COMPETITION POLICY FOUNDATIONS FOR TRADE REFORM, REGULATORY REFORM AND SUSTAINABLE DEVELOPMENT

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FINAL REPORT

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Final Report on Work package 1:

Competition Policy and Trade and Regulatory Reform.

Professor Simon J. Evenett

Overview

In the field of competition law it is fair to say that policy initiatives have proceeded far ahead of the underlying empirical base, especially in developing countries. This is as true of purely domestic competition law-related matters as it is for the interaction between competition law and other important forms of economic regulation, in particular trade policy, investment policy, state enterprise and privatisation policies, and price controls. The purpose of this first work package of research was to partially remedy this deficiency as well as to examine whether our empirical findings called for new policy recommendations concerning competition law and policy in developing countries.

This work package was broken into five parts, each constituting a deliverable that has been completed. Each deliverable focused on a separate matter, but all were empirical in nature. Each deliverable required the collection of substantial amounts of information and data, and two involved the use of econometric techniques. One of the deliverables is itself a database that will be made available to other researchers. Five people contributed to this work package: two professors of economics and three doctoral students in economics. Like all of the papers written under the CPFTR project, each of the papers written for this work package was presented to the researchers involved with the CPFTR project, and was thus exposed to scrutiny and some tough questioning by those who attended the project's workshops. (Some of those attendees were practitioners and EC officials; thus the scrutiny was not confined to academic economic matters.)

It is expected the four papers produced for this work package will be published in a volume edited by Simon J. Evenett. A publisher for that volume has already been found. The research in this work package has already spawned two related research papers, both of which have been published in academic journals. Up to two more other papers may be produced in a similar fashion with the goal of seeking journal publications. In short, the number of distinct pieces of publishable research that will follow from this work package will exceed the original commitment to the Commission, a further indication of the value-added delivered by this project.

In the remainder of this report a description of each deliverable will be made and this will be followed by a summary of the main policy implications.

Description of the deliverables associated with this work package

This work package was divided into five so-called deliverables, numbered one through five. (A full list of the deliverables associated with the entire CPFTR project can be found on page 61 of this Final Report.) The first deliverable involved the creation of a database of as many studies of economic reform episodes as possible that took place (i) after 1990 and (ii) involved reforms in, or affecting, Latin America,

Eastern Europe, South and East Asia. The goal was to learn what consideration, if any, was given by scholars to the possible effects of market structures and anti-competitive business conduct on the impact and evaluation of economic reforms. The goal was to go beyond a standard literature review and to use objective measures to classify the contents of existing research studies and their findings. Are there any blind spots in the literature? Do some types of research study give more emphasis to market structure and business conduct than others? Simon J. Evenett and Krista Lucenti were responsible for conducting the research for deliverable number one.

The second deliverable is a paper that uses the first deliverable to ascertain which reforms, on the basis of existing scholarship, appeared to be most susceptible to being eroded by anti-competitive practices. In addition to addressing this matter, the persons responsible (Julian L. Clarke, Simon J. Evenett, and Krista Lucenti) also examined which sectors appeared to be most vulnerable and which types of anti-competitive acts were alleged to have occurred more often than others. The resulting paper compares the results from the analysis of the database of academic studies (deliverable number one) with a database of newspaper reports of alleged anti-competitive practices in the same developing countries and regions. This proved instructive, as the summary of the research findings indicates below.

The third deliverable focused on the interaction between open trade policies and the exercise of market power in international markets. Specifically, an econometric analysis of the pricing power of European exporters of differentiated manufacturing products to four South East Asian nations was conducted. The critical question here is whether pricing power can survive in markets where there are relatively low trade barriers. The analysis was set up in such a way as to enable comparisons across the destination countries, enabling the authors to check whether market power was exercised by European firms more in those national markets in East Asia which are widely-believed to have weaker competition law enforcement regimes. The econometric analysis, which employed well-accepted techniques for estimating parameters that reveal the degree of market power, was conducted by Simon J. Evenett and Krista Lucenti.

The fourth deliverable involved a change of region (to Latin America) and a change in policies (from trade policies to domestic regulatory policies). Manuel Naessl and Damien Neven examined the responsiveness of the productive efficiency of the telecommunications sector in various Latin American countries to different mixes of government regulation, competition in the market for corporate control, whether competition in (traditional) fixed line services was permitted, and whether competition in substitute services (such as mobile phones) was allowed. This type of analysis helps identify not only if a competitive market environment matters, but which type of competition matters most (as firms can potentially compete in more than one way.) The expectation was that deliverables number three and four would add to the small econometric literature that seriously considers the interactions between inter-firm rivalry, competition law and policy, and other key public policies (such as trade reforms, investment policies, and policies towards utilities, including privatisation.)

The fifth deliverable addresses the definition, scope, rationale, form, and potential effectiveness of competition advocacy, which is a function of competition agencies that is strictly distinct from (yet can be related to) its enforcement activities and that seeks to encourage state bodies to adopt measures that foster inter-firm rivalry.

Competition advocacy has assumed greater significance in recent years because many experts and officials from industrialised economies have recommended that developing country competition agencies should concentrate on this activity, at least at first when their agencies are relatively inexperienced. Julian L. Clarke and Simon J. Evenett were responsible for bringing together the highly dispersed literature on competition advocacy and for discussing some of its elements in detail. In so far as competition advocacy is directed towards sectoral regulation and other government measures to regulate commerce at the border, this paper addresses similar topics as the others in this work package. However, rather than address what should be done in principle, the fifth deliverable also examines what has been done in practice.

To summarise, the first, second, and fifth deliverable are similar in that they involved going to considerable lengths to assemble the extant literature and to examine their strengths and weaknesses. To the best of our knowledge no other researchers have attempted to collect and synthesise *on this scale* the relevant literature on these particular topics. The third and fourth deliverables fit more closely into existing empirical approaches for addressing the matters at hand. In each case, however, the authors were careful to identify the value-added of their empirical strategies.

Summaries of the findings from four papers prepared under this work package

Before summarising each paper's findings, it should be noted that a number of common themes emerged from the research conducted for this work package. First, both econometric studies found evidence that corporate performance measures depended on national or sectoral policies towards inter-firm rivalry. Those policies do appear, then, to have some purchase over firm behaviour, even in developing countries. These findings counter some of the pessimism occasionally voiced about the capacity of developing country governments to effectively implement pro-competitive reforms.

The second major theme, which arises from the papers examining the extant literature, is that competition law-related matters have not received as thorough attention as one might like, especially for the purposes of advising policymakers. In some cases competition law-related matters are completely overlooked, perhaps because they may not lend themselves immediately and cheaply to measurement. In other cases members of the competition law community appear to have focused on principles and examples rather than on the mechanics of implementation and sober analyses of effectiveness (this is especially true of the discussions of competition advocacy.) Both of these themes, therefore, have clear implications for both the research and the competition law communities.

The first paper produced for this work package, deliverable number two, was titled "Extracting The Most Out Of Trade, Investment, and Regulatory Reforms: What Role For Competition?" The main accomplishments and findings of this paper were as follows. It is worth recalling that in many developing countries the principles of competition law and its enforcement are relatively new phenomena. The evidential base about this particular law, and about the firm strategies and practices that such laws seek to influence, that is available to guide policymakers is slim. One goal of this paper was to assemble two large databases that may go some way to remedy this deficiency. The databases concern both the prevalence of anti-competitive acts in four regions of the developing world and the impact of competition-related variables on

the effects of trade, investment, and regulatory reforms. At best, these databases are representative samples of different types of available information on the extent and effects of anti-competitive acts in these countries. The authors are well aware of the limitations of these databases and have highlighted a number of them in this paper.

Analysis of these databases revealed seven findings concerning the prevalence and effects of anti-competitive acts in developing countries. First, a wide range of industries or sectors are said to have been affected by anti-competitive acts. Second, that anti-competitive acts are said to have numerous adverse effects on many parties in the region and those effects are certainly not limited to price increases.

Third, approximately a quarter of allegations of anti-competitive acts in developing country newspapers specifically name multinational corporations or their subsidiaries as the culprits. This proportion is higher in Latin America and the Caribbean than elsewhere. These findings suggest that it most unlikely that foreign firms are not solely responsible for engaging in anti-competitive acts in developing countries. Fourth, the number of allegations by foreign firms against domestic firms is enough to suggest that many multinational companies are aware of the adverse impact that domestic anti-competitive acts can have on access to emerging markets.

Fifth, while forms of cartelisation figure prominently in database of newspaper articles, accounting for at least 40 percent of allegations of anti-competitive conduct, they figure far less prominently in studies on the effects of reforms to liberalise markets in developing countries. Allegations concerning abuse of a dominant position and anti-competitive mergers and acquisitions occur considerably less often than one might think (on the basis of the attention given to both in certain international fora.) Sixth, civil society, legislators, and customers have played at most a minor role in bringing to public attention anti-competitive acts. It would appear, then, that the development of a so-called competition culture has a long way to go in many developing countries.

Seventh, the evidence in the academic studies—such as it is—concerning the effects of inter-firm rivalry, lack of such rivalry, and competition policy on the impact of reforms is more prevalent for regulatory reforms (including privatisations) than for trade and investment reforms. Worse still, even though the academic studies in the second database identified a large number of anti-competitive acts, few of them went on to analyse the impact of such acts on the effects of reforms. This fact alone probably accounts for the failure to identify the need for state measures to tackle anti-competitive acts as a distinct policy recommendation for governments seeking to maximise the benefits of trade, investment, and regulatory reform. Readers of the literature on reform episodes in developing countries should not conclude, therefore, that the paucity of policy recommendations to enact or enforce competition laws implies that the effects of these laws, and the anti-competitive practices they seek to tackle, have been extensively analysed in the first place!

The second paper produced for this work package, deliverable number three, was titled "Trade Reforms, Market Power, and Pass-Through in Selected East Asian Nations." This econometric study had the following findings and suggestions for future research. The econometric estimates in this paper suggest that, in one-third of cases, market power is being exercised in East Asian markets by European exporters of manufactured products. In particular British exporters, perhaps due to greater exchange rate fluctuations and the continued use of the pound sterling rather than the euro, exert the greatest influence over their prices. Thailand, which is known to have a

weak competition regime, is shown to be vulnerable to price discrimination caused by exchange rate fluctuations. Korea, in contrast, does not. In addition, the authors found that the pattern of results is unaffected by the timing of trade policy reforms. These findings have a number of policy implications: First, open markets do not always result in prices being determined by marginal costs; second, even in economies with open borders competitive outcomes tend to be found more often in countries with stronger competition enforcement regimes; third, therefore, trade and competition policies are complements and not substitutes; and last, exchange rate regimes have an effect on inter-firm rivalry.

The authors of this paper attempted to collect a time series of tariff rates for the manufactured products under consideration in this paper in order to provide a measure of the barriers to entry to East Asian markets. However, there is no readily-available information on this matter; a collection of a time series at the eight-digit level would be extremely useful. Future research on this subject may want to develop a time series at the two-digit level of classification to begin with. In addition, future research should control for trade remedy cases to ensure that the effects of non-tariff barriers are not being picked up in the parameter estimates. In addition, a similar exercise estimating the market power of U.S. exporters of manufactured products would also be instructive.

The third paper produced for this work package, deliverable number four, was titled "Competition, regulation, and privatisation in the telecommunications sector in Latin America." The approach taken and principal findings of this paper were as follows. The authors estimated a reduced form which accounts for labour productivity (in part) in terms of proxies for these factors over a rich sample of 18 countries which had different experience in the scope and timing of liberalisation in their telecoms sectors over the period 1988-2003. The authors tried to account for the endogeneity of mobile competition and the timing of reforms.

Their econometric analysis yielded three principal findings. First, they found that privatisation raises labour productivity when output is measured in value terms, irrespective of whether there is competition or not (the interactions terms between privatisation and competition are not significant). If the observed link between privatisation and the value of output per worker was driven by a price effect (privatised firm having possibly more scope for price increases), competition should matter. Hence, it is plausible that the observed link between service revenues per worker and privatisation is due to an improvement in efficiency (higher quantities per worker).

Second, privatisation appears to raise teledensity only in the presence of competition. In one specification they estimate it appears that the position of the incumbent has a large quantitative effect the network expansion; it can reduce the benefit of expansion by more than 50% (for a market share of 70%). Third, the introduction of competition in fixed lines raises teledensity and the number of main line per worker but reduces the value of output per worker. The latter observation could be due to the price effect induced by competition; if competition reduces prices (and the elasticity of demand is below one) total service revenue will fall.

Taken together, these results might suggest that the introduction of competition in fixed lines both reduces price and increases efficiency. In addition, it appears that with respect to teledensity, the strength of the incumbent matters. The network increases more when the market share of the incumbent is low (and hence presumably

when the incumbent firm has been split into several units). These results give unambiguous support for the “Washington consensus” policy prescriptions in so far as they apply to the telecommunications sector. There is one wrinkle to their findings, however. Antitrust enforcement against telecoms operators does not seem to affect the authors' measures of efficiency. This finding may well have arisen because of a poor quality proxy for enforcement intensity.

The fourth paper produced for this work package, deliverable number five, was titled "Designing and Implementing Economic Reforms in Developing Countries: What Role for Competition Advocacy?" This study documented the different ends and means of competition advocacy, its relationship to the economic reform process, as well as pointing to some of the reasons underlying its successes and failures. The twin functions of advocacy, which were found to be to educate and to influence, seek to ensure that governments select regulations that are pro-competitive in the first place, and to amend those regulations that unnecessarily harm the competitive process. The pathway from competition advocacy to economic reform thus takes two routes.

The various claims made for competition advocacy can be split into two broad groups. First among these is when the case made for competition advocacy at the national level, where the twin roles of education and influence are seen to be the most important means of successfully promoting a competition culture. Second, competition authorities are perceived as benefiting from relationships formed at the international level, either through participation in seminars that open up informal channels of communication between authorities or through organisations such as the ICN, OECD, UNCTAD, etc.

One means by which competition policy can be used to secure beneficial economic reform is to ensure that promoting consumer welfare becomes a priority in the legislative process. Whenever the legislated is implemented and employed, the competition authority can then argue that the consumer welfare mandate should be respected. It is perhaps not surprising, therefore, that many writings on competition advocacy emphasise the opportunities and threats created by the legislative process and the rights of competition agencies in this respect.

Binding these various claims together is the philosophy that the competition advocacy function is beneficial because consumers are often too disparate to organise themselves into an effective lobby group on their own behalf. The theory of regulatory capture asserts that small groups with an interest in modifying the regulatory framework are effective at lobbying and organising in their own behalf than a large disparate mass. In this way, the competition authority replicates the actions of small, cohesive lobby groups but acts on behalf of the population in general rather than a select interest group Yet the ability to make a case in no way guarantees that others will listen, and when they do, that they are persuaded. When considering the effectiveness of competition advocacy the real question is how such activities alter the political-economy of policy-making in an economy. As competition agencies do not directly represent interest groups, the strategic use of information appears to be the most potent tool available in this regard.

Final report for Work Package 2:

Adopting Competition Laws.

Dr. Johannes Stephan, IWH Halle.

Overview

The empirical observation of proliferation of competition laws and provisions in other (national or supra-national) agreements remained unmatched by academic research. The overarching objective of workpackage two was to first take account of the growth in the number of countries having enacted a national competition law, the respective economic and political frameworks that existed in the countries during enactment, and the analysis of the factors that behind the adoption of such laws and the effectiveness of their subsequent enactment. The research conducted in this respect is aimed at strengthening policymakers' knowledge of the reasons why nations adopt competition laws and the factors that facilitate or impede implementation and effective enforcement of such laws. In terms of output, research in workpackage two led to: a comprehensive listing of statements made in favour and against the adoption of competition law in developing economies and their analysis both from economic and legal perspectives (deliverable 6); a database containing country-specific information about the economic and political characteristics that relate to the issue of a national competition law consisting of some 160 countries in the world (deliverable 7); a paper quantifying the factors that account for national decisions to enact competition law (deliverable 8); three papers as case studies analysing the factors contributing to the adoption of competition laws in Poland, South Africa, and Ukraine (deliverables 9, 10, and 11); and a paper discussing the implications of Poland's, Hungary's and the Ukraine's experiences for the discussions over "progressivity," "flexibility", and technical assistance in the adoption of competition laws and provisions in the framework of international trade agreements (deliverable 12).

Analysis of statements made in favour of and against the adoption of competition law in developing and transition economies (deliverable 6)

This list of claims raised in official statements by representatives of participating countries at international fora on competition (OECD, UNCTAD, CUTS, WTO, APEC, ICN, etc.) identifies structures amongst the claims by defining a taxonomy of statements and assesses each claim from economic and legal perspectives. The assessments of claims make reference only to the rationale for and against a *national* competition law and does not consider international agreements on competition.

Following a brief discussion of concepts and connotations used (competition principles, competition policy, and competition law), the report assesses 11 "core issues" in favour of adoption of a competition law, organised in 3 groups: claims related to economic theory; experiences by particular countries in the economic sphere; and experiences by particular countries in the political sphere. The theoretical viewpoint that competition improves static and dynamic efficiency and the welfare of the consumers in the economy is one of the most obvious rationales for a competition law. In addition to that, an often mentioned rational is that competition law is needed

in the process of privatisation, deregulation and liberalisation. For the latter, competition law is often seen as a remedy against anti-competitive practices by international mergers and cartels. Other economic reasons noted by particular countries are that a competition law could enhance the attractiveness to foreign direct investors, promote domestic enterprises in becoming international competitive, and could help to build-up a competition culture. In the political sphere the role of international organizations and regional agreements and competition law as a remedy against corruption are emphasised. A particular case is identified by South Africa: within that country competition law is also used as a means to achieve social objectives, like the correction of a historically conditioned racial imbalance of ownership of productive resources.

In spite of the world-wide proliferation of national competition laws and competition provisions in regional trade agreements, a number of countries are not convinced that any form of competition law is necessary and/or beneficial for them in terms of economic and political welfare and development. They may even perceive market based competition as dangerous to their prospects of economic development and hence have so far not enacted a competition law. Other countries are not even in a position to enact or enforce meaningful competition laws, for example because ongoing civil unrest or war forces them to fight market mechanisms or at least deprives them of the necessary resources for competition supervision (e.g. Ivory Coast in 1999/2000). The report assesses 23 "core issues" raised against the adoption of a national competition law, organised in 4 groups: development strategies at variance with a competition law; substitutes for a competition law; competing priorities, political and opportunity costs; and the pitfalls involved with competition law building.

With reference to the claims that a competition law could compromise the economic development, the analysis indicates that this is not the case. A national competition law is rather an efficient tool in support of economic development and economic development policies. This is the case, in particular, if the competition law emphasises dynamic rather than static efficiency. Furthermore, the analysis does not support the viewpoint that other policies could act as substitutes for competition law. Policies like a sectoral approach, trade liberalisation, and privatisation are rather complementary to a competition law than substitutes. With respect to competing priorities between several policies and a national competition law, the analysis suggests that those normally do not arise, if the policy measures and the competition law are well designed. A particular problem is that of limited resources. The claim is raised that developing and transition countries may not have the means to address social problems and to enact a competition law simultaneously. Therefore competition law is sometimes not conceived as a priority due to other pressing social needs. Such a viewpoint is short-sighted, however, because competition is welfare enhancing in the long term. Furthermore, the developed world does offer technical and financial assistance for countries which want to enact competition laws to overcome the existing limits in those countries, and in it is own interest to promote enactment of competition laws in countries it trades with. This form of assistance could be regarded as very effective development aid. In any case, there are no real and realistic alternatives to competition law, if a country wants to develop and participate more fully in global trade.

It is suggested that even in those cases in which the state wants to intervene actively to promote economic development competition law could be favourable. For example,

a policy to build-up an internationally competitive industry through import substitution or promotion of national champions competing within the country and internationally, is supported by sensible competition rules. Adoption of competition law is not the only bottleneck. Our research shows us that after adoption of a competition law, countries often fall short in its implementation. This suggests that even after the actual adoption of suitable laws, countries need a lot of support in the application and enforcement of their competition laws.

Database on competition law enactment in developing countries, the budget and staff of the relevant competition agency, and other structural (economic and otherwise) characteristics (deliverable 7)

The database was compiled for some 160 countries for which the relevant set of information was publicly available. Most data was collected from the World Bank Development Database, from the International Bar Association, the "Global Competition Forum", OECD, CUTS, UNCTAD, APEC, WTO, and from national political internet-sites. In some cases, facts were taken from other academic work, from field work conducted for UNCTAD and APEC by use of questionnaires, and some competition agencies were contacted directly to help with the compilation and interpretation of some of the characteristics to improve comparability across nations. For each country, some 46 characteristics were collected, for the statistical data for the years between 1980 and 2004, so that in total, the database consists now of over 5000 observations ready to be used as a reference database or for further empirical and econometric analysis.

The database is presented to the general public in the form of an interactive internet-based database and allows searches for countries over regions and for countries over their respective income categories (World Bank Classification 2004). In particular, the list of characteristics included in the database include: membership in regional trade agreements; total staff of competition agency, and distribution into economists, lawyers, and other staff; annual budgets of competition agencies; their mandate (political independence); the World Bank income classification; export of goods and services; import of goods and services; share of industry in total GDP; foreign direct investment inflows; economic freedom index; central government debt; development aid p.c.; political right index; civil liberties index; corruption index; etc.

Factors accounting for the enactment of a competition law – an empirical analysis (deliverable 8)

The objective of the study is to examine this recent growth in competition legislation. The paper does not analyse the question as to whether competition law is growth enhancing or not, there is a fruitful debate on this issue which led to a shift from a static view on effects of competition law to a more and dynamic one (see e.g. Aghion and Schankerman 2004, Evenett 2003, Audretsch et al. 2001, Baumol 2001, Posner 2001, and Baker 1999). Rather, this paper tries to find answers to the question of what are the relevant factors that influence the decision of a country to adopt a competition law.

As competition legislation enactment is an important topic for several international organisations like OECD, UNCTAD, WTO, and of general academic interest, there are numerous studies discussing reasons that influence the adoption of competition

legislation in a variety of different countries and groups of countries (see e.g. Kovacic 2001; WTO 1998). These studies provide fruitful information about factors that could influence the decision to adopt a competition legislation. However, these are mostly qualitative studies. Up to now there exists only one econometric analysis by Palim (1998) testing the information provided by these studies.

The present paper hence departs from the analysis by Palim and extends it as follows. First, by using panel data, more information in the regression is included and it is therefore possible to verify the results by Palim. Second, by extending the set of hypotheses to be tested, more information should be gained on which other factors influence the decision of enacting a competition law.

The methodology of this research is located between deductive and inductive methods, in as much as there simply cannot be a model per se that is exhaustive in explaining the mechanisms of enactment of a competition law. Whilst the econometric analysis hence assesses the historical and empirical evidence about what had led countries to embrace the idea of competition (inductive), the selection of factors determining the decision is guided by plausibility assumptions. The interpretation of results should hence not be misunderstood as constituting threshold values or preconditions without which the enactment of a competition law is either unusual (empirically) or would make no sense or is not (as yet) a viable option. Rather, the results are to be interpreted in terms of whether a factor either raises or reduces the probability of enactment.

In terms of stylised facts about countries that have enacted a competition law, our analysis suggests that by the end of 2004, 101 countries have a competition law (Table 1). Classified by World Bank income groups in 2004, research indicates that 31 of these countries belong to high income states, 22 to upper middle income states, 28 to lower middle income states, and 20 to low income states. Thus not only developed countries adopted a competition law in the past but also developing states: whilst until 1980, mainly developed countries had adopted a competition law, from 1981 to 1990 only 9 more countries introduced a competition law, 5 of those belong to the group of developed countries and 4 to developing countries. By the end of 1990, 35 countries adopted a competition law and from 1991 to 2000, nearly 60 countries adopted a competition law. The main fraction of these countries are in fact developing countries.

Table 1 Number of countries with a competition law

	High income states	Upper middle income states	Lower middle income states	Low income states	Total
by 2004	31	22	28	20	101
Adopted in the time period:*					
2004-2001	-	3	2	2	7
2000-1991	4	14	26	15	59
1990-1981	3	2	1	3	9
until 1980	19	3	2	2	26

Note: * The income classification of countries was determined for 2004 which often does not correspond to the classification during adoption.

Sources: Literature-surveys; World Bank classification of countries.

A panel logit regression analysis with a number of characteristics of countries and years during which countries have adopted a competition law was conducted. This analysis tested a set of hypothesis as to what the role of individual characteristics are for the probability of a country to enact a national competition law: economic development; size of the economy; systemic reforms and transition; trade liberalisation; foreign direct investment inflows; sectoral structure; state influence; international organisations, in particular IMF; regional trade agreements (e.g. EU , NAFTA, APEC, Mercosur, or COMESA); social policies in the form of social security taxes; subsidies and state aid; corruption; import substitution and export restriction.

The analysis was conducted in several steps: in a first step, the results for the whole sample are described (models I in Table 2). As data availability varies from country to country, first, a core model is calculated to capture as much information as possible without compromising on robustness. Departing from there, three augmented models on the basis of the core model are estimated to test further hypotheses. In a second step, the original core model is re-estimated for a reduced sample (model II in Table 2): because in particular from 1980 until 2004, mostly low, lower middle, and upper middle income countries have enacted a competition law, high income countries are excluded in this reduced sample estimation to test whether the results change for this particular sub sample. This accounts for the fact that those high income countries have a long standing history of competition law and might bias our regression results, e.g. the role of the level of economic development. Their inclusion into the core model was however necessary due to the number of observations for the empirical analysis in the augmented models. In this respect, for the reduced sample analysis, only the core model is presented, as the further augmentations parallel to the ones of the complete sample would reduce the number of observations below a comfortable minimum.

Table 2 Estimation results

	I	I.1	I.2	I.3	II
Levels of signifcance and sign					
GDP *p.c.*	+++	+++	+++	+++	+++
GDP	+++	+++	+++	+++	+++
Economic freedom	+++	(+)	(+)	+++	+++
Imports	+	+++	+++	+++	+++
Foreign direct investment	++	+++	+++	+++	+++
Industry share	- - -	-	- - -	- - -	- - -
Government expenditure	- - -	- - -	n/s	- - -	- - -
IMF credit	+++	+++	+++	+	+++
Regional trade agreements	+++	+++	+++	n/s	n/s
Social security system		+++			
Subsidies		+++			
Corruption			++		
Export duties				- - -	
Import duties				- - -	
Robustness					
Countries/Observations	109/2131	74/980	86/1110	103/1510	80/1584
Log likelihood	- 453.8	- 129.9	- 168.8	- 210.6	- 301.0
Wald test	+++	+++	+++	+++	+++
Correctly predicted cases	69.2 %	78.2 %	77.7 %	79.3 %	73.2%

Note: One sign denotes significance at the 10%-level, two significance at the 5%-level, and three signs denote significance at the 1% error probability level.

A first result is that for the core model, as well as for the three augmented models, the null hypothesis that the model does not contribute to the explanation of the event could be rejected. Second, nearly all explaining variables are highly significant and the signs of the estimated coefficients does not vary between the different models. Due to the usual problems of multicollinearity, it seems to be reasonable to focus in the interpretation of results on the sign of the respective values and to abstain from the interpretation of he strength of the influence, like e.g. odd ratios.

Column one of Table 2 reports the results for the 'core model'. Most results have the expected sign and whilst they are in line with the results reported by Palim (1998), they clearly extend beyond those in terms of the number of factors included in the analysis and the time-scale of this analysis. The empirical test shows that there is a significant and positive relationship between the level of economic development and the event of enactment of a competition law: a rising level of GDP p.c. appears to have raised the probability of countries to adopt a competition law. To some degree, the result may be due to the fact that, historically, it were mainly the developed countries that typically were concerned with the issue of competition laws. However, this explanation is only part of the story, because in the nineties, a large number of developing countries took the step towards enactment. The empirical results, never-the-less still support hypothesis 1 which corresponds to Palim (1998). With respect to the size of the economy, the analysis also indicates a positive relationship: as hypothesis 2 suggests, the probability of enactment increases with the country's size measured in GDP. Apparently, small countries were more reluctant to enact a competition law, possibly due to concerns that benefits from scale economies may outweigh the benefits derived from a higher intensity of competition. As assessed in Kronthaler et al. (2005), this concern however is misperceived. The third determinant that characterises the country in a comprehensive manner is the extent of economic freedom. Its influence on enacting a competition law confirms hypothesis 3 that the probability of enactment rises with economies increasingly relying on market forces. This result indicates that a competition law is particularly relevant for countries that are undergoing systemic reforms and transition. This again validates the result generated by Palim (1998).

With respect to the question of whether import competition can act as a substitute to a competition law (hypothesis 4), Palim's (1998) regressions produced an insignificant coefficient for import intensity. Thus, he assumes that "countries [...] are not following the view that import competition is a substitute for competition law" (p. 137). The results of this analysis are even clearer: the significant positive sign for the coefficient does indicate that the opening up of the domestic market to imports was typically accompanied by the adoption of competition legislation. Whereas the role of FDI is a rather ambiguous matter, a review of empirical studies on this issue leads the author to conclude that more competition is probably associated with rather more FDI inflows than the other way round (Evenett 2003, pp. 7-13). Our results likewise suggest that countries with a high share of FDI-related investment in total capital formation have a higher probability to enact a competition law, which hence confirms hypothesis 5. Whilst hypothesis 6 posits that the need for a competition law increases with the degree of industrialisation, the econometric results clearly show that countries with rather lower industry shares are more likely to have competition legislation than the other way round. This result may be due to the fact that typically

less developed countries with large industry shares have no competition laws whilst on the other side, highly developed countries with a bias on the service sector have already enacted such a law: in the former countries, the competition culture might not be developed sufficiently to convince industrialists that competition would be to their own advantage, rather pressure groups would then lobby against a competition law.

In regard to state influence in governing economic activity, the analysis supports hypothesis 7 that increasing government consumption expenditure reduces the probability of a country to enact a competition law. It is important to note here, however, that some countries explicitly enacted a competition law in an attempt to discipline governments with respect to undue interventions. Often, foreign support is tied in with pressure to enact a competition law. Palim's (1998) empirical test by use of the indicator of development aid however resulted in a counterintuitive sign. This is not too surprising, because it is typically the least developed countries that receive the largest aid packages. This analysis therefore uses the alternative indicator of IMF credits p.c. which is independent of the level of economic development. The conditionality-hypothesis for support by international organisations then is in fact confirmed: the higher the support by the IMF, the more likely are countries to have a competition law (hypothesis 8). A further driver of competition law enactment from outside the country are regional trade agreements, because they may seek a level playing field amongst their members (hypothesis 9). This influence of regional trade agreements is confirmed by the results both of Palim (1998) and of this analysis. The results are unambiguous with positive significant coefficients.

The first augmented model assesses more closely the issue of government intervention into markets. Of particular interest is the issue of social policy interventions targeted at the alleviation of poverty hardships: countries that do not have a fully-fletched social security system may run into a conflict between competition and intervention. The results of the analysis suggest that countries with a comprehensive social net are in fact more likely to have a competition law. This confirms hypothesis 10. The positive relationship between subsidies and the enactment of competition legislation however refutes hypothesis 11: as it turns out, subsidisation appears not to be empirically at variance with an economic system governed by a competition law (e.g. the EU competition law allows state-aid under particular conditions including sectoral and regional indications). The second augmentation of the core model focuses on the role of the perceived level of corruption on the probability of competition law enactment. Whilst in hypothesis 12, it is assumed that a high level of corruption might hinder the introduction of a competition law, the results of this analysis show the opposite: apparently, some countries use a competition law as a remedy against corruption (see e.g. Kovacic 2001, p. 296, Kronthaler et al. 2005, p. 25). The third augmented model captures intervention in foreign trade as an instrument of development policy. In line with hypothesis 13, import and export restrictions reduce the probability of enactment. Not surprisingly, the consideration of these policy indicators reduces the significance of the role of regional trade agreements: countries that use such restrictions typically do not form part of regional trade agreements, the information contained within regional trade agreements in the core model now appears between the two policy-indicators.

To test whether the associations established in the core model are sensitive to the selection of countries, a smaller subset of countries excluding the group of highly developed countries is considered (see last column in table 2). This group has a long history of competition legislation and the explanatory variables are measured for a

time much further away from enactment than in the other countries which could bias the results. Excluding those countries would increase the time-consistency between explanatory variables and the enactment. Again, the null hypothesis is rejected. Furthermore, all coefficients retain their previously established signs, and all but one are still significant. Only the role of regional trade agreements appears to be less important for countries with lower levels of economic development: this may root in the fact that in the subsample, the most important regional trade agreements are APEC, COMESA, and Mercosur, and their influence on competition law enactment can be assumed to be lesser than is the case for the EU. Those results suggest that the results of the core model and the augmented models are not sensitive to this selection bias which suggests that even the augmented models might hold for the reduced sample (this cannot be tested due to insufficient number of observations).

Whilst those results suggest that less developed and small economies with little economic freedom and high levels of corruption, etc. proved to be less likely to enact a competition law historically, there is no reason why these countries should not take the step to enact. This is because the econometric analysis presented here is unable to determine whether a country enacted because its own set of factors would suggest that it is 'ripe' to do so, or whether (the prospect of) enacting itself is the root of changes of determinants (causality).

Analysis of factors contributing to the adoption of competition law in Poland and implications for developing countries (deliverable 9)

The analysis of factors having significant influence on the introduction and development of Polish competition protection law has been conducted against the background of political and economic transformations: first, the principles of the so-called centrally planned economy were described as well as the evolution of economic policy under conditions of real socialism. In our opinion, this is necessary for the purpose of:

- presenting the nature of the political and economic transformations in Poland,
- understanding the limitations in possibilities of applying principles of competition, characteristic for market economy, under conditions of a centrally planned system, in which the actual market and private sector played a secondary role – supplementary at most.

Then the breakthrough period of 1987-1992 was described, i.e. the end of the old system and the dynamic beginnings of transformation. Probably conclusions following from the actions undertaken then will be most useful for developing countries, aiming at introduction of economic transformation. One has to stress though, that the Polish example "fits" mainly those developing countries which have a relatively more liberal political and economic system . One should not forget that in the so-called socialist block various forms of real socialism were applied: from brutal regime (Romania under Ceausescu's dictatorship), to a non-market and non-democratic system, but relatively liberal and inclined to make attempts to improve the functioning of the economy, including quasi-market changes (Hungary and Poland in the second half of 1980's). Probably the acceptance of "economic experiments" was a coordinated element of the socialist block's policy. The socialist block tested in Poland and Hungary its ability to make the system more flexible and improve its efficiency. However, irrespective of political motivations, it has made a positive

influence on the preparation and the course of Poland's economic transformation, including the introduction of competition protection law.

The following years, after conclusion of the Europe Agreement regulating the rules and establishing a timetable of Poland's association with the European Communities, constitute the "puberty" in applying EU principles of competition protection and state aid in Poland. This period ended in 2000 with the adoption of the acts: on competition and consumer protection and on conditions of admissibility and monitoring of state aid granted to undertakings.

Since 2001, after entering into force of the provisions of the aforementioned acts, the pre-accession period begins, ending with the Poland's accession to the European Union on 1 May 2004.

The historical and institutional analysis of the introduction of a competition law in Poland reveals a number of important regularities which may be relevant for developing countries in the process of enacting themselves:

1 Competition protection law can be introduced (act of 1987) even under unfavourable conditions, i.e. in a political and economic system in which the market plays an auxiliary (supplementary) role to central planning. It seems realistic, that if a law is once introduced, it evolves in the direction of actually supporting competition development.

Even if the economic structure of a particular country does not allow the functioning of competition, the will to counteract threats occurring in certain economy sectors may be an argument for the introduction of competition protection law. It is true, that the execution of such an assumption defeats the purposes usually set for competition protection law. On the other hand, the argument "let us introduce competition law to protect our economy against external competition" is politically catchy, which facilitates the introduction of such law. Based on the Polish example, a situation seems probable, in which law introduced for a different purpose later evolves in the direction of an actual support of competition development. One has to be aware, however, that such evolution is dependant on the direction of economic policy of the country, and anti-monopoly law will not replace other government activities in the area. It has to be accepted as certain, that the introduction of anti-monopoly law in an economy in which market mechanisms do not work, will not lead to revolution. It may, nevertheless, lead to an evolution of the way of political or economic thinking and acting. A significant role may be played by external support, which should not be limited to providing the so-called best examples, but facilitate (e.g. thanks to direct contacts), the immediate contact with the benefits resulting from competition.

2 In countries which are beginning to introduce market economy (Poland in 1990-1991), the most important task of the competition protection authorities is creating conditions for the establishment of competition.

It is obvious, that in order to protect competition it is necessary to lead to its establishment first. Ways to achieve such an aim may be varied and may lead e.g. through de-monopolisation, privatisation, attracting direct foreign investments or liberalisation of trade. One should not forget that structural changes should be made within a possibly short period of time, for the longer the process, the stronger the social resistance and the weaker the political support for the changes. In the first phase of implementing competition, a structural approach to the application of competition law should prevail. It results from the conviction that liquidating or

limiting the reasons for monopolistic practices (de-monopolisation of economy) is more efficient than focusing on the application of sanctions for unfair practices of undertakings (regulatory approach). In view of the above, the participation of an anti-monopoly authority in taking decisions concerning organisational and ownership structure of economy (control of ownership transformations in state-owned enterprises, merger control, division of undertakings) is of utmost importance. The basic role of a competition authority in the initial period of transformation is thus to prevent the state monopolies to emerge in a different organisational structure or to change into private monopolies.

3 Due to its role in the economy, the anti-monopoly authority should remain independent.

In the process of implementation of economic transformation and competition the anti-monopoly authority often inevitably comes into conflict with economic ministries (in particular for industry and agriculture), therefore its independence gains an incredible significance. It is the independence of the authority that is the guarantee of fulfilling its proper role. Thus, if the decision-makers intend to pursue a policy of actual competition protection, they should provide the competition authority with institutional and, as far as possible, financial independence. At the same time it is necessary to introduce transparent control procedures of decisions taken by such an authority. It seems that such a function is best fulfilled by another fully independent body, i.e. a special court. It has to be remembered, that even if a country has "ideal" competition protection law based on best standards, its implementation still depends on the institutional efficiency and, again, on the independence of the competition authority.

4 Competition does not emerge evenly in the entire economy, therefore competition protection instruments should be applied with different intensity with respect to different economy sectors.

The competition mechanism emerges significantly faster where the economy undergoes liberalisation and privatisation. Thus, the anti-monopoly authority should apply competition protection instruments with appropriate intensity to different economy sectors. One should not forget that there is a number of instruments in competition protection law, in particular individual or block exemptions, which may be flexibly used for this purpose. One can postulate the application of diversified measures of merger control on market with high or low competition level.

5 Competition protection law evolves with the economic development of the country. Competition policy instruments applied at the beginning evolve as a result of the changing conditions of pursuing the policy, exhibiting a tendency to apply regulations and procedures developed in countries with a well-developed market economy.

Competition protection law has to evolve constantly in order to be able to effectively fulfil new competition protection purposes. After a phase of creating conditions for the existence of competition, a tendency for a re-concentration of economy occurs. The competition authority should have the competence and knowledge on the subject, so that the concentration would take place on economic efficiency conditions and not under pressure of various labour and/or political lobbies. It is advisable that the amount of the fines in the initial period of the act being in force should not lead to bankruptcy of undertakings, but be noticeable for them. The functioning of the entire system is significant here, i.e. from the moment of imposing a fine up to its payment.

Any inefficiency of the system may significantly undermine the efficiency of functioning of the anti-monopoly authority.

6 Promotion and protection of competition requires sensible and consequent competition policy pursued by the entire government, not only by the anti-monopoly authority.

The competition authority will not be able to oppose the negative pressure of other ministries, which will not be willing to pursue a policy supporting competition. Therefore the entire government should be obliged to pursue a policy supporting competition, no only the anti-monopoly authority. A good instrument in the achievement of the above goal may be multi-year competition development programmes adopted by the government, setting tasks for the particular government agencies indicated for fulfilment within strictly specified schedules. Thanks to that, other state bodies become co-responsible for the introduction of competition.

7 Development and protection of competition and institutional development of the competition authority are dependant on numerous system factors of a diversified nature.

Depending on the phase of competition protection law implementation and government support, the competition authority may play various roles. It seems, that even if it is deprived of the possibility to operate efficiently, it can undertake a number of useful activities, among others to justify the usefulness and necessity of its existence. Such activities may comprise e.g. analyses determining the level of monopolisation of economy, or analyses describing methods and modes of operations of foreign competitors taking into consideration the realities of other economies. Such materials may become a valuable source of knowledge on the functioning of developed markets and may in the future serve as a base material, based on which e.g. a package of reforms will be implemented. Discussion initiated by such a body may also significantly influence the accumulation of knowledge on the very competition mechanism. One should not forget that the competition authority, depending on the tools it will be able to force into the act and the allocated funds, may also perform activities aiming at creating consumer awareness. Appearing as a protector of consumers, e.g. in mass media, results in a kind of fashion for competition protection law in the name of protecting the weaker participants of the market, including consumers. The existence of such awareness may have a great significance, for thanks to it consumers will in time demand taking measures with respect to sectors and spheres of life which in their opinion do not function properly. It will be obvious that the addressee of such demands will be the competition authority, who, thanks to that, will be able to fight for e.g. additional funds, jobs or more efficient tools.

The scenario of the development of the situation concerning the implementation of competition protection law depends on the awareness of the employees of the competition protection institution. Thus we cannot overestimate the assistance of other anti-monopoly institutions, which in a very careful and discreet way would help to create awareness related to both the role of competition and its protection.

Analysis of factors contributing to the adoption of competition law in South Africa and implications for developing countries (deliverable 10)

The case study is concerned with the particular conditions that led the South African ANC government to venture a complete overhaul of the nation’s competition law: in

1998, the previous Maintenance and Promotion of Competition Act of 1979 was replaced by the new Competition Act.

The analysis of competition policy in South Africa offers a number of interesting conclusions for competition policy reform in developing countries and also, albeit to a lesser extent, in former Socialist economies with dualistic economic structures, huge regional differences in the levels of economic development and major social inequalities. This analysis can also be regarded as a case study on the problem in the focus of attention of the ICN (International Competition Network) meeting in June 2005 taking place in Bonn, Germany. This problem consists in finding a successful 'bottom-up' approach for developing common elements of well functioning and widely acceptable competition policies in developing countries (Möschel, 2005).

The strategy of setting up workable competition policy standards for developing countries should be based on the understanding that the enormous diversity of these countries makes it practically impossible to carry out the international harmonisation of competition laws (cf. Garrett, 1998; Lloyd, 1998; Möschel, 2005). Furthermore, it is hardly likely that such harmonisation efforts (if any) could be based on either U. S. or EU standards since the major industrial powers don't want to have their well-established competition laws and policies softened up in such a forced harmonisation (Möschel, 2005). Still, these 'mainstream' competition laws and policies can serve as benchmarks for assessing the transparency and efficiency of competition regulations in developing countries.

Many developing countries (including the most industrialised ones) have opted for competition laws markedly different from American or European Union standards (see e. g. on Korea Lee, 1998; on seven countries of Asia and Africa CUTS, 2003; in general Scherer, 1994; Gal, 2004; Lipimile, 2004). The reasons of these differences can be linked to the strategic task of finding an optimal combination between the promotion of competition and development. The promotion of competition also helps development in a long-term approach, but the short-term requirements of finding the adequate balance between them may have a strong country-specific character. An interesting case of how this balance is being sought is South Africa.

As a former British dominion, the Republic of South Africa has a long tradition of a market economy. Its legal system bears many similarities with that of Great Britain, Australia or Canada. Its institutions are, in many respects, far more developed and better established than the institutions of most other African countries. The political and institutional setup of the country is many years ahead of a number of transition economies, including even some new EU members. Still, the country had to undergo a cumbersome transition process which had both a political and an economic character. Our research is aimed at the competition policy element of this transition process.

The Republic of South Africa had taken a path of economic development different from that of a string of other English-speaking former British colonies. The modernisation of the economy of the United States, Canada, Australia and even New Zealand was quite straightforward from the second half of the 19th century on. This modernisation process was supported by legislation based on human rights offered to each and every citizen, the establishment of modern democracy, and also on the timely adoption of laws indispensable for creating a modern market economy. For example, the first competition acts of the world were introduced in North America (Combines Act [Canada] in 1889, Sherman Act [United States] in 1890).

Contrary to the above examples, the economic and political development of South Africa was considerably slowed down by deep cracks within its society. These cracks led, among other things, to a retarded development of the country's infrastructure, higher education and banking system. The Boer War (1899-1902) took place between local states founded by settlers from Europe. After the end of the Boer War, tensions became increasingly serious between white and non-white ethnic groups, while the latter remained a decisive majority within the population. The country not only had a minority government dominated by Whites, but the other ethnic groups, mainly the Blacks were also systematically excluded from both the political and the ownership control of the economy.

This exclusion became explicit by the formal introduction of the apartheid regime from 1948 on. The enactment of racial segregation called apartheid resulted in a growing international isolation of the country which left the Commonwealth in 1961. South Africa was cut from an increasing part of international flows of capital and technology and also from the institutional element of international economic co-operation thereafter. The isolated economy of the country could be kept afloat by its well performing mining sector which was strongly concentrated in the hands of a few groups of local White investors.

This international isolation came to an end in 1990 when the last government representing the ethnic minority released African National Congress leader Nelson Mandela from prison and declared its readiness to start dialogue with the political opposition representing ethnic majority. The definitive transfer of power to an ANC dominated government took place as a result of the 1994 elections.

The dualisation of the South African economy became increasingly explicit by the 1990s. The country was (and to a certain extent, still is) a blend of the modern, high-productivity and internationally open business world mainly in the Cape and the Gauteng regions, a pariah kind of black townships around the major centres of industry (mainly Johannesburg and Durban), and spots of a subsistence economy reminiscent of the very low income African developing countries.

In a statistical approach, income disparity in South Africa measured by the Gini coefficient is about twice the usual value of the OECD countries (OECD, 2003. 3). The inequality indicator share of the richest 20% per share of the poorest 20% was 22.3 per cent in South Africa in 1998, as compared to 25.5 per cent in Brazil, 17.4 per cent in Chile and 7.6 per cent in Thailand (UN Human Development Report 2000, quoted by CUTS, 2002. 12).

The national rate of unemployment is around 30 per cent (and it may be even above this level due to the presence of the subsistence economy which escapes statistical measurement), but much higher in the black townships. If measured by PPP corrected GDP per capita, South Africa seems to have a level of economic development comparable to the one of some new Central European member countries of the EU such as, for example, Poland or Slovakia (cf. CUTS, 2002. 12; Brandsma et al, 2002).

This average figure doesn't speak, however, of real comparability. The South African economy is considerably less open to world trade than its European counterparts, and it suffers from much greater internal disparities. The economic landscape faced by competition policy is also markedly different in South Africa, and the structural and institutional peculiarities of its economy have made it difficult for its government to

adapt elements of competition policy regimes well useable and established in more (or even less) developed OECD countries .

The development of South African competition policy reflects the increasing effort of its successive governments to ensure a smooth functioning of markets of goods and services in the country. A really modern competition policy framework has been in place, however, only since the ANC government decided to pursue a policy of active de-monopolisation in order to create economic structures more in line with the democratic political regime established in the country. It might be remembered at this point that the Sherman Act was adopted in the United States in 1890 as a result of political pressure from 'small dealers and worthy men' wishing to achieve such a structure of economic power which would correspond better to the structure of political power guaranteed by democracy (cf. Bork, 1993; on the genesis of the Sherman Act see Rowley and Rathbone, 2004. 189-196).

Many country cases from the Third World or Eastern Europe have shown that the development of competition policy may take place in three main stages. The first stage is when there is some competition law in a country, but it has serious gaps in the coverage of the main competition policy issues (e. g. merger control is missing), implementation is either weak or inexistent, and caseloads are very small. We call these competition laws the 'nutshell' type :

- South Africa was at this stage until 1998,
- India is still more or less there in 2005,
- Malaysia did not even reach it, and

Certain transition economies of Europe such as Hungary were at this stage before the early nineties.

The second stage is when the structure of the law covers all the important fields of competition policy, there are appropriate institutions for implementation and caseloads are of considerable size, but national competition laws still show a variety of national characteristics (with many exemptions) putting them at a certain distance from the 'mainstream'. There is a variety of international examples of countries belonging here:

- South Africa entered this stage after the enactment of its new competition law in 1998,
- Zambia seems to be quite close to it with many exemptions and strong discretionary elements but surprisingly effective implementation,
- South Korea has certainly reached it (see in detail Lee, 1998), and
- Several new member countries of the EU were in this stage between 1990/1991 and 1996/1997, i. e. when their 'first-generation' competition laws were in effect.

The third stage is the one of national competition laws and policies close to or corresponding to either the American or the European 'mainstream'. These are systems with effective structures of implementation, with very limited exemptions on the national level and a strong consistency with competition laws applied by the main trading partners. The new member countries of the EU had to carry out a strong national adaptation to the competition law of the EU in the course of their preparation for accession (Hölscher and Stephan, 2004). This is how they entered the third stage

of competition law development with the introduction of their 'second-generation' competition regulations.

Regional differences in trade structures are the main reason why it is not necessary to set the impossible task of defining one single international competition policy 'mainstream': countries in Europe or North Africa could envisage an adaptation to the EU system of competition regulation whereas countries of the Pacific Rim or Latin America could rather use American antitrust as a benchmark. There are relatively few countries in the world, and South Africa certainly belongs to them, which have such trade structures that they could opt, in principle, for any of the two 'mainstream' solutions in case they decide to enter the third stage of competition policy development.

It is, however, hardly likely that South African competition policy could make this transition before 2010. The new South African competition law and its system of implementation are the outcomes of a lengthy and hard fought process of bargaining and compromises. It seems that the balance reached in this respect was satisfactory for the main political, economic, and social pressure groups in the country. The great number of 'public interest' based exemptions shows that this balance had a price in terms of a degree of complexity of the law rarely seen in 'mainstream' cases. Alas, this is not an exception in other industrialised 'developing' countries with ambitious competition policy regulations (e. g. South Korea, cf. Lee, 1998).

The comparative analysis of the competition laws of four developing countries has demonstrated that the South African government has managed to create such exemptions which really serve well defined policy goals (such as Black Economic Empowerment, the protection of employment, SME promotion, or increasing export competitiveness). The application of such exemptions is also conditional upon more or less precisely defined criteria in the South African system which has the positive implication that competition authorities have only a limited range of discretionary powers in sharp contrast with India or Zambia. This is basically the reason why we think South African competition policy has definitely entered the 'second stage' of competition policy development while India has not, and Zambia is a strange case on the road between stages 1 and 2.

The creation of a Southern African economic space is still well under way, but it can be taken for certain that the leading role of South Africa in the SADC will also be instrumental in determining the way competition laws will be enacted and implemented in those economies. Zambia and Botswana have more or less well established competition policies, Namibia has recently also introduced one and in the broader region while Kenya and Tanzania also have more than just a 'nutshell' kind of competition laws (see CUTS, 2003). Land-locked Lesotho and Swaziland have economies with such strong ties to South Africa that a certain level of de facto validity of South African competition law can be assumed for these countries.

The development of free trade in the customs union has reached a stage in which customs revenues are pooled among the member countries (interview information). The growing number of intra-regional dumping cases also points to a possible streamlining of competition laws in the region following the South African example . This might accelerate the movement of South African competition law to the 'mainstream' since it is hardly likely that other Southern African countries would be ready to borrow strongly country-specific elements of the South African competition law.

For instance, the six objectives of South African competition policy contain such elements which could be largely irrelevant for countries without latent ethnic tensions, lacking modern manufacturing capacities or economic conglomerates of a respectable size even in comparison with developed industrial economies. Still, South Africa is likely to become the competition law model in the Southern part of Africa due to the fact that it has created a well functioning system of competition policy up to the international standards of the nineties in the same time as it has proved quite successful in responding to the most important political, economic and social challenges in this special kind of transition economy.

Analysis of factors contributing to the adoption of competition law in Ukraine and implications for developing countries (deliverable 11)

The country study on the Ukraine presents the evolution of the competition law in the country starting from 1991 until early 2005. This evolution has been closely linked with the creation and transformation of the country, and reflects stages of thinking of economic development and economic policies in general. Until recently, it has also been a typical example of the CIS country approach to the protection of competition.

During the years, competition policy had to be maintain the delicate balance between the necessity to introduce and support competitive environment by complying with the relevant legislation and the danger of using the competition policy as a tool for further regulation of already overregulated sectors of the economy. As it is later shown, the move away from the non-competitive system of state command in the direction of competition protection has not been smooth and took time. When assessing the state of economic regulations in different periods in Ukraine, it should be remembered that Ukrainian transition was not only the path to the market oriented economy. It was at the same time transition to an independent state with own policies and institutions, on such a scale for the first time in its history. The text starts from the account of the achievements of different stages of Ukraine's transformation, which are necessary to give a background for the next sections. Then follows the description of subsequent laws governing competition policy in Ukraine and an analysis of factors behind the evolution of competition policy. The paper is focused on changes that happened in the competition law in Ukraine in 2001, primarily because it was the first, after the creation of anti-monopoly law and the competition office, important step marking the introduction of the modern competition regulations . Subsequent parts of the study are devoted to the role of international cooperation and to the enforcement and the effectiveness of actions of Anti-Monopoly Committee. Sections 4 on perspectives of competition policy in Ukraine and implications for other CIS economies conclude.

For the reason that until recently Ukraine has been a typical example of a CIS country approach to the protection of competition, while at the same time having relatively more contacts with the Western and especially European states than other former USSR republics, conclusions drawn here refer mainly to other CIS economies. As the Ukrainian example shows, slow transition from the command system may make the introduction of competitive markets difficult. Delayed privatisation, de-regulation of prices, liberalisation of trade or creating favourable investment climate do not support fast creation of competitive environment. Conversely, it can create grounds for the preservation of a hybrid system of big and strong businesses with non-transparent although powerful links with government officials and parliamentary deputies. In

Ukraine, these have been vertically- integrated large business groups that have hampered competition, have often exercised state capture and have been able to block enactment of new legislation in a non-transparent manner. Moreover, once the legislation became effective, it has been rarely used to promote competition on markets monopolised by big industrial groups. This is to say that the enactment of even good competition law is not able to promote competition by itself. The will of the authorities to change market structure is also necessary. As it was noted in the report on Poland, the evolution of competition legislation is dependant on the direction of economic policy of the country, and anti- monopoly law will not replace other government activities in the area. Markets that have enjoyed less regulation, less state-presence and low entry and exit barriers (retail trade and some other services dominated by SMEs for example) have quickly became competitive, with no need for too much interventions. In this view, all moves towards deregulation and improvement of business climate of a formally centrally-planned or state-dominant economy support the emergence and sustainability of competition. In spite of the general policies of a government, the effectiveness of the implementation of the competition law is conditional upon granting political independence to the antimonopoly body. As Ukrainian example shows, political and interest groups pressure may seriously limit the scope of actions of competition protection office in a situation where the committee is subordinate to the government, and hence cannot oppose actual industrial policies, even if they are hampering competition. Even good legislation is not enough in such case. International cooperation and use of "best-practices" are crucial for the consistent development of competition rules. However, the possibility for effective cooperation seems to emerge only when there is enough determination for changes from the sid e of the government and if the promised goals are attractive. In case of Ukraine such goal is represented by an increased integration with the EU and a stake in the Internal Market, which at least at the moment seems to form a credible commitment for changes. Further integration with the CIS – although economically attractive – does not seem to promote competition, as other large CIS economies are often monopolised and still have large state-owned or state-controlled sectors. The notion of competition and its proper understanding should be shared with the general public via various media, in order to increase social support for its protection. It is especially important in the case of the formerly centrally-planned economies, when populist sentiments are very strong and understanding of industrial policy often means unlimited support of state to "strategically important" enterprises.

Progressivity and Flexibility in Developing an Effective Competition Regime: Using Experiences of Poland, Ukraine, and South Africa for developing countries (deliverable 12)

The following set of qualitative analysis discusses the role of the concepts of special and differential treatment, progressivity and flexibility, as well as technical and financial assistance for the development of a competition regime. Some of the recent proliferation of competition laws is related to regional bilateral and multilateral trade agreements with a view on securing the benefits from lower trade barriers and open borders which may potentially be undermined by anti-competitive practices with their possible knock-on effects in other jurisdictions (e.g. international cartels). The way that competition issues were included in some cases into regional bilateral and multilateral trade agreements may be compared to Special and Differential Treatment provisions within WTO agreements, which are designed to provide the necessary

policy-space needed by less developed partners in trade negotiations and agreements. This study builds predominantly on case studies for Poland, South Africa, and Ukraine. Following a discussion of roots and concepts of flexibility and progressivity and technical assistance, the report discusses what can be inferred from the case study experiences in terms of the role of those concepts during the processes of enactment and revision of competition laws: the analysis showed that in all three case countries, a rather progressive and flexible design of the institutional reform into a national competition law were of pivotal importance, although not in all countries, the experience was positive. Assistance likewise played some role in implementing competition regimes in those countries, and played particularly important positive role where due account was taken to national particularities.

With respect to progressivity, the case studies indicate that sufficient time should be allowed for the drafting process of competition legislations. Competition advocacy in this process is of uttermost importance, in particular in order to get broad support for the new law within the society. In this regard, furthermore, it seems to be useful to involve all relevant interest groups to get the highest possible acceptance within the society for the new law. In this sense, South Africa's drafting process could be best described as 'bottom-up approach.' Contrary to this, the 'top-down approach' carried out in Ukraine seems to be less favourable. A further result considering progressivity with regard to the enforcement process suggests that in the beginning of the enforcement phase competition advocacy is just as important, in particular to establish a competition culture and to inform the society about the functioning of the law. This pertains mainly to informing both enterprises and consumers about what behaviour is lawful or not, and about their individual rights.

Moreover, the results suggest that progressivity in the implementation phase is strongly related to national particularities. E.g. whilst in South Africa, merger regulation was an important issue right from the time the law came into force, in Poland, however, the main task was to remove the causes of anti-competitive behaviour, e.g. building a competition culture, reducing entry barriers, etc. This indicates that there is no general rule for progressivity in the enforcement phase (it is often suggested that merger regulation should not be an important task at the beginning, because merger regulation is complex and time consuming), i.e. progressivity has to be designed with a view on national particularities. In this respect, it seems favourable to make use of de minimis rules right from the beginning to ensure that the competition agency does not have to use all resources for investigations but also retains some room for competition advocacy and for the learning curve. Over time, such use of de minimis rules (e.g. to focus on hard-core cartels as the EU suggests) can be reduced to an acceptable extent.

Considering flexibility, the results suggest that some flexibility is necessary to facilitate the introduction of a competition legislation. Two points seem to be important: first, it could be useful to broaden the scope of the competition legislation beyond the scope that a competition law would normally cover, in order to get broad support for the law within the society and to consider national particularities and development interests (e.g. South Africa). Second, it is maybe necessary to omit special issues and to allow for exemptions in order to facilitate the adoption of the legislation and to improve legal certainty (e.g. state aid in Poland). However, as the case of Ukraine shows, flexibility should not be used to water down the applicability of the respective law through an unclear definition of exemptions with a lot of interpretation possibilities.

Furthermore, with respect to the institutional setting, the experiences made by the case countries indicate that flexibility and progressivity should not be used here: an independent investigation authority, an executive body, and the right to appeal against decisions right from the beginning of the enforcement phase appears to be necessary for the establishment of a well functioning competition system.

With respect to technical and financial assistance, programmes can indeed make a difference in terms of convincing countries to start their own processes of competition law implementation, and this pertains mainly to developing countries due to scarce resources and lack of expertise. Our case countries may not have been constrained in those terms as much as least developed countries, yet all the same, they made extensive use of such programmes. This indicates that even for more developed countries assistance programmes may be just as relevant.

In terms of a Multilateral Framework for Competition, the results indicate that some flexibility and progressivity may be beneficial for the development of a competition regime - which in turn is a necessary yet insufficient condition for a Multilateral Framework. Just as is often stated in other sources, our results also suggest that "there is no one size fits all competition law" (Cuts 2003a, p. 9). Whilst progressivity does not necessarily contradict the possibility to build a Multilateral Framework, flexibility seems to be more problematic, especially as it seems to be the case that every country needs an different approach of flexibility. However, developing a competition regime with the support of both concepts could be regarded as an important first step in building a Multilateral Framework for Competition. Furthermore, as the case of Poland suggests, rules that were left aside at the beginning, can be adopted in a later phase (e.g. state aid regulation).

Whilst suggesting the potential usefulness of those types of special and differential treatment for the development of an effective competition regime within trade-related agreements, our analysis does not infer sufficient general evidence as to what extent, eventually, such measures can be applied in particular other countries, and as to what mix of measures are most effective in particular other countries. This is due to the fact that the rationale for and the dangers involved with the application of flexibility and progressivity, as well as for technical assistance, root in the very country-specific particularities themselves. At this general level, however, our view of this issue is that adherence to the three "principles" of transparency, non-discrimination, and procedural fairness is a necessary condition for special and differential treatment to deliver the beneficial effects as discussed here. This would hence exclude the application of special and differential treatment measures to either transparency or procedural fairness or both.

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Final Report for Work package 3:

International Cooperation on Competition Law and Enforcement.

Dr. Peter M. Holmes, University of Sussex.

Aims and objectives

The main objectives for this work package (WP) were: to produce

- A paper presenting a taxonomic analysis of the different types of existing instruments for international cooperation on competition policy matters. This taxonomy would also identify the different types of cooperation that has occurred to date. The part of the work was led my Dr Peter Holmes of Sussex University Economics dept in collaboration with Anna Sydorak a researcher at the Sussex European Institute , Dr Henrike Mueller, currently an official at OFT and formerly a DG Comp. official and a researcher at SEI but writing in a strictly personal capacity, Anestis Papadopoulos a researcher at LSE, currently an official of the Hellenic Competition commission, also writing as an individual. We were greatly assisted in this work by our interaction with other members of the programme and the work package especially James Mathis.
- Separate case studies of the structure and operation of the cooperation on competition enforcement matters, in RTAs and self standing cooperation agreements, between

  1. Canada and Costa Rica RTA
  2. Canada and Chile and MOU
  3. EU-Mexico RTA

  These studies were carried out by lawyers Dr Philip Marsden and Mr Peter Whelan of BIICL.

  4. US and Brazil, agency to agency agreement, carried out by economist Prof Andre Azevedo of the Universidade do Vale do Rio dos Sinos.

  5. EU and South Africa TDCA, carried out by Ms Vani Chetty a private legal practitioner and researcher.

  In all of these studies there was extensive cooperation from competition authorities.

  6. A further paper synthesising the results of these cases by Dr James Mathis, Law Dept, University of Amsterdam.
- A final paper Dr Mathis providing overall conclusions, drawing the implications of the above analyses for the design of cooperation agreements on competition policy matters that better serve the interests of developing countries (including, of course, promoting the participation of those countries in such agreements). and to draw implications of the above analyses for the design of potential multilateral provisions on voluntary cooperation.

The project thus produced eight papers in just over a year.

The papers

The first paper was the taxonomic exercise which classified different types of agreement.[1]

Chapter I introduced the issues, including a literature review. It set out the key research questions on the basis of which we later developed the taxonomy. Chapter II applied the methodology to Regional Trade Agreements (RTAs), which include competition provisions.[2] It concentrated on agreements where the EU is one of the signatory partners but also covers agreements signed by the US and Canada. Chapter III analyses these issues in respect of self standing enforcement cooperation agreements (including mutual legal assistance treaties). Chapter IV draw the conclusions together. The key finding was that it was inappropriate to look only at competition provisions of RTAs. One also had to look at agency to agency agreements. Moreover one had also to look outside the class of competition specific agreements to other forms of legal cooperation instrument such as Mutual Legal Assistance Treaties (MLATs), and the apparently unique US-Australian Antitrust Mutual Enforcement Agreement (AMEAA). We found that RTAs and agency to agency agreements differed little in their legal form and their essentially voluntary nature – except to the extent that EU RTAs often required legal harmonisation to EU rules and had less specific cooperation provisions than those of the US and Canada. But MLATS (and the AMEAA) contained "hard provisions" that were very different from either of the other two, and we found that while the EU itself had not MLATS covering competition, some member states did and also some MLATS were with developing countries. But the paper concluded that the voluntary nature of the competition provisions of RTAs did not mean they were useless, rather that one needed case studies of their operations, which was the next part of the project.

The research had in fact been partly motivated by the issue of whether RTAs were an appropriate form to make trade agreements, a question raised by our collaborator Dr Philip Marsden and Mr Peter Whelan. The next 5 papers in the WP were case studies of the operations of 5 agreements. Marsden and Whelan examined Canada and Costa Rica, Canada and Chile EU Mexico in detail[3].

Their conclusions were that on the basis of the evidence of these cases, one could reject the hypothesis that competition provisions in RTAs were necessarily inferior to agency to agency agreements. The Canada-Chile MOU was similar to the Canada CR RTA. The study used OECD guidelines a benchmark. They found that in these cases and EU –Mexico very little use was made of the formal mechanisms of cooperation. Nevertheless they found that the Latin American agencies were all completely

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[1] "A Taxonomy Of International Competition Cooperation Provisions" Peter Holmes (University of Sussex)[1], Henrike Müller (Competition Practitioner), Anestis Papadopoulos (LSE), and Anna Sydorak (University of Sussex)

[2] Strictly speaking the term Preferential Trade Agreements may be more accurate but the usual terminology is Regional Trade Agreements.

[3] Marsden, Philip and Peter Whelan, "The contribution of bilateral trade or competition agreements to competition law enforcement cooperation between the EU and Mexico" BIICL.

Marsden, Philip and Peter Whelan, "The contribution of bilateral trade or competition agreements to competition law enforcement cooperation between Canada and Costa Rica" BIICL,

Marsden, Philip and Peter Whelan , "The contribution of bilateral trade or competition agreements to competition law enforcement cooperation between Canada and Chile" BIICL, paper for this project.

satisfied with the "soft character of the agreements and workings of the agreements and they came to broadly similar conclusions about all three agreements which can be summarised as follows[4] . On the positive side:

> "Competition provisions in FTAs are themselves important government-to-government policy statements concerning the significance of competition policy and competition enforcement cooperation for the achievement of the objectives of free trade areas.
>
> • The benefits of free trade areas will be less likely to be undermined by private anticompetitive practices, by virtue of the existence of the laws of the parties and growing awareness that the authorities will exchange information and otherwise cooperate with one another, and particularly where the parties use the cooperation mechanism to work together on actual cases to prevent (private) anticompetitive behaviour within their respective jurisdictions.
> • The cooperation arrangement introduces a working relationship between the antitrust agencies of the parties.
> • Cooperation agreements promote trust and confidence between the competition agencies of the parties."

On the other hand their conclusions were also that in the case of these 3 cases:

"• The obligations […]are of the 'soft law' variety and thus are unenforceable in law between the parties.

• There are no dispute settlement procedures which apply in the case of conflict between the competition agencies.

• The parties effectively decide the extent of their obligations.

• The agreement does not allow the exchange of confidential business information between the competition agencies of the parties, even if such information was still to remain confidential *vis-à-vis* third parties and could only be used for the purpose for which it was provided.

• The agreement does not require or permit any information exchange that would otherwise not be accessible"

The study of the EU-South Africa TDCA came to similar conclusions about the formal agreement. It had had little direct impact and informal cooperation, especially on areas outside the scope of the agreement (esp. mergers) mattered most:

> "It would appear that the formality of the TDCA has been bypassed and a more informal network has been established whereby information can be exchanged. It is accordingly, questionable whether the TDCA has of itself been beneficial to date. There is no clear answer yet. However, the provisions of the TDCA may be very important for the future. The informal arrangements between the EU Commission and South African Competition authorities have dealt almost exclusively with merger related issues ranging from definitions of markets to relevant conditions to be imposed in respect of various transactions."[5]

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[4] The text here incorporates the common element s in the wording of the 3 cases studies.

[5] Vani Chetty, "The EU/South Africa Agreement On Trade, Development And Cooperation - An Analysis Of Cooperation In Competition Law Enforcement"

The study of Brazil also reached a fairly favorable evaluation of the working of the agreement, despite its shortcomings[6]:

> "Given the limitations[…], especially those related to the confidentiality clause and the soft law obligations that characterise the US-Brazil agreement on competition enforcement, one may argue that nothing would impede that the competition authorities of both countries cooperate in a similar way even without the agreement. In other words, it would confirm the first hypothesis, which says that competition agreements with no binding arrangements do not create value added over and above the informal cooperation between competition agencies. Nevertheless, soft law also has its advantages. It can overcome deadlocks in the relation of states that result from economic or political differences among them, when efforts at firmer solutions have been unsuccessful. Besides this form of cooperation is definitely more flexible than traditional international agreements with binding provisions. Furthermore soft law can be attributed to differences in the economic structure and economic interests of different states, as discussed above."

It was a general finding of our case study and work done to follow up the taxonomy paper the given the voluntary nature of the agreements in these cases, actual cooperation depends on the degree of closeness of the contracting parties, eg the relation between the EU and accession countries and/or the nature of pre-existing informal contacts.

Dr Mathis concluded that the key issue was how far the agreements provided for agencies to forward information they had uncovered even in the absence of a request of enforcement action affecting the other party:

> "In some cases the agreements reviewed appear to have gone further than the OECD instruments, at least on a textual basis where notification makes reference to considerations other than traditional comity. Certainly none of the agreements examined contain the clarity of expression found in the US-Australia consumer protection arrangement. Why competition law and policy agreements remain so vague on the subject of non-requested assistance remains a mystery for the purpose of this research, although in the absence of a better explanation, one is tempted to attribute industrial policy interests to this field. While it is evident that the arrangements examined can form the framework for cooperation, as has been generally concluded by the other authors, and while the regional agreements can instigate regulatory benchmarks and generate capacity for future cooperation, the absence of simple unilateral assistive gestures remains the norm rather than the exception.."[7]

In his final reflections on the implications of bilateral agreements for the multilateral system, he concluded that if a multilateral system is to emerge, it must address information exchange:

> "For whatever other ways the cooperation agreements between developed and developing may or may not inform future multilateral discussions, information

[6] Azevedo, Andre, "The working of the US-Brazil agreement on competition policy"

[7] J. Mathis "North – South Cooperation Instruments: The Effectiveness and Impediments for Bi-lateral Approaches to Cross-border Anti-trust Enforcement."

> exchange is likely to be close to the heart of the matter. For this purpose, the only instrument one can see potentially rising is the unsolicited notification by one country of a potential violation of another country´s law. For the RTAs examined, the emphasis thus far appears to be more on capacity building and the realization of operative agencies. Over time among those partners, the cooperation story may move along. Information will certainly be a part of those developments as well." [8]

And his final conclusions were that instruments to deal with this issue are needed, and the voluntary nature of collaboration leaves a gap to be filled.

> "The contrasting point for north – south agreements is that the larger context argues not for weaker instruments, as are most of the provisions of the reviewed agreements, but rather for stronger instruments. This also implies some stronger affirmative action to be undertaken on behalf of the developing partner in exchange for prioritizing competition law in its domestic legal system and providing for effective market access via the use of non-discriminations, and eventually positive comity instruments. While the emphasis in these early agreements will be upon capacity and functional criteria, over time positive comity and private rights of action will tend to surface and contribute to effectiveness. The *quid pro quo* should be more effective notification and assistance in the form of information that the other country´s laws may be being violated, and without the requirement of initial requests for case specific information."[9]

Dr Mathis's conclusions were his own personal views and do not engage other members of the team, above all those who are working in competition authorities, and whose own contributions were themselves very much individual. It has to be stressed that it was *never* the intention of this project to produce collective conclusions. However Dr Mathis's conclusions were reached after extensive and fruitful debate and discussion among members of the project and the collaborative element brought us real value added.

Dissemination and further links

The papers in this work package have been presented at the major project meetings and publication is expected in a volume edited by Prof. Evenett.

The members of this work package have built on previous collaborations with partners in other work packages, in for example a FW5 project involving IWW in Halle and CASE in Warsaw. This work package also brought new researchers into EU funded work.

As a result of the work done on this project members of this WP were invited to contribute to a major UNCTAD publication. Holmes, Peter, Anestis Papadopoulos, Bahri Özgür Kayalı, and Anna Sydorak (2005), "Trade and Competition in RTAs: a Missed Opportunity?" in *Competition provisions in Regional trade agreements: how*

[8] J.Mathis "North-South Cooperation Instruments: Implications for Multilateral Voluntary Cooperation"

[9] ibid.

to assure development gains, Philippe Brusick, Ana María Alvarez Lucian Cernat (Eds) UNCTAD 2005.[10]

Participants in the WP and the UNCTAD project have since collaborated to make submission to the *Journal of Common Market Studies* for a special issue on "Competition and Integration", though the odds are necessarily against success in the bid.

[10] See www.unctad.org/en/docs/ditcclp20051_en.pdf

Final Report for Work Package 4:
Regional Rules and Competition Law

Dr. Andrzej Cylwik

General Information

CASE-Doradcy Ltd. participated in the project entitled "Competition Policy Foundation for Trade Reform, Regulatory Reform and Sustainable Development". CASE-Doradcy was responsible for Work package 4: Regional Rules and Competition Law, which contained deliverables:

Del. 21	Analytical considerations in the design of regional rules on competition law.
Del. 22	Experience of EU accession countries concerning the extent to which preparing to join the EU has substituted national legislation for regional rules. Lessons for other developing countries.
Del. 23	Mercosur Agreement on Competition Policy—How effective has it been and how to deepen it?
Del. 24	Australasian competition law issues and lessons—a case study.
Del. 25	Best practices for allocating and designing regional measures on competition law and enforcement.

The research team of CASE-Doradcy prepared also deliverables:

Del. 9	Analysis of factors contributing to the adoption of competition law in Poland. Implications for other developing countries.
Del. 11	Analysis of factors contributing to the adoption and evolution of competition law in South Africa. Implications for other developing countries.

Deliverables 9 and 11 were prepared for Work package 2 entitled "Adopting Competition Laws", which was conducted by Institute fuer Wirtschaftsforschung, Halle, Germany.

Major Research Questions

The key goal of the project was to verify whether and in what extent the protection of competition affected economic development. Major research questions were formulated in Terms of Reference (TOR) prepared at the beginning of the project (December 2004, January 2005). These were the following problems:

Del. 21

Major Research Questions

Whether the selected surveyed cooperation agreements between developed and developing territories in structure and practice provide insight into possible multilateral modes of cooperation, and as related to prior and ongoing discussions regarding cooperation at the international organisational levels of WTO, OECD and UNCTAD.

Del. 22

Major Research Questions

How did particular EU accession countries benefited in respect of competition culture from their pre-accession periods?

What was the impact of the stage of development of their economies on the speed of the implementation of regional competition rules?

How can be these experiences beneficiary for other countries which have not enacted regional competition rules?

Del. 23

Major Research Questions

How effective is Mercosur Cooperation Agreement on Competition Law?

To which extent have the regional rules replaced or complemented national measures?

What are the key similarities and differences between Mercosur agreement on competition policy with other regional agreements (e.g. EU, NAFTA) and the multilateral rules on these matters (WTO)?

Del. 24

Major Research Questions

What are the advantages and disadvantages of the current Australasian competition and consumer protection regime?

How have the trade and competition provisions of the ANZCERTA worked together?

Does the current trans-Tasman competition and consumer protection regime serve its constituent countries sufficiently or efficiently? At which judicial/regulatory levels does it work best/least well?

Would the benefits of increasing (or decreasing) the level of integration of the Australasian competition and consumer protection regime be likely to out weight the costs of so doing?

Would the efficacy of the Australasian competition and consumer protection regime be increased by the introduction of a supranational regulatory institution to operate either in place of or jointly with the existing regulatory institutions?

If the efficacy of the regimes would be improved by introducing a supra national authority, in which specific areas of the regime should this authority operate?

If supra-national authorities are indicated, would the resultant increases in efficacy generate benefits that would outweigh the costs of introducing and maintaining these institutions?

Del. 25

Major Research Questions

What basic common elements of the successful designing regional measures (in CEE, Mercosur and CER countries) on competition law?

How deep are regional differences between different analysed approaches?

What best practices can be distilled from the considerations and experience described in Work package 4?

Policy Recommendations and Remarks

After detailed researches the policy recommendations have been prepared. Below we list some principal remarks drawn from the following deliverables:

Del. 21

The methodological innovation in this paper is to examine these matters through the lens of three distinct literatures: the economics of competition and competition law in economies open to international commerce, federalism and in particular the writings on federalism in antitrust (the latter being almost entirely an American affair), and the political science analyses of delegation using the principal-agent framework. The emphasis here was on the implications of analytical contributions to the literatures, as these writings tend to identify causal links that sometimes get lost in most qualitative accounts. Interesting differences were found within and between these three literatures, the latter pointing to the perils of relying exclusive on any one perspective when designing regional competition law and associated institutions.

The first important policy implication is that the number of options available to a group of nations that are considering enacting and implementing a regional competition law is larger than one might have thought, especially if European experience is the primary reference point. Not all of the aspects of competition enforcement and advocacy need be undertaken at the regional level; investigations, for example, could still be undertaken by national authorities on behalf of a regional decision-making body. This is not to say that each option is equally desirable, just that

the menu of choices is quite broad (as Figure 1 indicates.) A related implication is that arguments for collective action based on intra-regional cross-border spillovers or on the desire to ensure that the benefits of liberalisation are not lost to anti-competitive practices only go so far in helping policy makers choose from the menu of institutional options available to them.

The second implication for policymaking is that there is no clear blueprint or prescription for countries to follow over time when they create, or revise, regional decision making machinery on competition law and its enforcement. Although the European experience is instructive in many respects, no serious arguments were made this is the only way to organise collective action on competition law at the regional level. It would seem, then, that there are no short cuts to thinking through the implications for regional rule-making in competition law of the relevant commercial circumstances at home and in regional partners, the likelihood, form, and magnitude of cross-border spillovers, the economies or diseconomies of scale of enforcement technologies and practices, and the potential solutions to any principal-agent problems created by the delegation of powers to a regional competition agency.

The third important implication for policy making is that is fruitless to look for a perfect solution to the principal-agent problem at the regional level. It is worth recalling that this problem is faced when delegation occurs at the national level and, if the spread of independent regulatory agencies is anything to go by, the fact that political principals cannot completely control bureaucratic agents does not seem to have deterred delegation, although it probably has shaped the manner in which delegation is structured. Specialisation, the gains from delegation, independence, and so-called agency drift are related phenomena. The depth of expertise necessary to enforce competition laws typically calls for some type of delegation to a specialist agency. If independence of an agency is a pre-requisite for optimising effectiveness, then the tools available to national policy makers to discipline a regional agency narrow further. Furthermore, the more effective a regional agency becomes--that is, the larger the benefits for regional resource allocation over the pre-existing system of national enforcement efforts--the greater the latitude the regional agency has to follow its own priorities, secure in the knowledge that the ultimate threat from the member states (abolition) is less credible.

Del. 22

Three periods of development of the competition law may be distinguished in each of the analysed countries:

1. period of searching for own solutions taking into account the Community rules;
2. period of approximation of national laws with the Community law; and
3. pre-accession period devoted to full implementation of the Community law.

Antimonopoly laws adopted at the initial stage of economic transformation, i.e., before making a decision on applying for membership in an international organisation governed by its own competition rules (for example, the EU), were often based on own, usually inefficient, solutions. An example is the Latvian Law of 1991 or the Polish law of 1987.

Competition rules must be synchronised with economic development of the country in which they are introduced. Solutions at the beginning of economic transformation often include exceptions to the absolute prohibition to distort competition, which prohibition may be withdrawn in view of the interests of national economy (for example, Polish Law of 1987 or Latvian Law of 1991). At a later stage of economic transformation more detailed regulation of competition matters is justified. The same applies to the rules of granting state aid to undertakings, i.e., at the initial stage of transformation, where the undertakings are not duly prepared to function in competitive conditions and many enterprises require restructuring. It seems that the EU understood this problem and, despite the provisions of particular Europe Agreements, it did not request full compliance of State aid granted in the discussed countries with the Community rules. Upon undertaking accession negotiations, the European Commission started to insist on full harmonisation.

A gradual introduction of competition rules, as effected in all the discussed countries, is justified with the need to develop a relevant administrative unit necessary for ensuring the application and observance of competition rules in the given country. Regional competition rules contained in the CEFTA and in the free trade agreement entered into among the Baltic countries were directly taken over from the Community competition rules. However, both the CEFTA and the free trade zone of the Baltic countries turned out to be less attractive for their members than the EU which offers greater possibilities for economic development thanks to, among others, assistance funds.

Depending on the stage of transformation of particular economies, the key role played by the competition law changes, i.e., the initial key role of competition is to eliminate the existing monopolistic structures inherited from the former system, while, at a later stage, this role includes fight with the existing monopolies in order to protect the developing competition and consumers.

Polish, Czech, Slovak, Lithuanian and Latvian competition rules (concerning both antitrust and control of concentrations) are currently substitutive towards the Community rules.

The accession of all analysed countries to WTO and the accession of Poland, Czech Republic, Slovakia and Hungary to OECD did not have any special impact on competition laws of the above countries. It had, however, a significant importance for the development of their economies, in particular, for the increase in rating and for encouraging foreign investments. However, changes concerning competition protection and State aid were insignificant since the respective rules applicable in WTO and OECD are very similar to the Community rules. The exception was an earlier liberalisation of the financial sector (3-4 years earlier than stipulated in the Europe Agreements) in countries which joined OECD.

Del. 23

1. This paper presents the objectives, developments and scope of the Mercosur agreement on competition law, with emphasis on Fortaleza Protocol, which is the main instrument created to address competition issues within the bloc. It also examines the extent to which the regional rules replaced or complemented national measures. A special attention is given to the ineffectiveness of the bloc's competition policy up to the present. The problems are related to the fact that the Fortaleza

Protocol has not been implemented yet, and given the link between the removal of AD actions and the achievement of a common competition policy set up by the bloc, and the continuous delays in achieving the latter, there is a high incidence of antidumping measures applied on intra-regional trade. Finally, it also identifies some factors that might promote further cooperation on competition law and policies in Mercosur, providing some recommendations.

2. Instead of the cumbersome decision making process therein established, whereby a resolution made by CDC can easily be overruled by the TC and transformed into a trade dispute, Argentine and Brazilian competition authorities could sign a bilateral agreement based on the more lean procedures of positive comity, following other successful experiences such as those of Australia and New Zealand, and between the European Union and the United States. Second, both countries could unilaterally include the interests of Paraguay and Uruguay when handling cases through the bilateral agreement. This procedure would generate a continuous record of the damages suffered by those countries for not having domestic competition laws, thus providing an additional stimulus for a more rapid completion of the Fortaleza Protocol.

3. This innovative approach toward positive comity would create a dual pattern of cooperation inside Mercosur for an interim period. On the other hand, Argentina and Brazil could start immediately joint efforts for dealing with cross-border competition cases, and the practical knowledge engendered by this experience would point out the best solutions for an eventual reform of the Fortaleza Protocol after the introduction of competition laws in Paraguay and Uruguay. On the other hand, these two countries would be receiving a tailor made technical assistance for the drafting of their domestic laws, through the direct access to the jurisprudence produced by the agreement between Argentina and Brazil. At both levels this implies a complex and time consuming learning process, but its long-term results are obviously worthwhile.

4. Finally, in order to minimise the impact of antidumping measures applied on intra-Mercosur trade while they are still allowed, a plausible solution would be to follow the ‘reverse dumping’ clause established by the European Community during its transition period, where AD actions were allowed within the bloc. This clause stated that a dumped good could be re-imported into the exporting country duty-free. This procedure could impose an effective limit to dumping practices as far as the transaction costs are too high.

Del. 24

1. Since their first settlements, Australia and New Zealand have been closely related in terms of their legal, government and economic systems, their cultural heritage, and their intersecting trade and business activities. Together with their geographical proximity, this closeness has led to a trade regime (the Australia New Zealand Closer Economic Relations Trade Agreement, widely known as the CER agreement) that has promoted almost completely free trade between the two countries, and to similar competition law and enforcement attitudes and mechanisms. This degree of general regional cooperation is perhaps unique on an international scale, and so it stands as a potentially first-best model of cooperation and convergence for other regional groupings of countries to consider.

2. While the institutions, attitudes, priorities, methods and jurisprudence relevant to competition law are quite similar on both sides of the Tasman, there are enough differences. Despite the similarity of Australia's and New Zealand's competition laws and enforcement mechanisms, there still exists no trans-Tasman authority that jointly administers them. A recent investigation by Australia's Productivity Commission found that there was no need for such a body in the region, nor was there any justification for a joint regime to operate alongside the two separate regimes. A system with a separate mega-regulator for each country possibly could lead to competition between agencies to be seen as the leader in the region. Consideration of the desirability of a supranational regulator might best be considered after such an experience.

3. It might have been expected that the high levels of cultural, commercial, political and legal similarities might have resulted in a relatively prompt, smooth and complete harmonisation of competition laws between Australia and New Zealand, this has not been the outcome. The trans-Tasman lesson for groups contemplating harmonised competition laws and enforcement is a stark one. There can be no quick fix. The process has been slow, and it has mainly been one way – New Zealand has done much more of the convergence than has Australia. Other countries thinking of proceeding down the regional harmonisation path should take careful note of this.

4. Business law harmonisation between Australia and New Zealand as a policy initiative is far from complete. It is an on-going phenomenon. The 'natural' process of harmonisation between Australia and New Zealand of their competition policies and their enforcement has led to a higher level of certainty in the application of the common prohibitions, greater regulatory efficiency and, as a consequence, improved efficiency in markets within and between Australia and New Zealand. The removal of trade barriers has not, and never will be, enough to achieve this if there are no specific joint (or at least mutually compatible) pro-competition policies and institutions to complement and reinforce the free trade regime.

5. Australia's and New Zealand's experience to date shows that there are three major stages of harmonisation. First, there exists the minimum standards step, in which the regulators agree to cooperate in ways to minimise both their own costs and the regulatory burden that they impose on firms in enforcing their own separate statutes. Second, legislation can converge over time, in whole or in individual provisions, by natural osmosis or by rather more direct treaty, as occurred across the Tasman with the 1990 misuse of market power provisions. Short of full political union, however, it could not be expected that either country would ever adopt identical competition statutes, if only to preserve some flexibility to apply to its own national conditions. The third stage would involve the creation of formal trans-national regulatory institutions, either market wide or sector specific, and/or a trans-national court or tribunal to hear all competition cases (or certain designated types of cases) arising under the harmonised statutes.

Del. 25

1. The very important fact which can be observed both in case of the CER and in case of post communist countries of the CEE is that the competition regime was present in those countries even before the harmonisation started. The first acts regulating antitrust issues were introduced in Australia and New Zealand long before the

countries signed first agreement leading to economic integration. The antitrust laws were to help economies to develop and served the needs of the societies. Similar situation we observe in the case of the new members of the European Union.

2. The case of the new members of the EU shows how important for the economies in transition is the process of development of the competition law. The consecutive phases of the transformation needed different provisions to create competition culture in the economy. Such flexible approach to the process of the competition law introduction allows companies and the economy as a whole to adapt to the new conditions.

3. For the countries building competition regime as a part of the regional agreement two factors are especially important:

a) clear vision of the system which they are going to build or join,

b) conviction that the work is worth trouble and that it will bring visible benefits for their economies.

The factor a) was very important for the countries of the CEE. The perspective of the accession to the EU without a doubt accelerated process of the harmonisation in the acceding countries. The lack of such clear perspective seems to hamper the creation of competition regime in Mercosur. However, the success of the CER is also result of the positive influence of the second listed above factors. Both countries, as liberal economies, have strong conviction of the necessity of effectively harmonised competition law. This was also the case of the countries of the CEE.

4. The analysed cases present two models of the common competition regime introduction. The CER and Mercosur chose model of close cooperation while the CEE model is the model of integration policy based on the supranational institution. The second model, once established, is more effective and causes less crisis situations. It is obviously very difficult to build it. This is why rather model of close cooperation is the practice to be followed for the new regional agreements.

Lessons can be learned from the experience of Australia and New Zealand. Information sharing between national regulators is relatively easy to accomplish, and it saves duplicating information-gathering activities. Once common problems are identified and recognised, as was done with the trans-Tasman misuse of market power issue, the next step – a discussion on how to treat the problem – will be much easier.

5. Important factor influencing the success of failure of the regional competition agreement is similarity of the countries which take part in it. The cultural closeness is certainly an advantage, although the really important feature is similarity of the stage of economic development and conception of economic policy. The huge differences, especially in those two fields, are yet another disadvantage of Mercosur and they make again concept of two stage integration of those countries very constructive idea.

Additional important factors and best practices in CEE countries were:

- Large support for Competition Offices and Courts in candidate countries, especially in initial period: consultations, trainings and meetings, financial support for international activity.
- Participation of competition experts from candidate countries in negotiations concerning association with European Community and accession to OECD and WTO.

- Independence of Competition Offices and efficacious law enforcement against unfair competition.

General Conclusions

In the course of the work on the project members of the CASE team analysed three types of cases of the introduction and / or harmonisation of a competition regime during the process of economic integration related to regional agreement represented by: the case of development of Mercosur – the South American agreement grouping Argentina, Brazil, Paraguay and Uruguay, the case of development of the CER - free trade zone created by Australia and New Zealand and the case of the accession of the group of countries of the former communist block in the Central and Eastern Europe (CEE) to the European Union.

All three cases are significantly different. Nevertheless gathered data and conducted analysis enabled to point certain similarities and to indicate certain best practices. Mercosur and CER are for example similar in the terms of the way of harmonisation of the competition rules even though of course there are huge differences when we look at the efforts leading to the project's implementation. Probably the most unique from those three is the case of the transformation of the former communist countries of the Central and Eastern Europe and the EU enlargement of 2004 but even here we can find some regularities which can be useful in the understanding of the situation of the smaller countries of Mercosur. Those interrelations caused that all the analysed cases brought some elements which can be used by the developing countries.

In general the main conclusions from the analysis of the Eastern European cases can be use in the process of development of the new competition regime, especially in the developing countries. Main conclusions for the analysis of the CER case provide indications for the new grouping of states starting to build regional competition agreement.

Even though the Mercosur case is the least successful from those three it also provides important lessons which can be useful in both mentioned above situations. Especially new regional competition agreements are very often built in counties which are close to each other geographically and not necessarily economically which is exactly the case of the South American agreement.

The main final conclusions are as follow:

1. To create effective competition protection system, some understanding of the necessity and importance of it is needed. It is even more important when we talk about the creation of the supranational competition regime.

2. The consecutive phases of the adoption of a competition regime need different legal provisions and organisation solutions. It is important for process of creating competition culture in the economy. Such flexible approach to the process of the competition law introduction allows companies and the economy as a whole to adapt to the new conditions.

3. For the countries building competition regime as a part of the regional agreement two factors are especially important: clear vision of the system which they are going to build or join and conviction that the work is worth trouble and that it will bring visible benefits for their economies. The potential rewards will need to be convincing and lasting in order to engage the attention and commitment of the

relevant policy makers and other stakeholders, as well as to justify both the costs of negotiation and those of setting up the necessary infrastructure.

4. The analysis revealed two models of the common competition regime introduction: the model of close cooperation and the model of integration policy based on the supranational institution. The second model, once established, is more effective and causes less crisis situations. It is obviously very difficult to build it. This is why rather model of close cooperation is the practice to be followed for the new regional agreements.

5. Information sharing between national regulators is relatively easy to accomplish, and it saves duplicating information-gathering activities. Once common problems are identified and recognised, the next step – a discussion on how to treat the problem – will be much easier.

6. Additional factor influencing the success of failure of the regional competition agreement is similarity of the countries which take part in it. The cultural closeness is certainly an advantage, although the really important feature is similarity of the stage of economic development and conception of economic policy.

7. Economic growth or at least stable economic situation is necessary condition for development of competition and enforcement of competition law in a country. Economic crisis in the number of analyzed counties caused a break in or even collapse of competition in these countries. Competition is influenced by economic situation and reciprocally, lack or development of competition makes difficult or hampers economic growth.

8. Support for competition agencies and courts in the countries developing competition regimes (consultations, trainings and meetings, financial support for international activity), especially in initial period are very important. Participation of competition experts from developing countries in the conferences and other events organized by OECD and WTO fosters the process and guarantees exchange of ideas and best practices.

CPFTR List of Deliverables

Deliverable number[11]	Deliverable description	Month of delivery (October 2004 =Month 1) [12]	Nature [13]	Dissemination level or format [14]
1	A database of situations in which it has been shown—or alleged—that domestic reform and tariff reform initiatives since 1990 have been compromised in Latin America, Eastern Europe, South and East Asia.	4	R	PU
2	Using the database above, a paper that (i) summarises the principal types of allegation about the effects of anti-competitive practices on reform efforts, (ii) provides a framework that facilitates a critical evaluation of allegations concerning the effects of such practices on reforms in developing countries, and (iii) identifies those sectors/reforms whose benefits are most susceptible to being eroded by anti-competitive practices.	7	R	PU
3	Paper quantifying the extent to which the active enforcement of competition law increases the benefits of trade reform in East Asian nations. The paper will draw implications for policymakers as to the likely payoffs of adopting and enforcing a competition law for trade reforms.	10	R	PU

[11] Deliverable numbers in order of delivery dates: D1 – Dn

[12] Month in which the deliverables will be available. Month 0 marking the start of the project, and all delivery dates being relative to this start date.

[13] Please indicate the nature of the deliverable using one of the following codes:
R = Report
P = Prototype
D = Demonstrator
O = Other

[14] Please indicate the dissemination level using one of the following codes:
PU = Public
PP = Restricted to other programme participants (including the Commission Services).
RE = Restricted to a group specified by the consortium (including the Commission Services).
CO = Confidential, only for members of the consortium (including the Commission Services).

4	Paper quantifying the extent to which the active enforcement of competition law increases the benefits of telecommunications privatisation and associated reforms in Latin America. The paper will draw implications for policymakers as to the likely payoffs of adopting and enforcing a competition law for other domestic reforms.	10	R	PU
5	Paper describing and assessing the means by which competition-related concerns can, and do, enter national decision-making on reforms in the trade and regulatory arena in developing countries in Latin America, Eastern Europe, South and East Asia. This paper will identify better practices and will draw, where appropriate, lessons that are transferable to other developing countries. One likely set of lessons relates to competition advocacy.	10	R	PU
6	Paper documenting and assessing the claims made by policymakers, opinion formers, and other stakeholders in favour and against the adoption of competition laws in developing economies.	3	R	PU
7	A database that contains information on those developing countries that have adopted a competition law, the year of implementation, (where available) the budget and staff of the relevant competition agency, and other structural (economic and otherwise) characteristics of the country in question.	5	R	PU
8	Paper quantifying the factors that account for national decisions to enact competition law. This paper will better identify the factors that are likely to trigger the enactment and implementation of a competition law.	6	R	PU
9	Paper containing an analysis of the factors contributing to the adoption of competition law in Poland. Where appropriate, this paper will draw implications for other developing countries at a similar stage of development.	8	R	PU
10	Paper containing an analysis of the factors contributing to the adoption of competition law in South Africa. Where appropriate, this paper will draw implications for other developing countries at a similar stage of development.	8	R	PU

11	Paper containing an analysis of the factors contributing to the adoption of competition law in Ukraine. Where appropriate, this paper will draw implications for other developing countries at a similar stage of development.	8	R	PU
12	Paper discussing the implications of Poland's, Hungary's and the Ukraine's experience for the discussions over "progressivity," technical assistance, and special and differential treatment that are taking place at the WTO, UNCTAD, OECD, and the International Competition Network.	10	R	PU
13	A taxonomy of instruments employed when nations choose to cooperation on competition law and enforcement matters.	3	R	PU
14	A paper that analyses the structure and operation of the Canada-Chile cooperation agreement on competition enforcement matters. This paper will include recommendations for policymakers about the appropriate structure of such agreements between a developing and an industrialised economy.	5	R	PU
15	A paper that analyses the structure and operation of the Canada-Costa Rica cooperation agreement on competition enforcement matters. This paper will include recommendations for policymakers about the appropriate structure of such agreements between a developing and an industrialised economy.	5	R	PU
16	A paper that analyses the structure and operation of the EU-Mexico cooperation agreement on competition enforcement matters. This paper will include recommendations for policymakers about the appropriate structure of such agreements between a developing and an industrialised economy.	5	R	PU
17	A paper that analyses the structure and operation of the EU-S Africa cooperation agreement on competition enforcement matters. This paper will include recommendations for policymakers about the appropriate structure of such agreements between a developing and an industrialised economy.	5	R	PU

18	A paper that analyses the structure and operation of the US-Brazil cooperation agreement on competition enforcement matters. This paper will include recommendations for policymakers about the appropriate structure of such agreements between a developing and an industrialised economy.	5	R	PU
19	In the light deliverables 14-18, a paper that analyses the following matters: (i) the factors determining the choice of cooperative instrument, (ii) the effectiveness of different types of cooperation on competition matters, (iii) the factors which legitimately and illegitimately impede such cooperation, including national legislation, and (iv) the national and international arrangements that are more conducive to facilitating the different types of cooperation.	8	R	PU
20	Drawing on the papers commissioned in this work package, and on the available literature, a paper that distils the implications for the design of cooperation agreements more generally and the design of potential multilateral provisions on voluntary cooperation, in particular.	10	R	PU
21	Paper describing, for each major type of competition law, the analytical rationale (if any) for regional rules and the extent to which those rules will and should substitute or complement national legislation and associated measures.	4	R	PU
22	A paper that draws upon the experience of the EU accession countries to discuss the extent to which preparing to join the EU has or will substitute national legislation for regional rules. The paper will also draw lessons for other developing nations that are thinking of creating or joining a regional block in which competition law and enforcement provisions are envisaged or present.	7	R	PU
23	A paper which contains a detailed case study of the extent to which regional rules and enforcement measures have replaced or complemented national measures in Mercosur. The paper will draw out policy lessons for strengthening Mercosur's regional rules and will consider the broader implications of these rules for other Latin American nations	8	R	PU

24	A paper that contains a detailed case study of the rights and experience of national competition enforcement regimes under the Australia-New Zealand CER agreement. An assessment of the effectiveness of this agreement, especially concerning the absence of a supra-national enforcement authority, will be presented.	8	R	PU
25	On the basis of the analytical considerations and experiences described in work package 4, a paper that distils the best practices for allocating and designing regional measures on competition law and enforcement. It will be important for this paper to dwell on what lessons from any one region can be transferred to other regions or grouping of nations.	10	R	PU
26	Organisation of bilateral consultation between members of the research consortium.	1-12	O	RE
27	Organisation and execution of the opening meeting in London.	2	O	PU
28	Organisation and execution of the Steering Committee meetings.	1,6	O	RE
29	Organisation and execution of the mid-term meeting in Brussels.	7	O	RE
30	Organisation and execution of the final academic conference in Brussels.	12	O	PU
31	Organisation and execution of the final dissemination meeting in Geneva.	12	O	PU
32	Organisation and execution of the policymaker briefing in Warsaw.	12	O	PU
33	Organisation and execution of the final policy conference in Paris.	12	O	PU
34	Drafting and publication of the Final Report.	12	R	PU

Description of Consortium Participants

1. Centre for Economic Policy Research

The CEPR team, and the project as a whole, was led by **Simon Evenett (PhD Yale University)**. Evenett is a leading expert on international competition policy matters. He has written extensively on these matters in academic outlets, in reports for international institutions, and in a substantial report for the World Trade Organization's Working Group on the Interaction Between Trade and Competition Policy in 2003. Dr. Evenett is Professor of International Trade and Economic Development, University of St Gallen, Switzerland and is a Research Fellow of CEPR. He has also published papers on the empirics of international trade flows, international trade policy, and economic development; and has considerable econometric expertise. He is the author or editor of eight books. He has taught at two U.S. universities, at Oxford University, and has twice been an official at the World Bank. Since 1993 he has held several fellowships from the Brookings Institution, Washington DC. He led the first work package of this project and worked with the other participants in developing their research plans and monitoring and evaluating their progress.

Damien Neven (D.Phil. Oxford University) is a Professor of International Economics at the Graduate Institute of International Studies, University of Geneva and is a Research Fellow in the International Organisation and International Trade Programmes at the Centre for Economic Policy Research. He is an authority on the economic effects of implementing EC competition law and is the co-author of *Trawling for Minnows: European Competition Policy and Agreements Between Firms* and *Merger in Daylight: The Economics and Politics of European Merger Control*. In recent years, Professor Neven has researched the challenges faced by Eastern European nations as they implement competition laws, often in preparation for accession to the European Union. Professor Neven is also an accomplished empirical researcher, combining both econometric technique with substantial legal and institutional knowledge.

The following two persons were employed on this work package as research assistants.

Julian L. Clarke (Master in International law and economics, University of Bern) was a Research Fellow at the World Trade Institute, Bern and will work as a contract research assistant on this project. He has conducted econometric analyses of the overcharges created by the international vitamins cartel and on the effects of national competition law enforcement on inflows of foreign direct investment. More recently, he has examined the likely economic, environmental, and social impacts of proposals for a multilateral framework on competition policy. Clarke has been trained in both the law and economics of the world trading system. He has also spoken at an UNCTAD-sponsored capacity building conference on national and international competition policy. Mr Clarke is studying for his PhD in economics from the University of Fribourg.

Krista Lucenti (Master in International law and economics, University of Bern) was a Research Fellow at the World Trade Institute, Bern and will work as a contract research assistant on this project. Her research focuses on empirical analyses of barriers to international trade, in particular the antidumping laws. She has completed

an analysis of the spread of antidumping laws around the world, the vulnerability of a nation's exports to antidumping actions by trading partners, and the extent to which antidumping investigations and tariffs deflect trade flows from one import source to another. She has long standing interests in the law and economics of the multilateral trading system, and has also recently completed a study on the changing nature of trade facilitation measures that includes an analysis of the proposals at the WTO for further multilateral reforms in this regard. Ms Lucenti is studying for her PhD in economics from the University of Bern.

Selected Publications and Writings of the above researchers:

Evenett, S.J. *Study On Issues Relating To A Possible Multilateral Framework on Competition Policy*. Report prepared for the Secretariat of the World Trade Organization. May 2003.

Evenett, S. and Lehmann, A. and Steil, B. (editors) *Antitrust Goes Global: What Future for Transatlantic Cooperation?* Brookings Institution Press: Washington D.C., 2000.

Evenett, S., and Keller, W. 'On Theories of the Gravity Equation,' **Journal of Political Economy**, April 2002.

Neven, D., and Mavroidis, P. 'The International Dimension of Antitrust Practice in Poland, Hungary, and the Czech Republic.' November 2000.

Clarke, J. L., and Evenett, S. J., **'**The Deterrent Effects of National Anti-Cartel Laws: Evidence from the International Vitamins Cartel'. **Antitrust Bulletin**.

1.1. Other researchers in the CEPR team.

Frank Emmert (Ph.D University of Maastricht) brought a legal perspective to work package two, as he has developed a particular interest in legislative drafting at the EU level, European Union law, international trade and public international law. This expertise proved useful to this project. In addition, Emmert provides an interesting outlet for dissemination as he is the founder and managing editor of the *European Journal of Law Reform*.

Philip Marsden (D.Phil. Oxford University) is Director of the Competition Group at the British Institute of International and Comparative Law, and a former official of the Canadian Competition authority. Marsden is an expert on the accords signed by competition agencies that promote cooperation between them, and negotiated two such accords when in public service. He worked as a contractor on this project. He has published a book on trade, competition, and the WTO (with a foreword by Sir Leon Brittan).

James Mathis (Ph.D. University of Amsterdam) is a leading expert on the legal implications of international accords on competition law. Mathis has worked closely with UNCTAD and with leading non-governmental organisations, such as Consumers International. Dr. James H. Mathis J.D, is the academic co-ordinator for the EU International Trade Law (LL.M) program at the Amsterdam Law School and managing editor of the journal *Legal Issues of Economic Integration* for the Department of International Law at the University of Amsterdam. He has taught on training courses for EC officials on trade and competition policy matters.

Adam Török (Ph.D Hungarian Academy of Science) has deep knowledge of the Hungarian system. During the last eight years, he served as Director of the Research Institute of Industrial Economics of the Hungarian Academy of Sciences. He is currently Professor of Economics at the University of Veszprém and the Budapest University of Technology and Economics, and Adjunct Professor of Economics of the Case Western Reserve University Weatherhead School of Business. Knowledge at this level of expertise is hard to find outside the country. IWH has provided the link to Török, as they have already cooperated in other projects on the same topic and learned to value his contributions.

The fourth objective of the third work package involves analysing three case studies of the structure and operation of co-operation and competition endorsement. Also, the third and fourth objectives of work package four envisage conducting case studies of the Australia-New Zealand CER agreement and the Mercosur free trade agreements. The nature of these case studies requires that specialist local knowledge, which often cannot be found within Europe. The following three experts were hired to completed these papers:

Dr. Andre Acevedo (Ph.D. University of Sussex) will be hired to undertake the US/Brazil study. His thesis work has made him an authority on the co-operation arrangements and their absence in Mercosur.

Ms Vani Chetty (LLM Georgetown University) is a practising competition lawyer who has also undertaken research and worked with Holmes on the UK Department for International Development funded "7-UP" project of CUTS India. Ms Chetty's involvement was recommended by Prof Frederic Jenny, former chair of the WTO Working Group on the Interaction of Trade and Competition Policy, which Ms Chetty has also attended as a South African delegate. She also has very close contacts with the South African competition authorities.

David Round (B. Economics, University of Adelaide) is Professor of Economics and Director of the Centre for Regulation and Market Analysis at the School of International Business, University of South Australia. In addition to producing a substantial amount of research on industrial organisation, competition law and policy, and regulation, Professor Round has served on the Australian Trade Practices Commission, the Australian Competition and Consumer Commission, and the Australian Communications Commission.

1.2. Steering Committee External Experts

Robert Anderson is a Counselor at the World Trade Organization (WTO). He is the official in charge of the competition law and policy matters at the WTO and is also the Secretary to the WTO's Working Group on the Interaction Between Trade and Competition Policy. Mr. Anderson has written extensively on the relationship between competition law, economic development, and intellectual property rights protection. Formerly, Mr. Anderson was an Acting Director at the Canadian Competition Bureau.

Paul Geroski was Professor of Economics at the London Business School since 1991, and was Dean of the MBA programme from 1995-98 and a Governor from 1999-2001. Before his death he was Chairman of the British Competition Commission. He previously held a number of academic appointments. His recent research interests have focused on innovation, technological change and determinants

of corporate performance. He was President of the European Association for Research in Industrial Economics from 1995 to 1997, President of the Industrial Organisation Society in 1997 and was a Member of the Council of the Royal Economic Society.

Frédéric Jenny is a judge on the Cours de Cassation, the Supreme Court of France. He is also the chair of the OECD's Competition Committee and a Professor of Economics at the Paris-based business school, ESSEC. Professor Jenny obtained his Ph.D. in economics from Harvard University and during his career he has written over 70 articles on the industrial organisation and competition policy.

2. University of Sussex (UoS)

Peter Holmes (PhD University of Cambridge) has numerous publications on the interaction of trade and competition policy in the EU context, which has involved collaboration with Commission officials from a number of DGs. He has worked on CEEC-related issues and, with Saul Estrin, edited a book on this subject to which leading competition officials from the CEEC economies contributed. He has subsequently worked extensively on the development dimension of competition policy and has collaborated with colleagues at the WTO and the World Bank; in fact, the paper he co-authored with Bernard Hoekman in 2000 has been widely cited. Holmes has since been an adviser to DfID and the Canadian Independent Development Research Centre (IDRC). He has been a speaker at WTO workshops for African government officials on trade and competition in Cape Town (2000) and in Mauritius (2002). He has worked extensively with consumer organisations (Consumer Association and Consumers International in the UK and Consumer Unity Trust Society, India). He has been a UK delegate to the WTO Working Group on the Interaction Between Trade and Competition Policy. Holmes worked primarily on the third work package.

Henrike Mueller (D.Phil. University of Sussex) is both an academic expert on regulation and a former competition enforcement official. From January 2002 to January 2004, she was a Case Handler in the Directorate General for Competition, European Commission. Prior to that she researched at the Bremer Institut fur Arbeitsschutz und Gesundheitsforderung (BIAG), Germany. Dr. Mueller has written about the Single Market reforms in the EU as well as the rules on State Aids.

Selected Publications:

Anderson, R. and Holmes P, 'Competition Policy And The Future Of The Multilateral Trading System' **Journal of International Economic Law**. volume 5, number 2 2002.

3. Institute for Economic Research (IWH)

Johannes Stephan (PhD Freie Universität Berlin) is an expert in the relationships between economic development and trade liberalisation and integration more generally, and on the effects of EU enlargement on accession candidates in particular. He has participated in various research projects on these topics (amongst which a Volkswagen-Stiftung funded research project 'Conditions of Economic Development in Eastern Europe' and consultancy reports to the German government) and has contributed to academic discussions in various refereed publications. Since 2001, he has been coordinating a three year 5th Framework Programme on the 'Determinants of

the Productivity Gap in Central East Europe', supported by the EU Commission. Amongst the research commissioned, there is a work package on EU competition policy and industrial policy which is being covered in collaboration with Peter Holmes. He contributed to this project's research on the adoption of competition laws and worked closely with Török and Emmert from the CEPR team and also Zolnowski from the CASE team. He was responsible for the second work package of this project.

Franz Kronthaler (M.A. Universität Freiburg) focuses his research on EU structural and regional policy, and growth in underdeveloped regions in general. He studied at the Universities of Munich and Freiburg between 1992 and 1999 and worked in a consultancy during 2000. Kronthaler has been at IWH since 2001 where his main tasks include empirical research and policy-oriented research. He participated in several research projects funded by governments and governmental institutions on topics like "Effects of EU enlargement on Objective 1 structural fund policy in East Germany" and "Competitiveness of regions and consequences for regional policy in Germany." He worked as a contract research fellow in this project.

Selected Publications:

Stephan, J, *'Merger Control and Competition Policy in Central East Europe in view of EU Accession'*, forthcoming in **ICFAI Journal of International Business Law**, 2003 (with J. Hölscher).

Kronthaler, F, and Rosenfeld, M. *'Consequences of EU enlargement for regional promotion measures in East Germany'*, **Economy in Change** 9/2002, pp. 266-273.

4. Centre for Social and Economic Research (CASE)

Andrzej Cylwik (PhD Warsaw School of Economics) was one of the founders of the CASE Foundation. He graduated in 1968 at the Department of Foreign Trade of the Warsaw School of Economics (SGH) which at that time was called the Main School of Planning and Statistics (SGPiS). He also received his PhD there in 1983. He has supervised projects focusing on the liberalisation of the Polish economy - a process associated with Poland's accession to the EU and the WTO. He also specialises in sector analyses of branches of industry. Between 1990-96 he was the deputy Chairman of the Polish Anti-Monopoly Office where he was responsible for restructuring and de-monopolisation of the Polish economy and for supervising the processes of mergers and take-overs on the Polish market. He has extensive experience as an advisor to numerous executive boards and a member of supervisory boards. He is an author and co-author of over ten educational books and many articles. Since 1999 he has been the President of the CASE-Doradcy consulting company, which was established by CASE Foundation.

Małgorzata Jakubiak (MA, University of Sussex and MA, University of Warsaw) has collaborated with CASE from 1997. Her main areas of interest include international economics and macroeconomic policies. During 2000-2001 she was working at the CASE mission in Ukraine as resident consultant, developing a macro-model of the Ukraine's economy. She has published articles on trade flows, exchange rates, savings and investments in Poland and other Central and Eastern European countries, and on diffusion of innovation. She has accumulated significant experience on economic policies the Commonwealth of Independent States and in the Central and Eastern European economies.

Kamila Kloc-Evison is an expert at the Market Analysis Department at the Office for Competition and Consumer Protection. She has worked with the CASE Foundation since 1995, where she was author and co-author of papers on the development of the private sector in Poland. Presently studying for her **PhD** at **Warsaw School of Economics**, where she is examining the role of competition policy in regulatory reforms in the public utilities sector. She received a grant from the Open Society Institute –for the academic year 1998/99 and was a Fulbright scholar during 1999/2000). She spent the 1998/99 academic year at St. Hilda's College, Oxford University as a Visiting Graduate Student, and 1999/2000 at the University of California, Berkeley as a Research Associate.

Krzysztof Kowalczyk graduated from **Warsaw University** (Faculty of Law) and from **Kings College, University of London** (where he obtained a Postgraduate Diploma in EC Competition Law). He is currently working as a legal practitioner at the biggest Polish law firm, Domanski, Zakrzewski, Palinka (which is associated with Ernst &Young.) Kowalczyk is a specialist on competition law in Poland, Central Europe more generally, and in the EU. As well as giving legal advice, he is also the author of several economic publications. The most recent, prepared for the Polish Competition Office in January 2003, was titled "State aid for independent public medical centres". He collaborates often with CASE-Advisors in economic and legal analyses.

Katarzyna Elżbieta Pietka (MA Economics, Warsaw University) is an Economist with the CASE Foundation. She is currently a member of an editorial committee of one of Poland's leading economic quarterlies (Polish Economic Outlook). She covers current developments and outlook for the Polish economy with regard to the real economy, labour market, fiscal and monetary policy, inflation, balance of payments and macroeconomic co-ordination. She has previously researched on the social protection aspects of transition in the economies of Eastern Europe.

Wojciech Szymczak (PhD Torun University) is a specialist and practitioner on competition policy in Poland. Currently he holds the position of the Director of Market Analysis Department at the Polish Competition authority. His Ph.D. dissertation in economics focused on the small and medium-sized enterprises sector and has publications in this field and on contemporary European matters more generally. He has been Poland's delegate to the OECD Competition Committee.

Adam Zolnowski is a specialist and practitioner on competition policy in Poland. Previously he was Acting Director-General and before that Director of Market Analysis Department at the Polish Competition authority. He is also specialist on Foreign Direct Investment and was previously a Director at the Polish Agency for Foreign Investment. Zolnowski has publications on competition policy in Poland as well as on FDI-related issues. Presently studying for his **PhD** at **Warsaw School of Economics**, where he is focused on the problems related to high degrees of firm concentration in economies. He has been Poland's delegate to the WTO's Working Group on the Interaction Between Trade and Competition Policy. He published extensively in these fields. His primary interest in this project relates to the development of competition policy in Poland during the transition period and the role of Polish antimonopoly office.

Selected Publications:

Adamkowski J., Balas-Noszczyk B., Cylwik A., ‘Funkcje państwa w udzielaniu pomocy publicznej’ [State functions in granting the state aid], CASE, February 1998- PHARE project

Cylwik A. (ed.) ‘Szanse i zagrożenia przemysłu polskiego wskutek stowarzyszenia polski z UE ‘[Threats and Opportunities for Polish industry in the context of Poland’s integration to the EU”]’ CASE, April 1998- PHARE project.

Błaszczyk M., Cylwik A., Kowalczyk K., ‘State Aid” for Independent Public Medical Centers’, CASE- Advisors Ltd. March 2003- PHARE project