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OECD PROGRAMMES FOR GLOBAL COMPETITION ISSUES

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I want to begin by congratulating all of the organisers of this important event and to offer UNCTAD special thanks for inviting me. I am in charge of the OECD's outreach program -- its activities with non-members -- in the field of competition law and policy. At present, our official regional and country programs are with Russia and other transition economies in Europe and Central Asia, China and the emerging economies in Southeast Asia, and Brazil and other Latin American countries. In addition, we are have been working more closely with South Africa and developing contacts with other African countries, as well as with India and Pakistan in South Asia. One of the reasons and I am so glad to be here today is that this is our first real venture into this important part of the world. I hope you will find my comments useful. I know that the country presentations at this conference will be very useful to me.

I am going to begin by briefly discussing the reasons for the increasing global interest in competition law and policy -- what underlies this trend and what specific benefits competition law and policy can provide. I will then say a few words about the OECD's competition policy outreach program, after which I will describe the program of work of the OECD's Committee on Competition Law and Policy. (Another speaker at this conference, Frederic Jenny, is chairman of that committee but will mainly be talking about the subject matter of another committee he chairs -- the WTO Working Group on Trade and Competition.) The Committee's work focuses on assisting OECD members in dealing with the competition law and policy issues they encounter, but with increasing globalisation, work on the issues members care about can benefit from increasing interaction between members and non-members. I am pleased to say that this October the OECD is expanding its outreach program to include a Global Forum that will provide an opportunity for candid, informal discussions between high level competition officials from members and non-members. Finally, I will offer a few personal thoughts on the implications of my OECD experience on the possible negotiation of global competition rules.

In the course of discussing the CLP Committee activities, one of the topics I will mention is the implementation of the OECD's 1998 Recommendation on Effective Action against Hard Core Cartels. In that regard, let me tell you a brief story. I was the Secretariat member responsible for this Recommendation. One day, shortly after a series of UNCTAD and WTO meetings in Geneva, a colleague of mine told me that I had created some real concern at those meetings. This got me worried, of course. She then explained that while in Geneva she had been approached by a representative of an Arab country who was concerned that the Recommendation was some sort of action the OECD was taking against OPEC. She was at first surprised by the question, but she quickly saw that it was an entirely logical one for someone who is not familiar with competition law. She reassured him that his concern was unwarranted because the Recommendation addresses countries' application of their competition laws, and those laws do not apply to the actions of foreign governments. The same principles apply to my remarks today.

I. Reasons for Increased Interest in Competition Law and Policy

The last ten or twelve years have witnessed an explosion of interest in competition law and policy. The most obvious factor in this process was the shift in Central and

Eastern Europe and the CIS countries from central planning to greater reliance on competitive markets as the basic determinant of what and how most goods and services are produced and sold. By definition, markets cannot be competitive in the face of unwarranted restrictions on how enterprises may go about responding to consumer demand. Thus, this dramatic very quickly led to the enactment of competition laws and the adoption of competition policies.

The rapid globalisation of the world's economy has also contributed to this process. Trade liberalisation, increased opportunities for foreign direct investment, and technological improvements led to what competition policy refers to as reduced barriers to entry. When the barriers went down, entry and competition increased, and this led to competition-oriented economic reforms in many countries that had never focused on competition law or policy -- many of them developing countries. Some took such actions for defensive reasons, but many countries that have implemented such reforms or are considering them are finding that competition law and policy can be positive tools for economic growth and efficiency. They have realised that competition law and policy are not anti-business tools, but rather important protections both for consumers and for that vast majority of business firms that want to be free from discriminatory or otherwise unreasonable restrictions by governments or other firms. There may have been times in the past when private firms preferred to invest in countries where monopolistic conduct was permissible, but these days mainstream competition laws and policies are an inducement to foreign and domestic investment.

There is one other factor contributing to the current trend -- one that is much less dramatic than the first two but has been at work for over twenty years. I am referring to the increasing recognition by OECD countries of the value of competition law enforcement and of applying competition policy principles to government rules that restrict how firms can respond to consumer demand. Because of its gradual nature, OECD countries' increasing reliance on competition law and policy has not been getting many headlines, but it has been very important in its own right and as a contribution towards the global trend. And the CLP Committee has been the single most important source of this policy development.

II. Using Competition Law and Policy to Benefit Society – Efficiency, Growth, Equity

It is important to understand not only the general factors behind the increased interest in competition law and policy, but also the specific benefits that can be obtained. In general, the goal of competition policy is to benefit society as a whole by ensuring that countries' economies work well in permitting buyers to decide and communicate what products and services they want, and in permitting sellers to respond to this consumer demand as completely and inexpensively as possible. There are two main forces that work against this goal – monopoly power and inefficient government regulation. Competition law and policy seeks to offset these forces.

To understand how competition law and policy can benefit society – and in particular to understand its efficiency, growth, and equity benefits – it is important to understand that monopolists and hard core cartels generally obtain their monopoly profits by restricting output, meaning that they produce less than consumers want. They

deliberately create an artificial shortage, as a result of which some buyers may not able to obtain the product at all, and any buyers who succeed in getting it must pay an inflated price. It is easy to see that such output restrictions reduce productivity, create inefficiency, and hinder growth.

Moreover, monopoly interests generally take steps to perpetuate their economic power, which reduces the overall degree of competition in a market. Countries with non-competitive economies have relatively little economic opportunity for newcomers with good ideas and abilities. When entry barriers are lowered, opportunity increases and formerly protected businesses are forced to operate more efficiently. Well-conceived privatisation programs get assets into the hands of more people with the incentive and ability to expand companies through innovation and efficiency; and far more of a country's citizens have a better chance to contribute to, and benefit from, the resulting economic growth.

It is not just private anticompetitive behaviour that is the source of inefficiencies. Poorly designed or outmoded government regulation can contribute to the creation of private monopoly and can have effects similar to those of private monopoly, including the diminution of economic opportunity. Government ownership and operation of business entities also can have these effects.

To prevent such economic and social harm, competition law and policy each have roles to play. Competition law normally prohibits a firm from obtaining monopoly power by merger or by any means other than skill, foresight, and industry; it also prohibits the abuse of dominance and cartel arrangements in which two or more firms agree to act jointly as a monopolist. Competition policy is a broader concept that includes aspects of regulatory reform, demonopolisation, and privatisation, and seeks to halt the harm to society that is caused by a broader range of anticompetitive actions and policies, including corrupt grants of monopoly power and unduly restrictive government regulation.

I have mentioned competition policy's contribution to the efficiency and equity of an economy, but I also want to note that macroeconomic benefits also can result. The OECD regulatory review program has produced interesting and important indications that regulatory reform, backed by a strong competition law and policy, can improve economies' capacity to adjust to internal and external shocks. That is an increasingly important consideration in a world characterised by highly mobile capital flows.

The Asian Financial Crisis and Competition Policy

The recent financial crisis in Asia helped countries there and elsewhere to understand the importance of competition policy. The affected countries generally had experienced extraordinary growth in recent decades and followed sound macroeconomic policies. However, competition in many of the crisis economies was hindered by non-transparent, discriminatory policies, such as secret government-directed loans and sometimes corruption. In addition, many of these countries had an unusually large number of state-owned monopolies and private firms with monopoly licenses. Foreign takeovers often were subject to restrictions, and some countries also provided import protection and other forms of official or unofficial support for private cartels.

Whereas in competitive markets, high prices and profits generally signal good business and investment opportunities, in some Asian countries and industries these indicators to some extent reflected instead the monopoly rents that had resulted from these opaque and anticompetitive arrangements. In this way, anticompetitive product markets helped create unrealistic levels of demand for investment; and neither financial regulations nor corporate governance rules required the kind of transparency and accountability that would have warned investors and ultimately protected Asian and other emerging countries from the eventual loss of investor confidence.

The Need for Competition Law and Policy

It is now widely accepted that it is important to base economic reform on sound competition principles and some form of competition law. This is not merely an important element of regulatory reform, but a matter of economic self-defense. Fred Jenny has pointed to economic evidence that international cartels operate in ways that are particularly harmful to countries whose industrial sectors are less developed. Moreover, without a competition law, no country has a chance of preventing harm that might occur from an anticompetitive merger among multinational enterprises. For example, because of competition law considerations, Coca-Cola's acquisition of Cadbury-Schweppes did not include the latter's U.S. assets; and the proposed acquisition was been cancelled or modified in a variety of countries whose authorities objected that it was anticompetitive. Countries lacking competition laws and effective enforcement institutions are largely powerless to protect themselves in such circumstances.

Moreover, as I mentioned earlier, a properly enforced competition law is not an anti-business tool. Businesses are the most direct victims of most forms of anticompetitive conduct, and countries are finding that having a competition law in place can be beneficial to stimulating investment.

Finally, even more than competition law, competition policy is unambiguously beneficial not only to a country's consumers, but also to the business environment. These benefits do not come without some transition costs, but the savings that businesses and economies are realising through a competition policy approach to regulatory reform are enormous.

Competition Policy and the Social Safety Net

What about the human element in competition policy? The adoption of competition law and policy does not mean leaving all members of society to rise or fall based only on their ability to compete. Indeed, OECD countries are learning how they can use market forces and targeted policies to improve their ability to provide a "safety net" for the poor and disadvantaged. For example, perhaps the main reason why states traditionally maintained inefficient publicly-owned or regulated public utility monopolies is that such enterprises were believed to be indispensable to guaranteeing everyone access to essential services even when they cannot afford to pay the cost of providing the services. In fact, however, competition policy analysis has shown that there are ways in which countries can ensure universal service without the inefficiency that results from state ownership or from monolithic public utilities.

Thus, introducing competition can make it less expensive to provide for universal service.

III. The OECD Competition Policy Outreach Program

The OECD's competition policy outreach program has been active since 1989. It began in Central Europe and as I mentioned at the outset, it is undergoing its own globalisation process. The program is designed to use the expertise OECD members have developed – from their successes and their failures – to assist non-members in the design and implementation of a competition law and a competition policy. We do not provide funding, but rather access to our members' experience. In general, the comparative advantage of the OECD in this area is our members' willingness to donate the time of experienced, current competition enforcement officials to participate in OECD events. This means that our expert panels have unmatched expertise and credibility with respect to the actual issues that face competition authorities – how to build respect for the institution, ensure consistency in decision-making, fend off attempted political interference, etc. – as well as familiarity with the underlying legal and economic principles.

Our events are designed to take advantage of this unique (and very busy) asset, and we therefore do not provide full scale technical assistance courses on law and economics, but focus on shorter events that build capacity through dialogue between OECD competition enforcement officials and the competition-related officials in other countries. Some of our work involves providing comments on draft competition laws and other competition-related legislation, but more of it involves organising 2-day to 5-day seminars or workshops. Sometimes we hold these events on our own, and at other times we engage in joint ventures with the competition authorities of members or non-members, or with international organisations including UNCTAD, the World Bank, and the WTO. We are inviting all three of these organisations to our new Global Forum on Competition, but I will hold off on describing that event until I have talked about the activities of the CLP Committee.

IV. The Activities of the OECD's CLP Committee

Although the competition outreach program has been the OECD's main relationship with non-members, the OECD program that deals most directly with global competition issues is the program of work of the CLP Committee. To understand that program of work, some history is useful.

As some off you may know, after World War II the United States launched what must be one of the most successful assistance programs of all time in order to help rebuild Europe. The program was the Marshall Plan, and the genius of the program was that the US would provide funding only if all of the eligible recipients sat down with each other to decide how the funding should be spent. Thus, England and France found themselves needing to reach a consensus with Germany and Italy before any of them could receive assistance. Procedures were adapted to help prevent the discussions from turning into mere negotiations in which each party "kept its cards close to its chest" and held out for the biggest possible amount of funding. Consensus and co-operation were needed, or else no one got anything.

These co-operative processes were very successful, and in 1960 when the Marshall Plan ended it was decided to expand and rename the organisation that had developed them. The result was the OECD, which continues because of its origins and its Paris headquarters to be seen as a mostly European organisation, but is in fact a global one. The OECD now has 30 Member countries, the most recent of which are Korea and Slovakia.

The OECD no longer co-ordinates financial assistance – either to its members or to anyone else. What has survived is the OECD's operation as a forum for informal, off-the-record discussion of a wide range of issues -- some say "everything but defense policy." The work is organised around dozens of substantive committees, which are chaired by and consist of high level officials from the relevant ministries or agencies in members' capitals. The committee meetings thus include experts form different countries, who share their experiences and seek advice on how their colleagues have handled issues they are facing. In addition to providing advice, this process provides feedback on members' activities. In the CLP Committee, for example, each member submits an annual report, and under a very informal system of "peer review," representatives of other countries are able to ask for an explanation of why an agency handled such and such a case in the way it did. Sometimes, OECD Committees identify "best practices" for dealing with a particular problem, but these are very informal and voluntary. In a few cases, the OECD Council issues more formal "Recommendations," but again these are entirely nonbinding.

The CLP Committee's program of work includes activities relating to competition law enforcement and to regulatory reform, which I will address separately.

A. Competition Law Enforcement

The activities of the OECD's Competition Law and Policy Committee have had substantial positive benefits over the last forty years. In 1960, not more than ten countries had anything approaching what would today be considered a real program of competition law enforcement. Moreover, even among those countries there was not only a lack of consensus, but periodic open conflict. Today, the situation could not be more different. There are over 80 countries with competition laws, and the degree of analytical convergence among most of them is probably greater than that which existed in 1960 within Europe, or among English speaking OECD countries.

Within Europe, of course, the Treaty of Rome and actions of the European Commission deserve most of the credit for promoting this convergence. On a global basis, however, I think that most would agree that the CLP Committee has been the primary force. I am sometimes asked how the OECD could accomplish this without any binding rules, and my own personal answer is that the absence of binding rules actually helped bring about these reforms. When countries make binding commitments, they need to protect their interests in the text of the agreement. But in international relations as in business affairs, it is difficult to find text that fully protects one's interests, and for that reason parties often are willing to make more far-reaching agreements in a nonbinding document. For example, I was part of the US delegation that negotiated the current Canada/US bilateral co-operation agreement. At that point and currently, Canada and the US were co-operating very well, but twenty

years earlier there had been conflicts. In these circumstances, I think it is clear that we could not have reached as far-reaching an agreement if the agreement -- like the OECD Recommendation on which it is based -- did not provide that the parties maintain the right not to assist in ways they deem inconsistent with their important interests.

Benefits of OECD/CLP Activity – Improved Co-operation

In terms of competition law enforcement, probably the CLP's most important work has been a series of Recommendations on co-operation, the first of which was issued in 1967 and the most recent in 1995. This Recommendation encourages two kinds of co-operation – case-specific law enforcement co-operation, and a more general mutual respect and willingness to take a co-operative approach where possible. Law enforcement co-operation includes both investigative assistance and positive comity, while the more general kind of co-operation includes both negative comity and engaging in consultations. In the early years, the emphasis was on this latter category – on co-operating to avoid and reconcile conflict – whereas in recent years the emphasis has increasingly been on case-specific law enforcement co-operation.

One benefit of this Recommendation – for both members and non-members – has been its availability as a model for bilateral co-operation agreements. Agreements based on the Recommendation exist not only among member countries, but also between members and non-members, and among non-members. In a broad sense, I think it is fair to say that all co-operation agreements relating to competition law enforcement are based on the Recommendation. It is noteworthy that all of these bilateral agreements are essentially voluntary. There are some co-operation agreements that are binding in a technical legal sense, but even these agreements are essentially voluntary because they provide that a requested country may deny any request it deems contrary to its interests.

The Recommendation is not merely a model for bilateral and other co-operation agreements among countries, however; it is the instrument that provides the basis for all the co-operation that takes place between most OECD members. Though officials in non-member countries often think otherwise, most OECD countries have no bilateral co-operation agreements, and few have more than one or two. Thus, co-operation among most OECD members is based solely on the Recommendation. This point merits emphasis because in discussions of possible WTO rules it is sometimes said that OECD members' co-operation is merely an example of "bilateralism," and the only other model for broader co-operation would be a WTO agreement. In fact, however, the OECD Recommendation is an operational agreement on international co-operation among OECD member countries and the EC.

How does international co-operation work under the Recommendation and the bilateral agreements that are based on it? In general, countries notify each other when their investigations may affect each other's important interests, and they ask for and provide assistance subject to their applicable laws and important interests, including resource limits. Resource constraints are a real issue, because competition authorities are wary of devoting too much time to matters that may not benefit their domestic

constituencies. Legal restrictions are an even bigger issue -- one that is discussed further below.

Benefits of OECD/CLP Activity – A Campaign Against Illegal Cartels

The most recent example of the benefits of OECD work in the competition area is the impact of the 1998 Recommendation on Effective Action against Hard Core Cartels. Subject to limitations we need not discuss now, the Recommendation defines "hard core" cartels as illegal anticompetitive agreements by competitors to fix prices, restrict output, submit collusive tenders, or divide or share markets. The preamble explains that effective action against such cartels is particularly important and particularly dependent upon international co-operation. The importance stems from the cartels' distortion of world trade and creation of market power, waste, and inefficiency throughout the world. The need for co-operation is because such cartels generally operate in secret, and relevant evidence may be located in many different countries.

The text of the Recommendation is very straight-forward. It urges OECD countries to improve the effectiveness of their programs against hard core cartels, calling particular attention to the adequacy of their investigation tools, their sanctions, and their ability to engage in international co-operation. It also invites implementation by non-member countries.

A CLP Committee Report issued in 2000 found that the Recommendation has been very successful in bringing about reform, even tough that success indicated a need for more vigorous action in the future. Both the success and the need for further work are indicated by the many recent cases and the staggering amount of monopoly overcharges in some of them. For example,

- A global citric acid cartel raised prices by as much as 30% and collected overcharges estimated at almost $1.5 billion.
- Another illegal cartel lasted five years, raised the price of graphite electrodes 50% in various markets, and extracted monopoly profits on an estimated $7 billion in world-wide sales.

The distorted reality in which such cartels operate was vividly expressed by ringleaders of yet another recent illegal global cartel, who at a (supposedly) secret meeting laughed among themselves at the "famous saying" that "Our competitors are our friends; our customers are the enemy."

The Recommendation served as a catalyst for impressive legislative reform and enforcement actions. New and stronger competition laws were enacted (Denmark, Netherlands, UK), as well as updated substantive rules (Korea), new investigation tools (which in Canada include wiretapping and protections for whistle-blowers), and more stringent sanctions (which in Germany include criminal penalties). Nine OECD countries now have criminal penalties for such cartels, and the competition authorities in Sweden and the UK have recently endorsed this approach. Moreover, old statutory exemptions were repealed (most notably in Japan and Korea). In New Zealand, a

study of optimal sanctions for cartels led to willingness by courts to impose larger fines and a legislative proposal for increased maximums.

In actual cases, to the extent such work can be disclosed, there were many "firsts." The French authority made its first criminal referrals (and got its first convictions) for cartel activity. The UK brought its first international cartel case. The US obtained criminal convictions and record fines in several global cartel cases, and record fines were also imposed elsewhere, including Canada and Norway. Ireland declared cartels "public enemy no. 1," and until recently all of its civil and criminal cases involved price fixing. Spain condemned various "domestic" cartels, some of which illustrate how domestic cartel activity can have international effects.

OECD members had less success in achieving the more effective co-operation the Recommendation recognises as vital in attacking cartels. Thus, in most countries, the biggest remaining problem in dealing with international cartels is the continued existence of laws that ban competition officials from sharing confidential information with foreign authorities. Obviously, confidential business information should be protected, but the OECD has always maintained that such information can be protected and shared. Such information-sharing occurs in other areas of law – such as securities regulation – and it even occurs in competition cases in some circumstances. We are continuing to work on this problem at the OECD, partly by collecting information to illustrate the harm caused by the lack of information-sharing and partly by talking to the portion of the business community that is opposed to reform in this area. We are making progress, I think, but it is slow.

In the meanwhile, fortunately, the synergistic relationship between the OECD's work and that of its Members continues, with the Nordic countries and the Netherlands now taking the lead. These countries have in fact enacted the necessary legislation and have already used it to share information in a number of cases. I think this development has permanently changed the nature of the debate in a very positive way. Until recently, opponents of information-sharing have tried to dismiss it as an Anglo-Saxon concept that may work in former British colonies, but would never work in Europe. The Nordic countries and the Netherlands have demolished that argument, leaving us one important step closer to the kind of information-sharing that is necessary to effectively combat cartels.

The OECD Secretariat is seeking ways to complement this program by further – and new kinds – of outreach to non-member countries:

- The OECD will actively encourage non-member countries to associate themselves with the anti-cartel Recommendation.

- There are indications that international cartels are often particularly harmful to non-member countries; effective actions against such cartels would promote their economic growth.

- Assistance to developing countries is important in order to maximise the effectiveness of other countries' anti-cartel activities.

- To the extent possible, the OECD program will obtain information and other input from non-members.

- The OECD will, with others, continue to provide traditional, capacity-building outreach, in which the OECD shares its findings and to assist developing and transition countries to find appropriate ways of adapting those findings to their particular situations.

- OECD reports will also be relevant, available, and useful to all non-member countries.

- Through its Global Forum, the OECD will seek to go beyond capacity building to seek the kind of common understanding and trust that OECD meetings have been able to produce among its members and that is necessary to creating a mutually beneficial broader consensus on effective action against cartels.

B. Regulatory Reform Based on Competition Policy Principles

The CLP Committee is also very involved in evaluating systems of regulation and promoting what used to be incorrectly described as deregulation and is now more accurately described as regulatory reform. In fact, just as the CLP more or less invented competition law enforcement competition back in the 1960's, it can respectably claim to having created the current regulatory reform movement back in the 1970's, when OECD competition authorities from various countries began to apply competition principles to government regulations that banned procompetitive conduct or imposed unnecessary costs.

It is useful to recall that the increased use of competition principles was stimulated mainly by OECD countries' concerns about the poor performance of regulated sectors of their economies – including monopolies that were "regulated" by public ownership. This shift was not a matter of ideology – of capitalism versus socialism – but rather a matter of economic performance. The shift included a closer examination of whether particular activities really were natural monopolies and of how to regulate natural monopoly activities. In the past, there had been a tendency to treat an entire industry or enterprise as a natural monopoly if it had even one natural monopoly component. More recently, many countries have saved enormous amounts of money by separating natural monopoly activities from those that can be competitive. Based on OECD countries' experience in this kind of reform, the CLP Committee recently approved -- and the OECD Council issued a Recommendation on Structural Separation in Regulated Industries.

To illustrate what we mean by the competition policy approach to regulatory reform, I will discuss how this approach deals with regulations that address two common situations. First, if the cost structure in an industry is such that efficiency requires having only one provider, the provider is said to have a natural monopoly and is usually regulated to prevent it from abusing that monopoly. Second, in areas such as health care, where consumers cannot be expected to have enough information to prevent exploitation, the "information asymmetries" lead most countries to license health care providers and set forth some sort of safety standards for medication.

In these areas of market failure, competition policy does not oppose necessary regulation but seeks to ensure that the regulation interferes as little as possible with consumer demand and with producers' attempts to provide what consumers want. In other words, competition policy seeks to permit this dynamic interaction between buyers and sellers to operate to the maximum extent possible given any overriding social interests.

Thus, in natural monopoly areas, competition policy calls upon legislators and regulators to inquire from time to time whether and to what extent a particular market segment is really a natural monopoly. It also calls for periodic inquiry into whether technological change or some other factor will permit related market sectors to be split off from a natural monopoly so that competition can replace the inefficiencies inherent in natural monopoly regulation. And where natural monopoly regulation is needed, competition policy can help determine the most efficient form of regulation. For example, in most areas and under current technology, a competition policy approach to the electricity sector will probably acknowledge the need for continued price and service regulation of the local distribution of electricity, but may lead to lower prices by introducing competition in electricity generation.

When health or safety is the issue, competition policy does not call for deregulation, but rather serves a variety of useful roles. In the U.S., there are sometimes calls to ban the sale of products that are not inherently unsafe but are unsafe if used in particular ways. Such proposals typically treat the bans as if they had no cost, and competition policy shows that they do have a cost – that every restriction on what a producer may produce is also a restriction on what consumers may buy. Without opposing bans justified by health or safety concerns, competition policy asks regulators to consider whether consumers would be better off if instead of a ban the regulators merely required that the product be sold with a safety warning and instructions on proper use. To generalise from this example, competition policy advises regulators that they should not prevent consumers from buying what they want unless there have shown that overriding consumer demand is warranted by real health or safety concerns. And to generalise even further, competition policy does not prevent bans on unsafe products, subsidies to particular products, or any other regulatory schemes that may in some way be anticompetitive; rather, it provides an analytical framework that can be used to determine whether any given regulatory goal can be achieved at less cost to society.

The OECD issued a major regulatory reform report in 1997, and given the link between competition policy and regulatory reform, the CLP Committee was involved in all or most aspects of that report. This work has now shifted its focus somewhat but continues to be very important. We always discuss the competition policy principles underlying regulatory reform in our competition outreach events, but until recently, the OECD has not done much outreach work that focuses directly on regulatory reform. I expect that there will be more outreach in this area in the future, however.

V. The OECD Global Forum on Competition

The CLP Committee's principal focus in the last forty years has been the competition law and policies of its members. For most of that time, few non-members had competition laws or significant competition enforcement programs, and

consensus within the Committee therefore came close to representing a global competition law and policy consensus. That situation has been rapidly changing, as more and more non-members are enacting laws and becoming part of the global competition law enforcement community.

These changes have prompted various programs for broadening the discussion of competition law and policy issues. UNCTAD has expanded its work in this area. The World Bank has put on conferences in various regions, such as Southeast Asia and South America, as well as funding technical assistance programs in a number of specific countries. The WTO created its Working Group on Trade and Competition and may be used to negotiate some sort of competition rules or principles. And both the private sector and various competition authorities have proposed a "Global Initiative" -- sometimes referred to as a "Global Forum" -- that would be open to businesses, law firms, consumer groups, international organisations, and officials from every country with a competition law. The latter proposals have not yet taken shape, however.

At the OECD, as I have mentioned, we have created our own Global Competition Forum, which will engage officials from 21 economies in the kind of "OECD style" policy dialogue that has proved so useful to OECD members and CLP observers. Only one of the countries at this event has been invited to the Forum -- Egypt. In many ways, I wish you could all be there, but we are only one of the relevant organisations, and we are focusing on the informal dialogue that is the OECD's comparative advantage. We are not claiming to replicate the universality of UNCTAD, the WTO, or the Global Initiative, though I can certainly imagine that the OECD Forum might engage in some sort of joint ventures with those or other programs.

By design, the OECD Forum will not consist of direct capacity building, but go beyond it to provide a mutually beneficial interactive exchange of views and experiences. The invited officials will, of course, have the opportunity to learn more about "OECD best practices," but their participation will also provide OECD delegates the opportunity to learn information that contributes directly to the ongoing work of the CLP. This expanded network of officials from about 55 economies will meet regularly (in principle twice a year) to share experiences on "front burner" competition law and policy issues. Various international organisations will also participate, and the business community and a consumer organisation will be invited for part of the meetings.

Since I am here at UNCTAD's invitation, I want to say that we are very pleased that Rubens Ricupero, Secretary General of UNCTAD, will make one of the keynote addresses at our first meeting, along with Mario Monti, EU Competition Commissioner, and Charles James, Chief of the Antitrust Division of the US Department of Justice. The topics to be discussed at the meeting will include the role and tools of competition authorities, instruments of co-operation, hard core cartels, transborder mergers, and how the Forum can contribute the most to mutual understanding and co-operation in this area. The second OECD Forum meeting will be in February 2002, and may focus more directly on issues relating to competition policy and development.

VI. Implications Concerning a Multilateral Framework

I am often asked to discuss the implications of my OECD work for possible multilateral agreements relating to competition law and policy. I addressed this issue most specifically in a WTO conference last year in Phuket, Thailand, and I expanded the paper I delivered there into an article for the OECD Journal of Competition Law and Policy. I send a copy to anyone here who wants one, but today I will limit myself to a few short points based on my experience with OECD Recommendations and my work with developing and transition countries. I should note here that the OECD has not taken any position on whether competition law and policy should be added to the WTO's agenda, though it has done analytical work to help clarify the issues. Thus, my comments here and in my paper reflect personal views.

First, let me say that the work of WTO Working Group on the Interaction of between Trade and Competition Policy has led to considerable analytical progress concerning the pros, cons, and possible contours of a WTO competition agreement. Personally, I believe that purely bilateral co-operation is not sufficient, and I agree with those who say that a WTO agreement on competition could provide a useful and important boost to competition enforcement officials and those who are advocating enactment of a competition law. Moreover, thanks in large part to the Working Group, the risks associated with such an agreement have been reduced. For example, there is now less talk establishing specific substantive standards for countries' competition laws or of other mandatory provisions. I regard this as positive because it reduces the risk that a WTO agreement would either establish a "lowest common denominator" as an international baseline or distort competition principles to support producer interests.

I should also note at the outset that as someone who has spent fascinating and fatiguing years working to assist developing and transition countries on competition law and policy issues, I certainly share in the widespread view that there should be substantially increased technical assistance. It is also clear, however, that a WTO agreement on competition law would not be necessary in order to increase such assistance.

I will close by mentioning two areas in which negotiating a WTO agreement could pose risks that relate directly to the interests of the non-member countries with which I work.

First, I believe the concept of mandatory case-specific co-operation poses very real risks. The specific proposal to make co-operation mandatory was withdrawn, but hints of the idea keep surfacing. For example, one hears that the limits of voluntary co-operation call for a multilateral framework. To the extent that this means that a purely bilateral system will be inadequate, I agree. The argument is misleading or at least oversimplified, however, in implying that voluntary co-operation is inherently disadvantageous or that mandatory co-operation would be preferable.

The only necessary limit to voluntary co-operation is that a country can decline a request that it considers when it considers co-operation contrary to its interests. For example, a requested authority might not have the necessary resources, or might regard the requesting country's investigation as fundamentally misguided.

Seen from the perspective of the requesting country -- and sometimes from a global perspective -- the ability to deny a request is in fact a disadvantage.

On the other hand, this "limit" to voluntary co-operation also reflects the right of requested countries not to act contrary to their interests; it helps ensure that requested countries do not lose control of their own enforcement agendas. From their perspective -- and sometimes from a global perspective -- the ability to deny a request is an advantage. As noted in the CLP's Report on Positive Comity, this advantage of voluntary co-operation was clearly recognised by the EC in the context of the 1997 supplement to the EC/US co-operation agreement. In the EC's words, the voluntary nature of that co-operation agreement was beneficial because there is "no risk that a [requested country] would be obliged to investigate a case where it was not in its interests to do so." In Geneva, however, the EC initially proposed negotiation of a WTO agreement in which mandatory co-operation rules would create precisely this risk. The proposal was eventually withdrawn "[i]n light of the lack of experience in implementing [such co-operation] as a principle of voluntary action." I regard this as fortunate, though I remain concerned by the continued focus on the limits of voluntary co-operation and by the continued silence on why, since the risk of being obliged to act contrary to one's own interests was considered serious in the context of a bilateral agreement with a close ally in competition enforcement, this risk might be considered acceptable in a multilateral agreement among countries with no history of competition law enforcement co-operation.

In this regard, it is true that in some areas existing WTO agreements contain an requirement to investigate alleged anticompetitive conduct in some circumstances, but the potential costs to a country of being obliged to act contrary to its own interests in those sector-specific situations are far less than those that would result if the obligation applied to every kind of competition law violation in every sector of its economy. Such an agreement could impose prohibitive costs on the entire system, and unless the current pattern of requests reversed itself, the costs of the agreement would fall hardest on smaller countries and on all countries that do little international enforcement.

Despite this risk of losing control of their enforcement agendas, some developing countries do find the idea of mandatory co-operation appealing because they fear that their requests to large OECD countries will be ignored. That is a problem that merits attention, but I caution against thinking of mandatory co-operation as a solution. One alternative, which received informal support by at least one developing country that supports a multilateral competition policy framework, would be to provide for mandatory consultation if a requesting country believes that its request has been unreasonably denied.

My last point concerns the proposal that a WTO agreement contain a requirement, subject to dispute resolution, that countries' competition laws adequately ban anticompetitive agreements and abuse of dominance, and that countries treat hard core cartels as a serious violation. This issue is discussed in much more detail in the article I mentioned earlier. For now, I will just say that from 1997 until fairly recently, proponents of a WTO agreement usually contemplated negotiating relatively specific international standards that countries' competition laws would need to meet. The problem with this idea was that for dispute resolution panels to make predictable,

reasoned judgments on the adequacy of countries laws, the standards would need to be detailed in ways that would, among other things, impose an unacceptable level of harmonisation. In the last year or so, there has been increasing recognition that any WTO-required substantive standards for countries' laws would need to be very general in order to permit countries to have laws tailored to their own needs. In essence, the emphasis has moved from seeking to compel OECD and other countries to have and enforce laws meeting internationally defined standards, to accepting the adequacy of all OECD (and all or most other) competition laws and seeking to assist others in adopting and enforcing such laws.

I consider this shift of emphasis a good one, but if substantive requirements for countries' laws would be very general, what is the rationale for continuing to propose that the requirements be enforceable through the dispute resolution mechanism. For example, if countries' laws would satisfy a WTO anti-cartel provision by generally banning anticompetitive horizontal agreements, what would be the value of dispute resolution on the adequacy of law? I do not understand why countries that currently have no laws should be told that their new laws will be subject to being declared inadequate by a dispute resolution panel applying totally undefined criteria. OECD countries may not consider this a disincentive to reaching agreement, because they may see no risk that a panel would ever find their laws' inadequate, but other countries justifiably believe that they would face a much greater risk on this score.

Finally, it seems to me that compromise is possible. My views are shaped in part by my experience in seeing how nonbinding OECD agreements and peer review can produce concrete benefits, but they do not depend only on that. Since I see real risks and no real value posed by dispute resolution over whether competition laws' substantive provisions meet general international standards, it seems to me that such dispute resolution could be taken off the table, along with mandatory co-operation. I am certainly not in a position to make any predictions, and I may be guilty of projecting my views onto others, but I think that in those circumstances there could be consensus that the benefits of going forward would exceed the risks.

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Thank you for your attention, and let me invite you both to use our website as a research tool and to contact me directly at the OECD if your have questions or comments on my presentation or other questions about competition law and policy. Limited resources mean that we cannot always help, but we will be pleased to be asked and will help when we can. My e-mail address is terry.winslow@oecd.org.