

## COMPETITION POLICY: WHAT CHANCE FOR INTERNATIONAL RULES?

### *Note by the Editor*

*In November 1998, Ms. Joanna Shelton, OECD Deputy Secretary-General, addressed a conference on the global trade agenda. Her presentation reviews the different forms that international competition rules could take, their costs and benefits, and whether the development of international rules is warranted. She argues that the creation of more sector-specific competition provisions in the WTO, such as in the Basic Telecommunications Agreement, might lead to inconsistent competition policies across sectors. On the other hand, any attempt to create a binding multilateral competition framework, elaborated in some detail and enforceable through an international dispute settlement process, would not do justice to the diversity of competition regimes around the world and would likely then end up being set at the lowest common denominator. Moreover, the complex and fact-intensive nature of decision-making in antitrust cases is ill suited to an international dispute settlement process.*

*Ms. Shelton examines a third approach involving the adoption of (1) a limited set of core principles (such as non-discrimination) that are enforceable under a dispute settlement process, and (2) "common approaches" (such as guidelines on merger analysis) that are not subject to dispute settlement. This third way would have the advantage of being sensitive to enforcement realities (because individual cases would not be subject to dispute settlement) and to different conditions and historical experiences across countries.*

*Ms. Shelton also reviews developments in the OECD and elsewhere regarding international co-operation in the enforcement of national competition laws, including bilateral agreements between competition authorities, regional initiatives and OECD instruments of co-operation. These options are worthwhile in their own right and complement any possible multilateral agreement.*

*Ms. Shelton concludes that, while one should not underestimate the difficulty of finding consensus on any approach to international rule making regarding competition policy, the OECD will continue work in this area in the hope that it will contribute to further progress and a greater convergence of views.*

## COMPETITION POLICY: WHAT CHANCE FOR INTERNATIONAL RULES?

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### 1. Introduction

I have been asked to discuss the prospects for international rules in competition policy. Whether or not that will happen and what form any negotiations might take are still quite uncertain, as we have heard during our discussions over the past two days. But I will review some of the reasons for that uncertainty in the course of my presentation. First, though, I will briefly describe competition policy, and touch on some of the problems that international competition rules might address.

The broad objective of competition policy is to help ensure that market economies deliver high and rising standards of living. More specifically, competition policy primarily seeks to prevent firms from protecting or expanding their market shares by means other than greater efficiency in producing what consumers most want at the lowest possible prices. In some jurisdictions, competition policy has important secondary objectives such as contributing to market integration or preserving a freedom to compete.

Competition policy has two main branches. The first consists of advocacy whereby competition agencies encourage other branches of the government to adjust their policies so as to interfere as little as absolutely necessary with market competition -- for example, in the development of regulations. The second branch is competition law enforcement. As law enforcers, competition agencies investigate and prosecute or prohibit agreements which either exclude competitors or substitute collusion for competition. They also prohibit monopolisation or abuses of dominant position whereby enterprises unilaterally restrict actual or potential competitors. Finally, most competition agencies prospectively review mergers to ensure these are not used as a means to eliminate or restrict competition. Virtually all of competition law enforcement requires access to a great deal of highly specific, often confidential information concerning the workings of actual markets and individual firms. It also requires sensitive judgements and tradeoffs to be made concerning the economic effects of various types of conduct and mergers.

Competition law is, in general, national law, but it has never been purely domestic. There are four related reasons why competition law enforcement is taking on more and more of an international dimension and rising to greater prominence in international fora:

- First, until 1950, few countries had competition laws, and those that did generally took a very tolerant approach to cartels and other anticompetitive conduct; only gradually did competition law regimes become more widespread and more serious instruments of public policy.
- Second, until quite recently, all countries with competition laws other than the United States took a narrow view of the applicability of their laws to foreign firms' conduct in their markets.

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<sup>1</sup> The views expressed are those of the author. They do not necessarily represent the views of the OECD or its Members. The author wishes to acknowledge the contributions to this article made by Gary Hewitt and H el ene Chadzynska, staff members of the OECD's Competition Law and Policy Division. OECD instruments referred to in this article and other relevant information can be found at the OECD Competition Law and Policy Internet site: [www.oecd.org/daf/clp](http://www.oecd.org/daf/clp). Readers are also encouraged to visit the OECD Trade Directorate's internet site: [www.oecd.org/ech](http://www.oecd.org/ech).

In order to protect their citizens, a growing number of countries are extending the jurisdictional scope of their laws.

- Third, globalization means that a higher percentage of competition cases have significant international components.
- Fourth, to the extent that trade and investment liberalisation reduces entry barriers, it might give firms greater incentives, but perhaps less ability, to engage in anticompetitive conduct and mergers.

In the international debate over competition rules, the concern is sometimes expressed that the absence of competition law in some countries, the existence of exemptions to such laws, a lack of convergence in existing competition laws, or under-enforcement of competition law may permit a significant amount of anticompetitive activity which also distorts trade. This concern certainly has a logical basis. More widespread adoption of modern competition laws, reduced sectoral exemptions, greater convergence toward sound competition law principles, and more consistent, transparent enforcement are indeed likely to produce beneficial effects for trade. That said, there is a very active debate about whether or not writing binding competition rules into international agreements would advance or inhibit such developments. In particular, there is a significant divergence of views on whether such rules are necessary and would prove effective in reducing problems in a variety of areas, such as those associated with export and import cartels or with trade measures having a potential impact on competition.

Where countries stand in the debate over international competition rules depends principally on how they view the costs and benefits of such international rules. That in turn is linked to how much they think anticompetitive practices are indeed distorting trade flows, whether they believe international rules would be effective in stopping such practices, and the degree to which they would resist encroachment on national sovereignty in the competition policy domain.

The question posed in the title to my presentation has, strictly speaking, been partly answered since we already have some competition related rules in various multilateral agreements. Following a brief examination and critique of such rules, I will turn to a rather radical approach to adopting multilateral competition rules, and then outline what may be a more realistic alternative. This will be followed with an examination of some significant ongoing efforts to improve international co-operation in the competition policy domain, and a few brief closing remarks.

## **2. Existing and Potential Multilateral Rules**

The OECD has recently reviewed the competition elements in current multilateral agreements. While the provisions of the General Agreement on Tariffs and Trade (GATT) aim generally to get rid of trade restrictive practices of governments, a number of GATT provisions also address more specifically certain competition-related governmental actions in such areas as monopolies, technical standards, and licensing. The Preamble to the Safeguards Agreement states that Members recognise "...the importance of structural adjustment and the need to enhance rather than limit competition in international markets". In the General Agreement on Trade in Services (GATS), a number of competition-related provisions exist, for example on monopolies and exclusive service arrangements, as well as on the effects of domestic regulation and the need for transparency in all these matters. The same is broadly true of the "Understanding on Commitments in Financial Services".

From the competition policy point of view, the most significant development within the GATS framework has been the Telecommunications Agreement, which became binding this year on some sixty-

nine signatories. The Annex to this agreement contains an obligation to allow service providers of other Members access to public telecommunications networks "...on reasonable and non-discriminatory terms and conditions". More specifically, the reference paper to the Agreement also contains a general commitment of Members to maintain adequate measures to prevent anticompetitive practices of major suppliers. In addition, it gives several specific examples of anticompetitive practices.

Although the Telecommunications Agreement represents a welcome breakthrough in terms of extending competition rules to international trade in services, it also contains some dangers if it spawns a raft of other sector-specific agreements, each with its own set of competition rules. While the OECD has been seeking to promote the convergence of competition policy across countries, a proliferation of sector-specific competition rules could create diverse rules and interpretations within a given country. Different rules could not only lead to inefficient market distortions, but there is also a danger that sector specific competition rules will degenerate into being regulation under a different name. Powerful incumbent firms can be expected to push strongly to hold on to dominant positions in the face of new domestic and international competition. And to the extent that sectoral competition rules are enforced by sectoral regulators, another problem can be expected. Sectoral regulators are significantly more prone to capture by industry interests than competition offices having an economy-wide, competition encouraging, rather than regulation-based, mandate.

An alternative -- far more radical -- approach is a set of binding competition rules, elaborated in some detail and enforceable through an international dispute settlement process, such as that proposed by the so-called Munich group of academics. Discussions on the Munich Code in the OECD and elsewhere have highlighted the pitfalls of this approach. There is a significant risk that minimum standards developed under such a Code would not do justice to the diversity of competition laws around the world, and might end up being set at a lowest common denominator which would be very difficult to improve later. Moreover, the complex and fact-intensive nature of decisionmaking in specific antitrust cases is ill-suited to review by international bodies. Finally, few if any countries appear to be willing to accept review by an international body of national antitrust decisions in particular cases.

There is, however, another possible approach to multilateral competition rule making which seems to be more promising than either the sectoral approach or the adoption of a supranational authority imposing a set of legally binding rules. This approach seeks to have countries agree on a framework for rules, rather than on a set of specific provisions. In the attempts to delineate such a framework, a distinction is increasingly made between "core principles" and "minimum standards" (or, preferably, "common approaches"). Work is currently under way in the OECD to further refine the distinction and delineate the included components.

In the context of this work, "core principles" refer to basic concepts upon which there could be broad agreement. They could include a commitment to adopt a competition law covering certain general types of practices, to create effective enforcement institutions, and to ensure that government bodies do not encourage or sanction conduct which might violate competition law. Core principles could and should also include due process principles, most notably non-discriminatory treatment of all firms regardless of their form of ownership or home country; and transparency in decision-making (especially at the interface between regulation and competition policy).

The adoption of core principles would provide a framework which could bring coherence to sector-specific agreements, such as the Telecoms Agreement referred to earlier. In particular, the competition institution established in each country as a result of an agreement on core principles would become the body to enforce any competition provisions agreed in the course of liberalising a particular sector. Thus, concepts such as "relevant market", "barriers to entry", "market power", and "abuse of dominance" would have consistent meanings, whether the sector was basic telecoms, civil aviation, or maritime transport.

Thought should also be given to including in the due process portion of the core principles respect for comity, meaning that within the framework of their own laws, and to the extent compatible with their important interests, governments should implement competition policy taking into account the important interests of other signatories. It might be advisable to extend this to include what is called “positive comity”, which is increasingly being incorporated into bilateral agreements between competition agencies. Under positive comity, if a signatory believes that anticompetitive practices carried out on the territory of another signatory are adversely affecting its own important interests, it may notify the other signatory and request its competition authorities to initiate appropriate enforcement procedures. However, in order to preserve essential control over limited enforcement resources, the requested signatory would retain the right not to act on the request.

Under this third approach I have been outlining, it is envisaged that signatories would bind themselves to observe the core principles, but the actual enforcement of national laws would not be subject to dispute settlement. Competition law would continue to be applied by independent national competition authorities, accessible to complainants. A multilateral agreement on core principles could, however, help ensure that national competition offices are backed by a suitably comprehensive law, adequate powers and resources, a recognised advocacy role, a duty to protect confidential information, and access to effective deterrents or sanctions.

Adoption of agreed core principles by itself would represent a significant step forward in promoting international co-operation in competition policy. It could be usefully strengthened, however, by encouraging international co-operation in notification of cases and in exchanging information. Even closer forms of co-operation could be provided at the multilateral level in cases where there is a significant international trade dimension, especially where there is a substantial degree of market foreclosure.

Everyone should be able to agree that a multilateral agreement incorporating core principles, including due process provisions and encouragement of international co-operation, would certainly have the potential to improve the application of competition policy and reduce trade frictions. But what if this potential is substantially unrealised due to a lack of enforcement at the national level? Some might argue that this is why a multilateral agreement must be backed up with binding dispute resolution, even on national cases. However, such a view effectively puts the discussion back on the difficult-to-negotiate binding rules track. Fortunately, there is another, probably more acceptable, way to ensure that competition laws are adequately enforced, at least in cases having international effects. Contracting Parties to a multilateral agreement might agree to bolster positive comity by allowing a Contracting Party and its firms to formally petition the competition authorities of another Contracting Party to take action in specific cases. Where this right is exercised, the competition office of this Contracting Party could be obligated to take action or publicly explain why it chose not to. Many believe it would be even better if the agreement gave governments and private parties the right to bring competition law actions in foreign courts.

Let me now examine in more detail just how petition rights, private rights of action and positive comity could help convert trade disputes into more manageable competition cases.

Consider first formal *petition rights*. Suppose a firm alleges that, despite assiduous efforts, it failed to gain a footing in a foreign country, because that market is foreclosed by a network of what the firm claims is a network of anticompetitive distribution agreements. Instead of complaining to its trade authorities, the firm could directly petition the pertinent foreign competition authority to investigate those agreements. If it were able to exercise such a petition right, the foreign competition authority would be obligated to provide an informed response to the petition within a reasonable time frame. Moreover, a refusal to investigate could be subject to appeal in the courts. This would greatly improve the chances that the alleged barriers to entry would be removed, assuming of course that they are in fact anticompetitive.

Trade disputes could also be nipped in the bud by having these disputes be effectively *privatised*. Applying the same example as before, if the foreign country, pursuant to a multilateral agreement or otherwise, provided an effective right of private action to both foreign and domestic firms, the aggrieved firm could directly challenge the legality of the restrictive agreements in the foreign country's courts -- as opposed to before the country's competition agency, as described in the previous example. Once again, this would ensure a more rapid and more likely elimination of any barriers which are truly anticompetitive than would appeal through trade officials operating on a government to government level.

Last but not least, *positive comity* could contribute to the solution of trade disputes. Again reverting to my previous example, instead of complaining to its trade ministry, the firm alleging that its market access is blocked could go to its own competition authority who would then request its foreign counterpart to investigate the competitive effect of the distribution agreements. Upon receiving this request, the foreign competition authority would then have to consider making an appropriate investigation and possibly taking measures to prohibit the distribution agreements.

A recent OECD study found that rights of formal petition and effective private actions to enforce competition laws already exist in a number OECD countries and where they do, they apply equally to firms of all nationalities. Unfortunately, such petition and private action rights are far from universal among OECD Members. Perhaps that could be changed through the process of drafting a multilateral agreement, which incorporated such rights as core principles.

Returning to my third approach, now that I have explained what I mean by core principles it is time to turn to minimum standards or common approaches. There is an important distinction that needs to be made between these terms. I have already said that under the third approach, countries would bind themselves to act in accordance with the core principles, including their procedural elements. The specific rules they adopt and implement would however not be subject to binding dispute settlement. That is why I prefer to avoid the term "minimum standards", which has usually been used in the context of binding obligations. The multilateral approach I have been describing would leave countries free to adopt whatever implementing rules they deem best. It would offer them, however, important guidance in the form of agreed "common approaches" to aid them in designing and enforcing the substantive criteria. I am referring here to the tests and analytical concepts applied to assess the legality of horizontal agreements, vertical restraints, abuses of dominant position, or proposed mergers.

The fact that these so-called common approaches would be non-binding would significantly increase their chances of being agreed. It would also better convey the nature of competition law -- that there is a range of valid approaches to control specific anticompetitive practices. It is also helpful that the term "common approaches" does not conjure up the same fear that countries will be reduced to agreeing on some minimum, lowest common denominator.

I expect that countries would be much more willing to subject core principles to some kind of binding dispute settlement than would be the case for minimum standards. Whether or not signatories have certain types of legal provisions -- such as a competition authority or transparency -- can be objectively determined on the basis of readily available information. Things are far different when trying to judge whether a particular minimum standard was properly applied in a specific case. As previously mentioned, competition policy investigations are long, fact intensive inquiries, involving a series of complex judgements, especially in cases assessed under the more common rule of reason rather than the simpler *per se* illegal approach. An outside international panel, however well intentioned, would simply not have access to all the necessary information, much of which would be confidential, involving as it does highly sensitive strategic planning and trade secrets of individual firms. Furthermore, a multilateral disputes panel might lack the expertise and time needed to sift through the evidence and make judgements requiring

in-depth knowledge of the relevant product and geographic markets and involving difficult economic tradeoffs. There is also the difficult issue of national sovereignty. Few nations would be willing to see an international panel over-rule its national competition agency on questions involving both objective evidence and subjective judgements. Fewer still would be willing to believe that an international panel is in a better position to supervise their competition agencies than national courts of appeal.

This third approach that I have been describing for multilateral competition rule making through the adoption of binding core principles and non-binding common approaches while admittedly ambitious is far from being unrealistic, considering the progress achieved so far at the OECD, in bilateral agreements and in regional economic arrangements. I turn now to those developments.

### **3. A Brief Selective Look at Other Developments Regarding International Co-operation in the Competition Policy Domain**

OECD work on international co-operation in the competition policy domain has certainly contributed to the current discussion surrounding possible multilateral competition rules. It must be noted, however, that past and current work in this domain has been motivated as much by a concern to improve competition policy in an increasingly globalized world, as it has by a desire to facilitate ongoing trade liberalisation.

Competition officials have tried to reduce frictions caused by extraterritorial application of national competition laws. They have also been sensitive to the need to reduce business costs and uncertainty, especially in the area of transnational mergers. Above all, competition officials have been keen to co-ordinate their efforts to detect and prosecute international cartels.

The OECD has played an important catalysing role in promoting co-operation among national competition agencies. Formally, its efforts have borne fruit in the form of two OECD Council Recommendations, in 1995 and 1998.\* The first of these builds on a series of earlier Recommendations dating back to 1967. It centres on enhancing co-operation between Member countries on anticompetitive practices affecting international trade. In particular it states that Member competition agencies should:

- inform each other of possible violations of the other's law
- forewarn each other of cases which may affect the other's interests
- request the other agency to act against practices which affect the requesting country's interests
- collect and share information to the extent permitted under national confidentiality laws
- co-ordinate investigations, and
- co-ordinate remedial actions.

The 1995 Recommendation contains a voluntary conciliation process, which has not yet been tested, and if previous experience is any guide, probably will be very infrequently resorted to.

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\* See <http://www.oecd.org/daf/clp>

The 1998 Council Recommendation is narrower in scope. It seeks to encourage co-operation in eradicating so called "hard core" cartels. These constitute the most damaging and egregious violations of competition laws, since they are directed at fixing prices, rigging bids, restricting outputs, or sharing or dividing markets. The Recommendation states that Members should:

- ensure their competition laws effectively halt and deter hard core cartels, and
- co-operate in enforcing their laws in this domain.

Both the 1995 and 1998 Recommendations urge Members to co-operate in ways respecting negative and positive comity.

The 1998, 1995 and prior Recommendations were consciously drawn up in the hope they would help spawn bilateral co-operation agreements. Fortunately, that appears to have happened. Such co-operation, so far concentrated chiefly on Australia, Canada, the European Union, France, Germany, New Zealand, and the United States, is important in itself, but it also contributes to plurilateral or multilateral developments.

All bilateral agreements, especially the most recent ones incorporating elements of positive comity, have come up against an important roadblock -- namely difficulties agencies have in sharing confidential data. Sometimes parties agree that confidential information can be shared with foreign competition agencies. Such consent, though, is all too rare, and certainly cannot be counted on when likely to be most needed. I am thinking here especially of international cartel cases, where the parties face substantial potential sanctions. To help find a way around this difficulty, the U.S. Congress passed in November 1994, the International Antitrust Enforcement Assistance Act, which under certain conditions, allows the U.S. competition authorities to enter into international agreements providing for the exchange of confidential information. Interestingly, this law also permits the exchange of information with countries whose interests are affected by anticompetitive conduct organised in the United States which is not illegal under U.S. law. So far, there seems to be just one agreement signed under this law, that is, the one between Australia and the United States. It should be noted, however, that prior to the passage of this Act, the United States and Canada entered into a mutual legal assistance treaty which allowed for the transfer of confidential information in antitrust cases having a criminal dimension. I believe the United States and the European Union also may be close to implementing an agreement to further advance their existing co-operation and to facilitate information exchange.

The most direct way to solve the confidentiality problem -- indeed the strongest form of bilateral agreement, *i.e.* one which is legally binding -- has been adopted by Australia and New Zealand. In the context of their closer economic relations treaty (ANZCERTA), these two countries adopted a free trade area and simultaneously replaced antidumping laws with competition law provisions. Moreover, they amended their abuse of dominance provisions to permit complainants in either country to initiate proceedings in the other country. The ANZCERTA arrangement also allows the two countries' competition offices to hold hearings in either country, and to issue subpoenas and remedial orders enforceable in the other country. Such a high degree of co-operation is probably not possible outside the context of a far reaching trade agreement between countries having very similar competition laws and legal cultures, but it certainly provides an interesting example of the degree of co-operation that is possible in some circumstances.

In addition to bilateral arrangements facilitating co-operation between competition authorities, I should mention in passing various regional groupings. The most far reaching of course is the European Union, whose founding Treaty has been used to build a complete competition law, enforced by the European Commission and applying to all cases having an effect on intra-community trade. The European



Union has also entered into an agreement with the former EFTA countries providing for wide ranging co-operation and exchange of information between the European Commission and the EFTA Surveillance Authority. This agreement contains an explicit derogation from normal European Union rules protecting the confidentiality of information, to allow for greater co-operation. Various Europe Agreements concluded between the European Union and the central and eastern European countries on track for eventual membership in the European Union, complete the picture in Europe with obligations to harmonise competition laws with those prevailing in the European Union.

Other regional arrangements also have some competition provisions, but they are considerably narrower in scope than what is occurring within ANZCERTA or the European Union. For example, the objectives of the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the U.S. mentions not only the elimination of trade barriers but also the promotion of competition and the protection of intellectual property rights. NAFTA's Chapter 15 contains specific references to competition policy, monopolies and state enterprises. Member countries are required to "adopt or maintain measures to proscribe anticompetitive business conduct and to take appropriate action with respect thereto", consult with respect to "the effectiveness of measures undertaken by each party", and co-operate "on issues of competition law enforcement policy". Chapter 17 includes, in the context of intellectual property rights, rules on the control of abusive or anticompetitive practices or conditions. The Canada-Chile Free Trade Agreement goes further, however, in that for products having zero tariffs, it replaces antidumping duties with domestic competition laws.

International co-operation among competition agencies is not something that depends only or even primarily on formal instruments of co-operation. It is greatly fostered by countries having similar laws and enforcement cultures. One could fairly say that virtually all the OECD's activity in the competition policy domain serves in some way to promote such similarity, especially after our 1992 Ministerial instructed us to devote more attention to fostering convergence in competition laws.

The OECD has more recently been engaged, through our Joint Group on Trade & Competition, in constructing building blocks for closer co-operation between the trade and competition policy communities. These building blocks should also be useful in stimulating the development of the common approaches that eventually might be incorporated into multilateral competition agreements. A good example of this work is a recently approved document discussing the competition and trade effects of vertical restraints and laying out a methodological approach to deal with such restraints. Next year, we will begin to do the same kind of work in the areas of merger review and assessing abuse of dominance, and will also seek to create a framework of petition rights and rights of private actions to deal with cases where it is alleged that anticompetitive conduct is inhibiting market access. Finally, work is also progressing on an outline of core principles and common approaches which might at some point be the subject of a plurilateral or multilateral agreement.

It is often said that as trade barriers decline, private anticompetitive practices become a more important and more pervasive restriction on market access. The OECD's trade and competition work has failed to turn up a large body of convincing evidence for that hypothesis, but it continues to examine the question. As just mentioned, however, there is perhaps a more fruitful direction to look in with respect to efforts to promote both greater trade and greater competition. Many countries, including virtually all OECD Members, are currently liberalising sectors which used to be vertically integrated private or publicly owned monopolies. Reforms are especially evident in sectors such as telecommunications, electricity, natural gas, transportation, and financial and professional services. As these sectors are privatised and progressively opened to market forces, there is a distinct possibility that the former state owned enterprises or closely regulated private firms will try to restrict growing competition. If they succeed, the reforms will probably yield little in the way of real efficiency improvements and cheaper, better products for

consumers. This is why the OECD is working hard to inject a competition policy dimension into our work on regulatory reform.

On regulatory reform, I should mention that in addition to a major report to Ministers in May 1997 -- which assessed the results of countries' experience with reform and made specific recommendations in a number of areas, including competition policy and its enforcement -- we are now conducting country reviews to assess Members' progress in reforming their regulatory regimes. We are making specific recommendations to the countries under review; and competition policy is one of the central elements of our reviews and recommendations. Telecommunications and electricity are the two sectors that are included in our reviews.

#### **4. Conclusion**

In my presentation this morning, I have tried to show that international competition rules could take several different forms, each having different likelihoods of materialising and different desirabilities as well. At one end of the spectrum we could have more of what already exists. That could include new WTO sectoral trade agreements, containing competition provisions similar to those found in the Telecommunications Agreement. Such arrangements bring risks of inefficient market distortions and potential trade frictions because of different treatments accorded to competitors covered by different sectoral agreements. Extending the status quo would also include adding to the web of bilateral co-operation agreements between competition agencies, and some growth in the use of common rules within countries entering common markets or other forms of integration going further than customary free trade areas. More bilateral agreements certainly seem like a good idea but they do not address the problem posed by the lack of competition laws in some countries, and low levels of enforcement in others. Common rules within regional blocks of fairly similar countries could effectively regulate problems occurring within the groupings but solve none of the problems involving outside countries.

At the other end of the spectrum, is a set of detailed binding competition rules enforced through a dispute settlement process. This option has a significantly lower probability of being adopted, but it has served a useful purpose in helping to clarify the relevant issues and catalysing the development of more realistic alternatives.

I have devoted the lion's share of my comments this morning to examining a third approach, one dependent on adopting a set of core principles enforceable under a dispute settlement process and a group of non-binding common approaches. This third approach has the advantages of being more politically feasible, as well as sensitive to competition enforcement realities and different conditions and historical experiences across countries. It is also rooted in past successful efforts at international co-operation in this area. That said, I do not underestimate the wide divergence of opinion that still exists and the difficulty of finding consensus on any approach in this area. But whatever form international rule making regarding competition policy takes, I am confident that the OECD will be able and willing to contribute to advancing the work.