

COMMUNICATION FROM ROMANIA

Revision

The following is a revised version of document WT/WGTCP/W/181, issued 17 April 2002. It incorporates two Annexes which were received on 18 April 2002.

Capacity building and technical assistance – challenges facing competition authorities

The 21st century: both rich and poor countries face the new challenge of globalization – a changing economic environment when know-how and information replace labour and even capital, as sources of competitiveness.

Globalization has increased the need for closer cooperation between the nations, on the one hand, and between the regional and international organizations with key roles in the formulation and implementation of different elements of the framework for global economic policy, on the other hand.

Lester Thurow, in his book "Head to Head"¹ - a "masterful economic analysis that policy making ought to consider" - made a realistic picture of the present economic world: "In the economic contest that lies ahead, the world is not divided into friend and foe. The game is simultaneously competitive and cooperative. One can remain friends and allies, yet still want to win".

Identifying mechanisms designed to foster coherence in global economic policy-making is the aim of negotiations within most economic organizations.

The WTO Doha Ministerial Conference joined those efforts. A very short and fast record of their debates shows that its results are largely satisfactory for the WTO members, both developed and developing countries. The Work Programme for Development adopted through the Doha Declaration opens new ways for WTO actions for a deep and strong contribution to world economic growth, employment and alleviation of poverty and, thus to global governance and sustainable development.

It is time to answer the new challenge: to find a system that could both regulate and liberalize, a system that permits fair and sustainable development and that provides for inter-connections: between governments, markets and civil society.

¹ Lester Thurow, "Head to Head", Ed. Warner Books, 1993

Romania is a developing country that builds a market economy and promotes commercial and economic policies connected to contemporary realities and challenges. The strategies and policies of the Romanian government fasten our economy to the international economic system and aim, over the long term, to contribute, through regional and global co-operation, to fulfil its objectives.

The Romanian Competition Council follows, as concerns the establishment of a coherent legislative framework and also its effective enforcement, the economic national strategy and, particularly, the efforts to comply with economic performance criteria and European social standards in order to build a functioning market economy and to prove its capacity to cope with competitive pressures and international market forces.

Effective competition policies and regulatory mechanisms are an important part of the governance framework of states. A basic framework of law enabling economic agents to act according to a competitive environment is not enough. Competition is what completes it. In the absence of an explicit competition policy, there is a real risk that the competition process might be obstructed or distorted by the actions of private parties or by the State itself.

Furthermore, competition policy contributes greatly to advancing not only the national economy but also the global economy as a whole. It is a necessity for all, including developing countries. It is the moment to reaffirm and welcome two results of the WTO Doha Ministerial Conference:

- including the needs and interests of developing countries at the heart of the Work Programme adopted in the Ministerial Declaration and more, the full inclusion of developing countries into the WTO and its decision-making process as a mean of integration into the global economy;
- recognizing the need for a multilateral framework to enhance the contribution of competition policy to international trade and development and also, the need for enhanced technical assistance and capacity-building in this area.

The necessity to strengthen co-operation and political dialogue between developed and developing countries is not a purpose but a fact under the present conditions of markets. We must underline the recognition of the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in all areas, and particularly in the competition field, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development.

This is the reality that countries are facing when they attempt to adopt competition law for the first time, which requires technical assistance. It is a big challenge to build trust in market forces and to promote the perception that competition policy contributes to sustainable economic development. When countries with successful experiences in operating competition law join these efforts and share their experiences and know-how, the effort is much easier. The same holds true for designing a framework of competition policy that is suitable for each country's specific economic situation. In this context, technical assistance is important not only for capacity building of countries that have competition laws in place, but also for developing countries that have yet to introduce competition laws. Depending on the specific requirements of the recipient country, two levels of technical assistance activities could be identified. The first level involves the discussion of theory and models for competition law and policy while the second level involves providing assistance beyond this theoretical level, toward assistance in the implementation of competition laws, the conduct of investigations, market definition, and the institution compliance mechanisms, identifying and setting priorities and designing an effective strategy.

Under the technical assistance programs the developed countries make available their resources and expertise in competition law enforcement, consumer protection and public utilities regulation. The programs have to strengthen their capacity to engage in global and regional trading arrangements and to encourage the exploitation of trade opportunities in order to achieve sustainable development, economic growth and the reduction of poverty.

Technical assistance is only one of the various forms of international co-operation and it is important to note the aid programs are more efficient if they promote as a priority the effective partnerships between the grantor and the beneficiary.

The experiences of different countries that recently adopted and implemented competition legislation could serve as useful reference for countries that are in the process of drafting competition laws or at the initial stage of enforcement.

Economic realities are raising new problems before competition authorities. In this context, sharing experience from one group of countries to another it is not sufficient; new decisions and initiatives are required. The competition authorities' interaction by exchange of information on real cases is extremely important for a common approach and will contribute to reduction of administrative barriers. The increased interaction between competition authorities could be facilitated by concluding of bilateral or regional agreements that regulate a concrete procedure.

The diversity of companies' behaviour and the complexity of the relations established on international markets are raising new arguments for international co-operation in the competition area. Even when national competition law is effectively enforced, it covers only acts and actions of companies and sometimes – regulatory bodies, but it does not touch the international activity of governments, which may also have anti-competitive character. Competition authorities are not often involved in the process of such decision-making and thus may not influence such processes.

An active participation in elaborating common approaches for competition policy and co-operation on real cases between the competition authorities will enhance the contribution of competition policy to international trade and development.

In this context, it must be mentioned the activities of the Global Forum for Competition as well as International the Competition Network that make international co-operation between authorities from different countries more effective. It is also important to improve the cooperation between the countries under various intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels.

CONCLUSIONS

Over longer term, the economic environment has to change in the direction of better functioning and more fluid markets.

Competition policy encompasses economic regulation, privatization, antitrust laws and international trade. The application of these policies, and the interface between these and other related policies have a significant influence on industrial structure, business behaviour and, consequently, on economic performance. It may also foster more flexible and dynamic environments that enable countries to respond more effectively to changing market conditions.

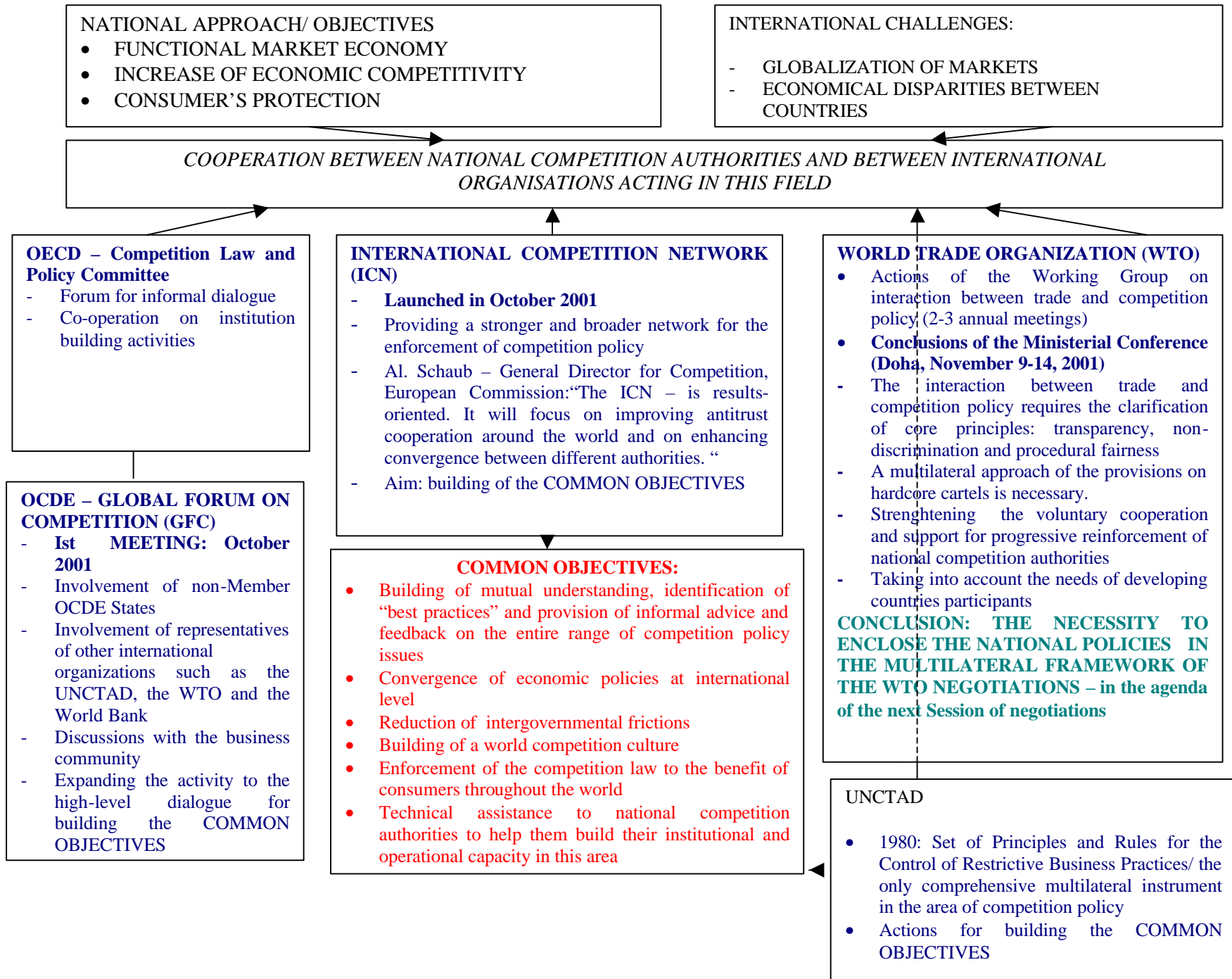
Competition issues have become international issues because anti-competitive practices are increasingly international in nature.

Through the simultaneous enforcement of presented co-operation initiatives, the way for effective regulation of competition at the international scale and for promotion of a competition culture around the globe is opened. Effective regulation is possible on the basis of multilateral agreed mechanisms. The issue of elaboration of the multilateral framework on competition in the WTO was widely discussed for the long time and it is now under preparation.

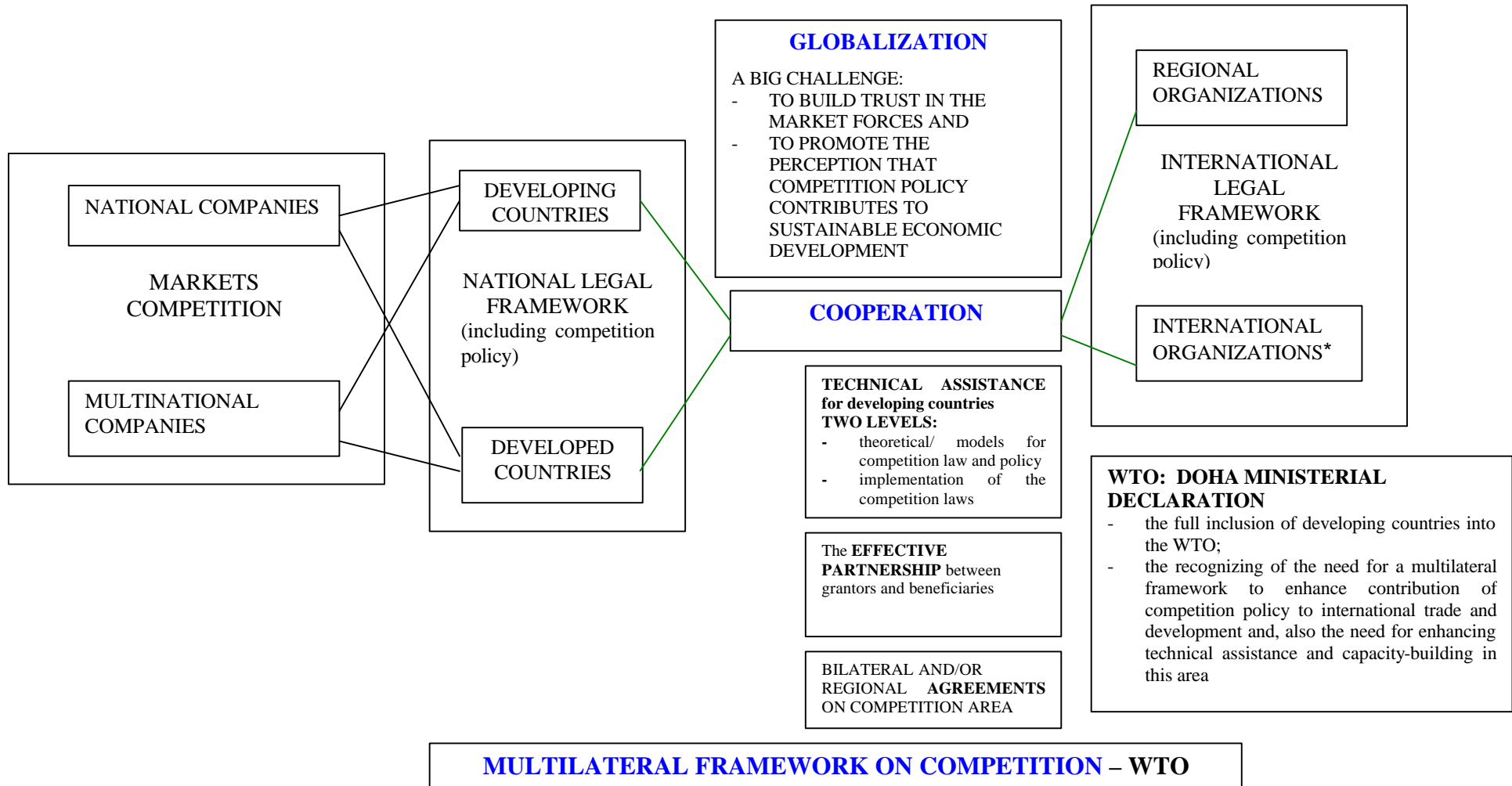
For reaching these objectives and for obtaining the expected results the developed countries, the international organizations must better integrate the developing countries into the international economic system. Consequently, it is important to have in view and act continuously in accordance with the commitments concerning technical assistance and capacity building of the developing countries. These require a close co-ordination between the organization donors (WTO, UNCTAD, World Bank) as well as between the bilateral national donors.

The fundamental objective of technical cooperation is to assist recipient countries in their understanding and implementation of agreed international economic rules, in achieving their full participation in the multilateral trading system and in ensuring a lasting structural impact on the recipient country, by directing all instruments towards human resource development and institutional capacity building.

ANNEX I COMPETITION POLICY IN THE CONTEXT OF PRESENT INTERNATIONAL CHALLENGES



ANNEX II: CAPACITY BUILDING & TECHNICAL ASSISTANCE – CHALLENGES FACING COMPETITION AUTHORITIES



* The chart on international organizations

