UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
LIMITED

TD/B/COM.2/L.5
3 October 1997

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
Second session
Geneva, 29 September 1997
Agenda item 3

RECENT DEVELOPMENTS IN FOREIGN DIRECT INVESTMENT TRENDS AND POLICIES

(Agenda item 3)

Summary of the Chairperson of the informal discussions on "Liberalization and competition policy"

1. Discussion on agenda item 3 began with an informal discussion on FDI liberalization and competition policy, which started off with a debate by a group of invited experts on the proposition "The more foreign direct investment policy is liberalized, the more important competition policy becomes".

2. Several arguments were put forward in favour of the proposition, supporting the view that FDI liberalization and competition policy were complementary or closely linked to each other and that competition policy was essential for reaping the benefits of liberalization for growth and welfare. The most important arguments included the following: first, the immediate objective of liberalization, namely encouraging FDI, could itself be thwarted by private cartels in which firms in different countries agreed to keep out of each other's markets. Similarly, firms in a given country could keep FDI out by acquiring essential inputs and making it impossible for new competitors to enter production. Another kind of restrictive business practice hindering FDI involved

GE.97-51675

joint ventures, which, while being unobjectionable in themselves, could involve ancillary restraints such as exclusive technology-sharing arrangements that prevented the entry of other firms into the industry or market. Competition law and its application could prevent such agreements and arrangements among private firms.

3. Furthermore, more than half of FDI entered countries (especially developed countries) through mergers and acquisitions, which could lead to concentrated markets and create scope for anti-competitive practices by firms. Competition law that reviewed and controlled mergers when considered necessary could reduce this possibility and could, moreover, deal with situations where privatization, deregulation or the provision of incentives and market protection to foreign investors had the potential to create market power and stifle competition. Moreover, it was emphasized that, as countries liberalized their FDI policies and moved towards regional or other integration arrangements, the adoption of comparable competition policies was being seen, increasingly, as a way of creating a level playing field and as a condition for participating in these arrangements.

4. It was also argued that the rapid increase in FDI in recent years, reflecting the success of liberalization policies, was closely related to the pursuit of competition and the adoption of competition policy. In fact, competition policy could be considered an integral part of liberalization, which could not occur to any substantial extent and would not be effective unless there was constant competition advocacy and concern with competition.

5. With respect to the resources required for establishing the institutional infrastructure and designing and implementing a set of rules and regulations, it was emphasized that the costs involved should not be overestimated. The costs of implementing competition policy could be geared to the size of a market and the adaptation of policy to the needs of that market, and it was possible to exercise economy in various ways. In small economies, for example, costs could sometimes be lowered by relying on regional competition policy rather than on separate national policy. Costs of implementation of national competition policy could be minimized by recognizing that, in small markets, concentration might not be as important as ensuring the contestability of markets. Costs of implementation could also be lowered by setting thresholds for merger review and relying on private resources for studies of particular industries (e.g. by relying on trade associations). Competition advocacy could be entrusted not just to competition agencies but to other institutions and groups in society, especially universities, technical institutions and international organizations, thereby reducing costs related to this important activity. All this suggested

that competition policy need not be overly costly, and that the benefits of a competition policy would be well worth the cost.

6. Several arguments were also made against the proposition, supporting the view that, whether competition policy in itself was important or not, liberalization (or increasing liberalization) of FDI policy need not be linked to a greater need for competition policy. It was argued that, from a common-sense point of view, linking competition policy to liberalization by emphasizing the importance of monitoring and restraining foreign investors, e.g. when they entered through mergers or acquisitions, was not sound, since the whole purpose of liberalization was to encourage investment and not to protect incumbent firms. The important thing was to encourage production rather than to ensure competition. The fact that FDI had taken place in increasing amounts in countries with no competition policy and laws suggested, moreover, that competition policy was not an important factor for investors.

7. From an economic point of view, it was argued that directing resources to the building-up of the infrastructure and skills-base for designing and implementing competition policy was not a sound proposition for developing countries. Establishing and applying an effective competition regime comparable to those that existed in developed countries such as the United States or the European Union required substantial resources, financial and human. For developing countries, it was more important at the present stage to establish - through FDI liberalization, reduction of tariff and non-tariff barriers to trade, and domestic deregulation - market structures that worked.

8. It was argued, moreover, that, since for many developing countries, recent steps in liberalization, privatization and deregulation represented a dramatic increase in the openness of industries and markets to the entry of new suppliers, they would go a long way towards increasing competition in markets. Competition law and competition authority could be introduced in due course.

9. While the format of the debate was designed to bring different positions into relief and marshall all the arguments related to the interface between FDI liberalization and competition policy, the open discussion that followed the debate led to a convergence of views on the relationship between investment policies and competition policy within the broader framework of liberalization, privatization and deregulation currently under way in many countries. Speakers drew upon their experiences in developing countries and economies in transition, as well as developed countries. There was general agreement about the importance of competition for development and growth. There was also agreement regarding the role that trade liberalization and open investment policies could play in creating contestable markets conducive to competition. With respect to

privatization, which was an important source of FDI for some countries, some participants drew attention to the conflict between fiscal and efficiency objectives that arose when Governments wished to maximize revenues from the sale of former state monopolies in one piece.

10. There was agreement that, within the broader framework of liberalization and other policy changes under way, competition policy was necessary and useful. Views also converged that good competition laws and enforcement agencies gave a positive signal to foreign investors. Competition authorities could also enhance the entry of foreign investment by advocating the dismantling of government-sanctioned domestic cartels and by advocating trade liberalization. For this to occur, competition agencies needed to protect competition rather than competitors and should be given considerable autonomy.

11. At the end of the day, the only difference in opinion that remained related to the precise timing of or the urgency to be attached to the adoption of competition law and the establishment of the necessary institutions for its implementation. Some participants felt that tackling broader issues related to market structure through liberalization, privatization and deregulation should be given priority. They held that if the institutional background and skills were weak, a toothless competition agency might result; and, if the broader issues related to market structures were not adequately tackled, it would be inefficiently applied. Others, however, asserted that the costs and complexities of competition policy and its enforcement were overstated. They pointed to the historical adaptability of competition policies, and argued that competition advocacy would be difficult to conceive in the absence of an autonomous competition agency. They also argued that the fruits of trade and investment liberalization would not be achieved fully if adequate competition policies were not put in place in advance and that the establishment of such policies could send the right signal to foreign investors by indicating the commitment of Governments to follow a transparent and market-oriented path.

12. The debate and discussion also raised questions about competition policy in the context of the regionalization and globalization of markets. Some participants drew attention to the increased concentration of global markets for some products at the same time as national markets were attracting more players. It was suggested that the definition of relevant markets should take into account the emergence of regional markets such as those in Europe and Latin America. In this context, countries might need to understand better the modalities of international cooperation between national competition agencies. This could help avoid conflicting decisions between different competition authorities, and allow, where appropriate, a degree of joint enforcement of rules.