



# **Competition Policy in the WTO: what's it all about?**

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## Issues to be addressed

- Status of competition policy in the WTO post-Cancun**
- Why the interest in competition policy in the WTO?**
- The debate in the Working Group: some parameters**
- Is competition policy really a new issue in the WTO?**
- Parting thoughts**



## **Status of competition policy in the WTO post-Cancun**

- ❑ Subject is not “dead” but possibility of negotiations is widely opposed by developing countries**
- ❑ EU, Japan, other proponents have agreed it can be pursued “outside the Single Undertaking of the Doha Development Agenda”**
- ❑ Continuing focus on technical assistance/institution building, in co-operation with other intergovernmental organizations**
- ❑ Report from the Paris Mini-Ministerial: “emerging consensus favouring further study in the existing Working Groups” (Minister Derbez, Chairman)**



## Why the (current) interest in competition policy in the WTO?

- ❑ Growing incidence of anti-competitive practices with transnational dimensions: wide recognition of costs they impose on Members/the system
- ❑ Ability of such practices to:
  - ❑ impede market access
  - ❑ undermine the intended benefits of trade liberalization (e.g., expanded supply, lower prices)
- ❑ Perceived relevance of fundamental WTO principles to the sound and effective application of competition law
- ❑ Perceived relevance of competition policy to future evolution of the WTO



## The debate in the WTO Working Group

- ❑ **Not concerned with harmonization of competition law, in the sense of imposing uniform approaches**
- ❑ **Not concerned with the creation of an international competition agency**
- ❑ **Market access an important consideration, but not an exclusive focus**
- ❑ **Wide-ranging exploration of the complementarities of competition policy and trade liberalization**
- ❑ **Much attention also given to the significance of competition policy for developing countries and ways of assisting them with the challenges that they face in this area**



## Is competition policy a “new” issue in the WTO? (1)

- ❑ **GATS, Article VIII: issues concerning conduct involving monopoly and exclusive service suppliers**
- ❑ **GATS, Article IX: consultations regarding anti-competitive business practices that restrain competition and thereby restrict trade in services**
- ❑ **TRIPS, Articles 8 and 40: Members permitted to take measures to deal with anti-competitive licensing practices/other abuses**



## Is competition policy a “new” issue in the WTO? (2)

- ❑ Agreement on Safeguards, Article 11:3:  
Members not to encourage non-governmental measures equivalent to measures prohibited by paragraph 11:1 (e.g., voluntary export restraints)
- ❑ Basic Telecom Negotiations, Reference Paper on Regulatory Principles: commitment to action against anti-competitive practices by major suppliers in the telecom sector
- ❑ **Implication: competition policy is *not* a new issue in the WTO, though not yet systematically developed.**



## Parting thoughts

- Issue unlikely to go away; question is how it is likely to unfold
- Possibilities at the multilateral, regional and bilateral levels
- Complementary roles of the various international organizations working in this area
- Importance of horizontal principles in this area: downsides of a fragmented approach
- Relevance of the recent Telmex decision



# Appendix 1: Doha Ministerial Declaration, text of relevant paragraphs

## "INTERACTION BETWEEN TRADE AND COMPETITION POLICY

- 23. Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.
- 24. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, 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. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.



# Appendix 1: Doha Ministerial Declaration, text of relevant paragraphs (cont'd)

## "INTERACTION BETWEEN TRADE AND COMPETITION POLICY

- 25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity-building. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them."



**Annex 2: Issues requiring further clarification (according to developing country submission at Cancun (WT//MIN(03)/W/4 )**

- Non-discrimination
- Transparency
- Hardcore cartels
- International cooperation
- Compliance mechanism