions/principles in WTO frameworks/agreements and in emerging or existing free trade agreements.
- Examine the role of international organizations like the International Competition Network (ICN), OECD and UNCTAD in engaging with the WTO and/or bilateral negotiators in this area.
- Analyse the desirability of introducing competition enforcement mechanisms through trade agreements.
- Consider whether there is a set of principles concerning the design and enforcement of competition law that would be universally beneficial, and whether countries could unilaterally move towards the application of those principles.
- Consider further whether (and how) principles on which there is no unanimity can be advocated for international convergence on the basis of positive net global welfare gains.

Expert Group analysis and policy proposals were submitted in two forms

1. Critical issues studied through an overview paper and think pieces commissioned for the E15Initiative. These papers are referenced on page 12 and can be accessed at <http://e15initiative.org/publications/>.
2. Policy options presented in this synthesis and compiled in the summary table. The options are grouped under three categories:
 - Improving the international competition ecosystem to reinforce the trade agenda
 - Applying competition policy to optimize international trade frameworks
 - Harnessing the power of free trade agreements

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FOREWORD

The world has changed. The sophistication and complexities of 21st century business dynamics with an expanding international dimension require a revised approach to international and domestic policy-making. The domains of trade and competition policies are no exception. Alongside the growth in international trade transactions and foreign direct investment, the number of cross-border mergers and antitrust cases with a global dimension has risen dramatically over the past decade. At the same time, the levels of wealth and income inequalities have never been greater. The time is ripe to re-evaluate how the realms of international trade and competition policy can better reinforce each other in order to fulfil their potential to stimulate sustainable and inclusive growth.

Up until now, international trade and competition policy-making have largely been evolving in isolation in spite of the recognition that the benefits gained through trade liberalization in recent decades could easily be negated by restrictive and anticompetitive practices fostered by the private sector or national authorities behind country borders. At the same time, trade opening in itself has greatly contributed to the promotion of competition in developed

and developing countries alike. While the international trade agenda has been pursued at a multilateral level through the World Trade Organization and at a regional level through a multitude of regional agreements, sustained efforts to implement enforceable international antitrust frameworks have not come to fruition and are currently not being pursued in the relevant institutions.

The E15 Expert Group on Competition Policy and the Trade System has embarked on the challenging path to not only re-examine the current state of the international debate on competition policy and trade, but also to propose a better policy approach going forward. The resulting policy options articulate the role of trade and competition policies as vehicles of inclusive globalization. They advocate for a more integrated policy approach across the two disciplines. Not only do they state the case for the growing need to incrementally optimize the international competition ecosystem to reinforce the global trade agenda, but they also explore the direct and enhanced application of competition policy to optimize current international trade frameworks.



The Expert Group on Competition Policy and the Trade System has been comprised of over 25 globally esteemed experts in the areas of trade and competition policies, including economists, practicing lawyers, policy-makers, and analysts. The heterogeneity and interdisciplinary of the Group has not only led to fascinating conversations but also to the development of a set of forward-looking recommendations of great relevance to all governments around the world. In addition to the policy options, the Expert Group has also developed a series of in-depth analyses in the form of think pieces commissioned by the E15Initiative. The thought leadership of Eduardo Pérez Motta and the substantive contribution of the knowledge partner, Bruegel, have been invaluable throughout the entire process.

As co-conveners of the E15 Expert Group on Competition Policy and the Trade System, we are convinced of the need to provide organized and structured input into the policy and governance debates on the interface between international trade and competition policy. The policy options that have resulted from this thought and dialogue process are offered to policy-makers and stakeholders alike, in the

hope that they provide paths to effectively respond to policy imperatives of societies the world over. In a second phase of the E15Initiative, we intend to engage policy-makers in advancing these options.

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COMPETITION POLICY AND TRADE IN THE GLOBAL ECONOMY: TOWARDS AN INTEGRATED APPROACH

GLOBALIZATION HAS BECOME A REALITY AS MANIFESTED BY EVER-LARGER FLOWS OF TRANSNATIONAL TRADE AND INVESTMENT. AT THE SAME TIME, THE LATEST AVAILABLE FIGURES REFLECT DOWNWARD CORRECTIONS OF TRADE GROWTH FORECASTS. ECONOMISTS SUGGEST THAT THIS MAY BE DUE NOT ONLY TO THE LINGERING EFFECTS OF THE 2008 FINANCIAL AND ECONOMIC CRISIS, BUT ALSO TO STRUCTURAL CHANGES THAT HAVE RESULTED IN LOWER ELASTICITY OF TRADE WITH RESPECT TO GENERAL ECONOMIC GROWTH.

Against this background, two key questions are the following: what can be done to renew sustained growth in world trade and to enhance the contribution of trade to economic growth and prosperity? Is the policy and institutional framework for the global economy incomplete?

Competition policy, comprising both competition (anti-trust) law enforcement and competition advocacy work, is a central element of the necessary framework for inclusive liberalization. The importance of such law and policy is now recognized across developed and developing countries alike. Competition enforcement provides an essential tool for countering cartels, abuses of dominant position, and anticompetitive mergers that otherwise undermine the purchasing power of citizens, block competitive opportunities, and impede development. It is key to ensuring that state-owned or mandated enterprises operate in ways that promote welfare globally and do not place non-state-affiliated enterprises at an unfair disadvantage. Finally, competition policy and competition analysis are essential to ensure that international trade and global value chains operate in ways that are inclusive and open with respect to participation by all competitive suppliers.

Despite significant efforts aimed at promoting international cooperation in competition law enforcement, especially during the past two decades, major future challenges remain as globalization goes further and deeper and national economies become increasingly interconnected.

Jurisdictional gaps remain to be filled. While much useful work has been done by organizations such as the International Competition Network (ICN)—an informal network of competition authorities, the OECD, and UNCTAD to promote international cooperation and the voluntary adoption of sound enforcement practices at the national level, the world today lacks robust mechanisms to ensure transparent and non-discriminatory application of competition law by all countries. In the absence of such mechanisms, there is a risk that competition law enforcement can itself be employed as a tool of discrimination or market exclusion, contrary to the values it is intended to promote.

The E15 Expert Group on Competition Policy and the Trade System, jointly convened by ICTSD, the World Economic Forum, and Bruegel, developed proposals to address these challenges. In recognition of the fundamental complementarity of competition and trade policy, multiple initiatives have been taken at the international level to attempt to formalize their interrelationships and better harness related synergies. To date, none of these initiatives has resulted in a binding framework that ensures a better application of competition policy in relation to trade and investment. In the context of this incomplete institutional and policy infrastructure, the Expert Group has put forward a set of options with the objective of intensifying international convergence and injecting competition into international trade.

A TRADE AND COMPETITION AGENDA FOR THE GLOBAL ECONOMY: SCOPING THE NEED

IMPLICATIONS FOR COMPETITION POLICY OF A GLOBALIZED ECONOMY

Globalization has not negated the need for governance mechanisms to ensure market openness and address market failures, including those resulting from anticompetitive conduct. Indeed, globalization has specific implications for competition law and policy. The mounting cross-border fluidity of economic activity has been reflected in the growing number of competition law cases with an international dimension. The fact that individual commercial transactions or conduct may be subject to overlapping scrutiny by competition agencies in multiple jurisdictions, sometimes with conflicting results, imply a need for examination of the possibilities for greater coordination of enforcement standards and remedies in competition law cases with transnational effects.

THE LINGERING EFFECTS OF THE ECONOMIC CRISIS

Supranational trade frameworks have, in the past, provided an effective conduit to facilitate the growth of cross-border trade flows. In many instances, however, these frameworks still entail gaps, flexibilities, and second best approaches to trade regulation (and its enforcement) that allow for a certain degree of protectionism to resume. It is thus crucial to work on those areas of trade regulation where gaps persist. In the context of a slow post-crisis global economic recovery, renewed attempts to exploit the imperfections of the international trade regime may be expected and it will be important for policy-makers to consider competition principles (market efficiency and consumer interest) in policy design and implementation.

THE ROLE OF STATE-OWNED ENTERPRISES IN THE GLOBAL ECONOMY

State-owned enterprises (SOEs) have emerged as a new influential player on the international scene. Like many non-state-owned companies, SOEs have also grown beyond national borders and expanded their activities globally. The increasing presence of public enterprises in the world economy presents particular challenges for competition, trade, and investment policies. The establishment of a level playing field between SOEs and private businesses is a core challenge for international trade and investment policy in the 21st century. A key dimension of the framework to be developed will involve ensuring the full application of national competition laws to SOEs that compete with non-state-owned actors, except as specifically justified by narrowly defined criteria.

TRADE AND COMPETITION POLICES AS VEHICLES OF INCLUSIVE GLOBALIZATION

Given the recent evolution of the global economic landscape, it has become increasingly important that the competition and trade policy communities enter into a constructive strategic dialogue to ensure that anticompetitive and trade restrictive measures do not curtail the growth and efficiency gains of the past decades. To realize the full potential of a globalized economy in promoting sustainable growth and development, a re-evaluation of the current interaction between the domains of trade and competition policy is warranted. The policy options outlined below aim to facilitate the use of competition law and enforcement to better harness the benefits brought about by trade liberalization.

In the context of a slow and uneven post-crisis global economic recovery, renewed attempts to exploit the imperfections of the international trade regime may be expected and it will be important for policy-makers to consider competition principles in policy design and implementation.

POLICY OPTIONS FOR A MORE INTEGRATED APPROACH

IMPROVING THE INTERNATIONAL COMPETITION ECOSYSTEM TO REINFORCE THE INTERNATIONAL TRADE AGENDA

To prevent that the benefits brought about by trade liberalization be negated by increasingly sophisticated anticompetitive practices and arrangements with an international dimension, a re-examination of the application and design of competition policy itself may be required. This first category of options explores reforms that should be undertaken in the competition policy community to decrease the risk of inconsistent, inappropriate, or abusive use and enforcement of competition policy that could have negative impacts on trade and investment flows. Four measures are proposed to incrementally optimize the international competition ecosystem, which will reinforce the international rules-based trade agenda.

POLICY OPTION 1 - Intensify multidimensional awareness raising

This recommendation concerns intensified awareness raising regarding: (i) the type and impact of current anticompetitive practices; and (ii) the mutually reinforcing

objectives and interconnections of the trade and competition policy agendas. Competition policy should cease to solely exist as an island isolated from the mainland of the global political economy as it is “deeply intertwined with trade, foreign investment, free movement of goods, services and capital, the law of intellectual property, sectorial regulation, and the wide variety of proposed and actual industrial policies” (Fox 2015).

- Awareness on the interface between competition and trade policy should be advanced at an international, regional, and national level through diverse mechanisms and in relevant fora such as the ICN, UNCTAD, OECD, and, when feasible, in the WTO. For instance, when the international community is ready, work should resume in the Working Group on Trade and Competition Policy at the WTO, which is still extant and could serve (as it did in the past) as a vehicle for the promulgation of competition policy principles and approaches in a multilateral setting.
- To better inform the debate among policy-makers and in academic circles, an independent data and information platform could be developed to collect, organize, and disseminate information about government and private actions that affect the well functioning of markets with an international dimension. This platform could also empower civil society and other relevant stakeholders by providing them with data and analyses, enabling them to scrutinize the decisions of national and international authorities and businesses.¹

The first set of options explores reforms to be undertaken in the competition policy community to decrease the risk of inconsistent or inappropriate use and enforcement of competition policy that could negatively impact trade and investment flows.

POLICY OPTION 2 - Enhance coordination and collaboration at the international level

A globalized economy driven by international and deeply interconnected commercial activities requires a coordinated and collaborative approach not only to trade and investment but also to competition policy. International cooperation in the field of competition policy has never been more important, as competition agencies increasingly review multi-jurisdictional mergers and investigate conduct that spills across borders. The following outlines a series of practical and incremental steps aimed at enhancing cooperation and coordination in the implementation of competition policy at the international level.

- **Step 1: Stronger recognition of the need for an enhanced, sustained, and consolidated approach to informal international interactions.** In the recent past, competition authorities have benefited from collective cross-fertilization through networking activities in organizations like the ICN, OECD, UNCTAD, and regional competition fora. Informal cooperation has been very useful for competition authorities in identifying enforcement issues of mutual interest, leading to better understanding and sharing of knowledge on the elements of cases, as well as gauging possible effects of authority decisions in other jurisdictions. In addition, the importance of informal frameworks lies in the fact that they lead to greater trust and further breed cooperation and convergence in competition law enforcement. It is proposed to build a strategy sustained on three elements to promote an appropriate implementation of best practices. (i) The ICN harnesses OECD's technical capacities and its own networking capabilities to strengthen recommendations and best practices in those areas that need further development. (ii) The ICN develops a “model” advocacy strategy aimed at assisting competition agencies, principally young authorities, to persuade lawmakers to change the existing legal frameworks as necessary to comply with best practices.² (iii) The ICN, drawing on the comparative advantages of UNCTAD, provides technical assistance and capacity building to competition jurisdictions to implement internationally recommended practices.
- **Step 2: Strengthening voluntary international joint investigation and decision-making on multi-jurisdictional mergers.** International cooperation and coordination initiatives could focus on multi-jurisdictional mergers as the most important source of potentially conflicting decisions. Experienced competition agencies could work more effectively together by voluntarily collaborating in joint investigation and enforcement. (i) A single coordinating authority for the merger investigation in question could be nominated. The role of this authority would be limited to the collection of information and coordinating activities among investigating authorities in the jurisdictions of relevance. (ii) The ICN could provide a forum for the identification of a coordinator or a lead authority in such multi-jurisdictional cases. This coordination mechanism could also be applied for international cartel and unilateral conduct cases that have multi-jurisdictional effects. (iii) A useful complement to such a system of international cooperation in enforcement would be domestic legislation allowing for recognition of foreign competition decisions. Legislation could explicitly state that decisions of foreign competition authorities can be taken into account as relevant evidence in assessing both the substance of a given case and in determining the resources to be devoted to the investigation.

POLICY OPTION 3 - Work towards bilateral and regional dispute resolution and appeal mechanisms

In strengthening the links between trade and competition, it would be natural to consider whether countries negotiating bilateral or regional free trade agreements (FTAs) could progressively introduce international dispute resolution and appeal mechanisms in ways that elicit the support and participation of national competition authorities. To date, competition policy related provisions in FTAs have largely been exempt from the dispute settlement mechanism of these agreements. Their inclusion could present an opportunity to experiment and then further explore multilaterally.

- Two kinds of dispute settlement mechanisms could be envisaged: (i) state-to-state dispute settlement mechanisms modelled on existing mechanisms established through FTAs for other areas of trade policy; and (ii) mechanisms allowing private companies concerned by individual decisions to seek redress at the international level. These would fulfil different functions and consequently be subject to different rules and limitations.

POLICY OPTION 4 - Promote convergence in competition regimes through peer reviews

Nations have gradually witnessed significant convergence in competition enforcement procedures and methodologies of analysis among antitrust agencies. The peer reviews undertaken within the frameworks of the OECD and UNCTAD contribute to achieve further convergence across the globe. Peer reviews are a powerful instrument to assess competition law and policy. Their promotion should be enhanced with a view to improving competition policies and adopting best practices.

- The introduction of peer reviews in FTAs as a mechanism to evaluate competition decisions in jurisdictions could be considered. The conclusions and recommendations of these in-depth reviews should be public and even discussed in legislatures. It would also be advisable to make public the peer review process

APPLYING COMPETITION POLICY TO OPTIMIZE CURRENT INTERNATIONAL TRADE FRAMEWORKS

The second category of options examines the importance of competition policy considerations in the adoption and assessment of trade rules and measures. It advocates that renewed attention be directed at the interface with international trade policy. Further, rather than focus on preventing anticompetitive measures that may undermine the trade agenda, the positive role the competition policy community can play in optimizing current international trade frameworks

should be enhanced. To this end, the options elaborate on how competition law could be used to counterbalance the negative influence of domestic interest groups on the trade and investment policies of their governments. Two key dimensions of this strengthening of the role of competition policy are put forward: greater empowerment and engagement of national competition agencies in the decision-making and implementation of existing flexibilities in trade rules; and an assessment of the current regulatory framework for state-owned enterprises, with the elaboration of key principles and rules on competitive neutrality.

The second category of options examines the importance of competition policy considerations in the adoption and assessment of trade rules and measures.

POLICY OPTION 5 - Enhance the role of competition policy in informing trade measures

Regarding flexibilities and gaps in existing trade rules, WTO members could adopt a more proactive *ex ante* approach by inviting their respective competition agencies to evaluate on the basis of competition merits any decision related to anti-dumping, tariff modification, government procurement, sanitary and phytosanitary (SPS) measures or technical barriers to trade (TBT), foreign direct investment, and services regulation, and to emit a proposal in each case. Before the competition authority makes its proposal, it would have the obligation to consult with all parties affected by the decision—government, businesses, and consumers.

- In concrete terms, this empowerment of national competition authorities at a country level could encompass the following. (i) In the case of *tariffs*, the competition authority would have the mandate to evaluate the full cost-benefit analysis of the tariff movement from the perspective of domestic market efficiency. (ii) In the area of *government procurement*, competition agencies should encourage ongoing efforts to broaden and deepen the WTO Agreement on Government Procurement, while calling attention to the harm caused by “buy national” measures and working with procurement officials to eradicate collusion among suppliers. (iii) As regards *services and investment regulation*, the competition authority could evaluate the welfare and market efficiency impact of proposed regulatory changes to better inform *ex ante* national decision-making (before protective regulatory barriers are erected), and it could also emit opinions on services liberalization proposals. (iv) In cases related to

TBT and SPS measures, the competition authority could conduct an independent analysis of the market impact of the measures considered (without substituting for the technical analysis of the responsible specialized government agency). (v) Regarding *contingency trade measures* such as anti-dumping, the input of competition agencies could provide for an additional and more balanced assessment of the competitive effects of the conduct under examination.

POLICY OPTION 6 - Ensure competitive neutrality

Maximizing the benefits of trade and investment flows in an environment in which SOEs are increasingly present on the international scene demands continued and enhanced promotion of a level playing field between private and state-owned companies. Competition policy could be relevant in rethinking the regulatory frameworks for SOEs in view of the limited rules on competitive neutrality embodied in current trade rules.

- Domestic competition policy authorities should assess the current regulatory framework for SOEs in order to issue public recommendations on a relevant set of competitive neutrality principles. Any such proposal would need to preserve the state's right to determine ownership regimes.
- Moreover, the growing concern over the international activities of SOEs creates scope for an international agreement that could define some key principles to ensure competitive neutrality both in cross-border and domestic regulation of SOEs. The Trans-Pacific Partnership (TPP) Agreement may offer insights on the way forward as it has a chapter covering SOEs and designated monopolies. The importance given to the issue in the TPP highlights the significance of these topics for future deliberations on global economic governance.

HARNESSING THE POWER OF FREE TRADE AGREEMENTS

This third category advances proposals for harnessing the power of FTAs and dispersing more widely the most innovative approaches to the interface between competition

This third category advances proposals for harnessing the power of FTAs and dispersing more widely the most innovative approaches to the interface between competition and trade policy.

and trade policy. The vast majority of FTAs concluded between WTO members now contain provisions dealing with matters related to competition law and policy. At one end of the spectrum, there are provisions that lay out in very broad terms the obligation of promoting competition within the jurisdiction of the signatories. At the other end, FTA obligations are more clearly defined and involve: adopting or maintaining competition laws; addressing anticompetitive practices; establishing mechanisms to facilitate and promote competition policy; considering the impact of regulation on competition; and promoting a competition culture. These provisions can go further and define the design of competition regimes to be established in the signatory countries, or even determine which anticompetitive practices the parties should address—i.e. anticompetitive agreements, abuses of market power, and anticompetitive mergers. As has been noted, there may also be provisions on the treatment of SOEs and designated monopolies with related concerns over competitive neutrality. In addition, several FTAs also contain provisions on positive and negative comity in which the parties agree to cooperate on a reciprocal basis in implementing mechanisms for competition law enforcement.

POLICY OPTION 7 - Harness the power of free trade agreements

In addition to fostering further cooperation and convergence in enforcement matters, future or presently negotiated trade and investment arrangements could act as a vehicle for incremental harmonization of competition laws and practices in the absence of an international agreement on these issues. To this end, the development of a model competition chapter for inclusion in FTAs would greatly facilitate the process.

- The model competition chapter—developed by the ICN with technical advice provided by the OECD and UNCTAD—should include enforcement provisions covering abuse of market power, cartels, and mergers. Existing ICN and OECD best practice documents already contain much of the necessary material. Regarding the treatment of SOEs and designated monopolies, the development of a model text by the ICN under the principles of transparency and non-discrimination could be the way forward. The model chapter should also include provisions on competition advocacy as well as procedural standards for competition law enforcement. Finally, the migration of current FTA approaches to competition and trade into the multilateral trading system itself could be considered at an appropriate stage. At a minimum, the WTO should presently be taking stock of related developments and generating a knowledge bank.

NEXT STEPS

The Expert Group options are based on an assessment that current institutional and policy frameworks are incomplete, and they aim at two broad proposals: promoting international convergence and injecting competition into international trade. Both encompass a number of dimensions and work programmes that could enhance the contribution of competition policy to global economic development. Many of these efforts would represent extensions of initiatives already being taken at the national level or in the context of new FTAs, including the recently concluded TPP Agreement. As such, while bold and ambitious in some respects, the policy options also build very concretely on practical steps that are underway as well as exploratory work already initiated in various relevant international organizations, academic institutions, and think tanks.

It is advisable that competition authorities strategically prioritize the implementation of the policy options put forward by the Expert Group. Given their limited resources, they should place particular emphasis on choosing those options that maximize the impact of their interventions and help enhance the effectiveness and efficiency of their actions.

The efforts to be undertaken in the international competition policy arena should build on the important work already being conducted on related issues by organizations such as the ICN, OECD and UNCTAD. A practical and incremental approach to the optimization of competition law and policy vis-à-vis the global trading system is envisioned. The willing participation of leading competition agencies and other advocates of progressive competition policy is vital. In this way, it is believed that the framework to emerge would make an essential contribution to a more inclusive and balanced globalization underpinning world prosperity in the decades to come.

Endnotes

1. The main database underpinning such a platform would contain, *inter alia*, documentation of actions including: competition law enforcement cases that discriminate against foreign firms; proposals or decisions in trade policies and trade laws, specifically anti-dumping and safeguards, that not only affect competition but can induce anticompetitive practices like cartelization or abuse of dominance; government decisions that affect competitive neutrality principles, specifically in relation to regulations that benefit SOEs; decisions that affect competition such as discriminatory subsidies, industrial policies, and tax exemptions; abuse of buying power in international supply chains; and changes in national competition laws that intentionally handicap foreign firms. The above list is indicative and could be enriched with reference to additional developments and actions.
2. It is clearly understood that political realities are different in every country, and as a consequence specific strategies will be different. The “model” advocacy strategy which is proposed will set out major lines and guiding principles based on positive experiences from other jurisdictions. Each authority shall define the specific actions in accordance with their own circumstances and level of development.

A practical and incremental approach to the optimization of competition law and policy vis-à-vis the global trading system is envisioned. The willing participation of leading competition agencies and other advocates of progressive competition policy is vital.

TABLE SUMMARY OF MAIN POLICY OPTIONS

POLICY OPTION	THE CURRENT SITUATION	WHAT NEEDS TO CHANGE
Improving the international competition ecosystem to reinforce the international trade agenda		
<p>1. Intensify multidimensional awareness raising regarding: (i) the type and impact of current anticompetitive practices; and (ii) the mutually reinforcing objectives and interconnections of the trade and competition policy agendas.</p>	<p>The number of national competition agencies has grown significantly over the past two decades, as the economic interconnectedness of countries worldwide has risen.</p> <p>Global value chains mean that businesses often operate across borders. Many competition cases today have an international dimension, in which multiple authorities investigate the same matter. This means that the risk of inconsistency of antitrust decisions with a negative impact on trade and investment flows has also risen.</p> <p>There is a risk that competition law can be employed as a tool of discrimination or market exclusion.</p> <p>In order to minimize the distortive effects of competition law and enforcement on trade flows, several enhancements in the competition policy related ecosystem are required.</p>	<p>Awareness on the interface between competition and trade policy should be advanced at an international, regional, and national level and in relevant fora such as the ICN, UNCTAD, OECD, and (when feasible) the WTO.</p> <p>To better inform the debate among policy-makers and in academic circles, develop an independent data and information platform to collect, organize, and disseminate information about government and private actions that affect the well functioning of markets with an international dimension.</p> <p>Such a platform could also empower civil society, the media, and other relevant stakeholders by providing them with data and analyses, enabling them to scrutinize the decisions of national and international authorities and businesses.</p>
<p>2. Enhance competition policy coordination and collaboration at the international level.</p>	<p>International cooperation/coordination in competition policy has become ever more important, as competition agencies increasingly review multi-jurisdictional mergers and investigate conduct that spills across borders.</p> <p>To reduce the risk and cost of potentially inconsistent antitrust decisions improved coordination mechanisms should be considered.</p> <p>As a supranational authority is out of reach, this implies adopting an incremental approach, using the institutional structures and instruments that already exist to optimize cooperation and collaboration step by step.</p>	<p>Step 1: Stronger recognition of the need for an enhanced, sustained, and consolidated approach to informal international interactions:</p> <ul style="list-style-type: none"> ■ ICN harnesses OECD's technical capacities and its own networking capabilities to develop and strengthen recommendations and best practices in those areas that need further development. ■ ICN develops a "model" advocacy strategy aimed at assisting younger competition agencies to press lawmakers to change the existing legal frameworks as necessary to comply with best practices. ■ ICN, drawing on the comparative advantages of UNCTAD, provides technical assistance to implement internationally recommended practices. <p>Step 2: Strengthen voluntary international joint investigation and decision-making on multi-jurisdictional mergers:</p> <ul style="list-style-type: none"> ■ International cooperation and coordination could focus on multi-jurisdictional mergers as the most important source of potentially inconsistent competition authority decisions. Experienced competition agencies could work more effectively together by voluntarily collaborating in joint investigation and enforcement. ■ A single coordinating authority for certain merger investigation could be nominated. The role of this authority would be limited to the collection of information and coordinating activities among investigating authorities in the jurisdictions of relevance. ■ ICN could provide a forum for the identification of a coordinator or lead authority in such multi-jurisdictional cases. This mechanism of coordination could also be applied for international cartel and unilateral conduct cases that have multi-jurisdictional effects. ■ A useful complement to such a system of international cooperation in enforcement would be domestic legislation allowing for recognition of foreign competition decisions.
<p>3. Work towards bilateral and regional dispute resolution and appeal mechanisms.</p>	<p>Competition policy related provisions in FTAs have largely been exempt from the dispute settlement mechanism of these regional agreements.</p> <p>A multilateral dispute resolution mechanism might not be feasible in the medium term. However, the inclusion of such mechanisms in bilateral and regional FTAs could present an opportunity to experiment and then further explore multilaterally.</p>	<p>Two kinds of dispute settlement mechanisms could be envisaged:</p> <ul style="list-style-type: none"> ■ State-to-state dispute settlement mechanisms modelled on existing mechanisms established through FTAs for other areas of trade policy; and ■ Mechanisms allowing private companies concerned by individual decisions to seek redress at the international level. These would fulfil different functions and consequently be subject to different rules and limitations.
<p>4. Promote convergence in competition regimes through peer reviews.</p>	<p>There is a gradual convergence in competition enforcement procedures and methodologies of analysis among antitrust agencies across countries.</p> <p>Peer reviews are a powerful instrument to assess competition law and policy. The reviews undertaken within the frameworks of the OECD and UNCTAD contribute to achieve further international convergence.</p>	<p>It would be worth considering the introduction of peer reviews in FTAs as a mechanism to evaluate competition decisions in member jurisdictions.</p> <p>The conclusions and recommendations of such in-depth reviews should be public, even discussed in legislatures. It would also be advisable to make public the peer review process.</p>

POLICY OPTION	THE CURRENT SITUATION	WHAT NEEDS TO CHANGE
Applying competition policy to optimize current international trade frameworks		
<p>5. Enhance the role of competition policy in informing trade measures.</p>	<p>Current international trade frameworks allow for a certain degree of trade protectionism.</p> <p>Attempts to create a multilateral, legally binding competition policy framework complementing current trade policy instruments at the WTO have not materialized.</p>	<p>Develop a different approach to the use of competition policy at a national level to improve the market efficiency effect of the most important trade decisions. This implies greater empowerment of competition authorities.</p> <p>Adopt a more proactive <i>ex ante</i> approach in which national competition authorities evaluate, based on competition merits, any decision related to antidumping, tariff modification, government procurement, SPS, TBT, foreign direct investment and services regulation. The authority would then emit a proposal in each case following consultation with all affected parties.</p>
<p>6. Ensure competitive neutrality.</p>	<p>The increasing presence of state-owned enterprises (SOEs) in the world economy presents particular challenges for competition, trade, and investment policies.</p> <p>The main concerns relate to ensuring a level playing field between privately and state-owned companies in view of the advantages that SOEs may have in tax treatment, financing, and regulatory application. This creates market uncertainty and affects international flows of trade and investment.</p>	<p>Competition policy authorities should assess the current regulatory framework for SOEs in order to issue a public recommendation on the set of competitive neutrality principles of relevance.</p> <p>The increasing concern about the international activities of SOEs creates scope for an international agreement that could define some key principles to ensure competitive neutrality both in cross-border and domestic regulation of SOEs.</p> <p>The TPP Agreement may offer future insights as it has a chapter covering SOEs and designated monopolies. The importance given to the subject of SOEs and monopolies in the TPP highlights the significance of these topics for future deliberations on global economic governance.</p>
Harnessing the power of free trade agreements		
<p>7. Harness the power of free trade agreements.</p>	<p>FTAs are important platforms for cooperation in competition enforcement. Nations across the world have drawn attention to incorporating competition provisions in FTAs (especially the US and EU). This trend has started to facilitate the necessary cooperation/coordination between national competition authorities when enforcing competition law.</p> <p>Competition provisions in FTAs range from ambiguous obligations (provisions that lay out in broad terms the obligation of promoting competition) through to deeper commitments on e.g.: adopting competition laws; addressing anticompetitive practices; establishing mechanisms to facilitate competition policy; and considering the impact of regulation on competition. They can also go further and define the design of competition regimes to be established in signatory countries, even determine which anticompetitive practices the signatory parties should address.</p>	<p>In addition to fostering further cooperation and convergence in enforcement matters, future or presently negotiated free trade and investment arrangements could act as a vehicle for incremental harmonization of competition laws and practices in the absence of an international agreement on these issues.</p> <p>To this end, the development of a model competition chapter for inclusion in FTAs would greatly facilitate the process.</p> <p>The model chapter should include enforcement provisions that would be developed by the ICN with the technical support of the OECD, covering abuse of market power, cartels, and mergers. Regarding the treatment of SOEs and designated monopolies, the development of a model text by the ICN under the principles of transparency and non-discrimination could be the way forward. The model chapter should also include competition advocacy provisions. The inclusion of provisions on procedural standards for competition law enforcement is also crucial to ensure that the decisions taken under the umbrella of the FTAs are fair, transparent, and effective.</p>

EXPERT GROUP PAPERS AND THINK PIECES

The papers commissioned for the E15 Expert Group on Competition Policy and the Trade System can be accessed at <http://e15initiative.org/publications/>.

Anderson, Robert D., and Anna Caroline Müller. 2015. *Competition Law/Policy and the Multilateral Trading System: A Possible Agenda for the Future*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

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E15 INITIATIVE: EXPERT GROUPS AND TASK FORCES

In the quest for effective responses to the challenges faced by the global economy at this time, foremost experts were invited to contribute to 15 thematic groups as well as three task forces addressing horizontal issues. The groups met regularly between 2012 and 2015 with the goal of delivering a set of policy options on the occasion of the WTO's 20th anniversary. These options are intended to animate discussions and feed the present and future international trade and investment policy agenda for sustainable development. The full volume of policy options papers, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting in Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade. The second phase of the E15 Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

E15 INITIATIVE THEMES

- 1 – Agriculture and Food Security
- 2 – Clean Energy Technologies
- 3 – Climate Change
- 4 – Competition Policy
- 5 – Digital Economy
- 6 – Extractive Industries
- 7 – Finance and Development
- 8 – Fisheries and Oceans
- 9 – Functioning of the WTO
- 10 – Global Trade and Investment Architecture*
- 11 – Global Value Chains
- 12 – Industrial Policy
- 13 – Innovation
- 14 – Investment Policy
- 15 – Regional Trade Agreements
- 16 – Regulatory Coherence
- 17 – Services
- 18 – Subsidies

* Policy options to be released in late 2016

Implemented jointly by ICTSD and the World Economic Forum, the E15 Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade and investment system for sustainable development.



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