

**Working Group on the Interaction
between Trade and Competition Policy**

OVERVIEW OF MEMBERS' NATIONAL COMPETITION LEGISLATION

Note by the Secretariat

1. This document is the final version of a text circulated previously as an informal note by the Secretariat (Job 2223, circulated 15 April 1999). That note was prepared in response to a request made by the Working Group at its meeting on 27-28 July 1998 (document WT/WGTCP/M/5, paragraph 85) that the Secretariat prepare a document summarizing objective information on national competition legislation that had been provided by Members in their respective submissions and presentations. The present document incorporates comments provided by a number of Members on the draft version, both during and subsequent to the Group's meeting on 19-20 April.

2. A number of limitations relating to the approach used in preparing the document should be noted. First, as was noted by delegations in the meeting of 19-20 April (WT/WGTCP/M/8 (to be issued)), the coverage of the document is limited to a stocktaking of national competition legislation, as such. It does not, therefore, cover national competition policy regimes that do not embody such legislation. The view has been expressed in the Group that a national competition policy can exist without a competition law,¹ and two examples of such policies that rely on instruments other than competition legislation (e.g., a high degree of market openness supplemented by sectoral rules and other instruments, where necessary) have been presented in the Group.²

3. Second, as was stipulated by the Group when the request was made, the document is based solely on information provided by Members and observers in their written and oral submissions. In fact, not all Members with national competition laws have provided information on their respective laws. In addition, to the extent that Members, in their submissions, were not asked to follow a prescribed format and, therefore, did not necessarily address all of the same topics and elements, the information provided may be incomplete.

4. Third, the attached overview clearly represents a "broad-brush" approach to the description of national legislation. Consistent with the direction given by Members, it simply notes whether particular types of conduct (e.g., horizontal or vertical restraints) are addressed under the respective national laws, and provides related information on the title of the law, the agency responsible for administering it, the availability of criminal penalties and private actions to enforce the law, etc. In fact, each of the categories included in the table could, in principle, be the subject of a series of sub-categories relating to issues such as whether a *per se* or rule-of-reason approach is employed in respect of a particular type of conduct, what factors are considered in applying the relevant statutory provisions, whether private actions or criminal penalties are available in respect of some types of competition law offences but not others, etc.

¹ WT/WGTCP/2, paragraph 46.

² See WT/WGTCP/W/53 (overview of national competition policy of Hong Kong, China), WT/WGTCP/M/3, paragraph 42 (presentation of national competition policy of Hong Kong, China in the Group) and WT/WGTCP/M/3, paragraph 48 (presentation of national competition policy of Singapore).

5. Fourth, the attached overview does not delve into matters such as exceptions and exemptions from national competition laws, which were not discussed extensively in the submissions of most Members, and which would, in any case, involve significant additional analysis.

6. With regard to notation, the attached table simply notes, with a check-mark (✓), if, according to the information provided, a particular matter is addressed in a Member's competition law. It does not distinguish between situations where the element in question is generally applicable or only partially so (i.e., in a subset of situations).

OVERVIEW OF NATIONAL COMPETITION LEGISLATION

Member / Observer	National competition law	Competition law includes provisions on:				Agency responsible for administering the law	Agency engages in competition advocacy activities? ³	Right of action before a court available to private parties?	Criminal penalties? ⁴
		Horizontal restraints (cartels)	Vertical restraints ⁵	Abuse of dominant position or monopolization	Mergers				
Argentina	Law 22.262 (1980)	✓	✓	✓		National Commission for the Defence of Competition			
Australia	Trade Practices Act (1974)	✓	✓	✓	✓	Australian Competition and Consumer Commission	✓ (especially through the National Competition Council)	✓ ⁶	
Bolivia	Market Arrangement Code (proposed legislation not yet approved by Congress)	✓	✓	✓	✓	INPROCOP (National Institute for the Protection of Consumers, Competition and Industrial Property) ⁷			
Brazil	Law 8.884 (1962, amended 1990, revised 1994) / Law 8.137 (1990) / Law 9.021 (1995)	✓	✓	✓	✓	CADE (Administrative Council for Economic Defense) / SDE (Secretariat for Economic Law at the Ministry of Justice) / SEAE (Secretariat for Economic Monitoring at the Ministry of Finance)	✓		

³ Competition advocacy refers to activities undertaken by staff of a competition agency or related authority to influence the design and/or implementation of government policies, legislation or administrative actions that affect competition.

⁴ It is assumed that all national competition laws provide for the application of civil (non-criminal) remedies; therefore, these are not specifically noted.

⁵ Some national laws address vertical restraints through broad provisions dealing with "restraints on free competition", "agreements in restraint of trade" or related conduct.

⁶ Except in regard to the prevention of mergers.

⁷ Agency to be created following adoption of proposed legislation.

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Canada	Competition Act (1986)	✓	✓	✓	✓	Commissioner of Competition (supported by the staff of the Competition Bureau)	✓	✓	✓
Chile	Decree Law No. 211 (1973)	✓	✓	✓	✓	National Economic Prosecutor's Office Resolutive Commission Preventative Commission	✓	✓ ⁸	✓
Colombia	Decree 2153 (1992)	✓	✓	✓	✓	Office for the Promotion of Competition	✓		
Croatia (non-paper)	Law on the Protection of Market Competition (1995)	✓	✓	✓	✓	Agency for the Protection of Competition / Council for the Protection of Competition	✓ (especially through the Council for the Protection of Competition)		
Czech Republic	Act 63/1991 Coll., on the Protection of Economic Competition, as amended by Acts 495/1992 Coll. and 286/1993 Coll.	✓	✓	✓	✓	Office for the Protection of Economic Competition	✓	✓	
European Community and its Member States	Relevant provisions of the Treaty of Rome (especially Articles 85 and 86) ⁹ and the Merger Regulation (1990) ¹⁰	✓	✓	✓	✓	Directorate IV of the European Commission ¹¹	✓	✓ ¹²	¹³
Hungary	Act on the Prohibition of Unfair and Restrictive Market Practices (Act No. LVII of 1996)	✓	✓	✓	✓	Office of Economic Competition	✓		

⁸ Private parties may appeal the resolutions of the Resolutive Commission before the Supreme Court.

⁹ In parallel to the provisions of the Treaty of Rome, each EC Member state has its own national competition legislation.

¹⁰ The competition law of the European Community also includes provisions on state aids (Articles 92-94 of the Treaty of Rome) granted by national governments.

¹¹ Each EC Member state also has its own national competition authority.

¹² With respect to national courts.

¹³ The competition legislation of the European Community and its member States provides, in most cases, for administrative sanctions in place of criminal penalties. The national legislation of Denmark includes provision for criminal penalties.

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India	Monopolies and Restrictive Trade Practices Act (1969, amended 1991)	✓	✓	✓	✓	MRTP Commission			
Japan	Anti-monopoly Act (1947)	✓	✓	✓	✓	Fair Trade Commission	✓	✓	✓
Kenya	Restrictive Trade Practices, Monopolies and Price Control Act (1989)	✓	✓	✓	✓	Monopolies and Prices Commission			✓
Korea	Monopoly Regulation and Fair Trade Act (1980)	✓	✓	✓	✓	Fair Trade Commission	✓		
Mexico	Federal Law of Economic Competition (1993)	✓	✓	✓	✓	Federal Competition Commission	✓		
New Zealand	Commerce Act 1986; Fair Trading Act 1986	✓	✓	✓	✓	Commerce Commission	¹⁴	✓	
Norway	Competition Act (1993)	✓	✓	✓	✓	Competition Authority	✓	✓	✓
Peru	Legislative Decree No. 701 (1991)	✓	✓	✓		INDECOPI (National Institute for the Defense of Competition and the Protection of Intellectual Property)	✓	✓	
Poland	Act of February 1990 on Counteracting Monopolistic Practices and Protection of Consumers' Interests	✓	✓	✓	✓	Office for Competition and Consumer Protection	✓		
Romania	Competition Law (1996)	✓	✓	✓	✓	Competition Office / Competition Council	✓		
South Africa	Competition Act 98 of 1998	✓	✓	✓	✓	Competition Commission Competition Tribunal Competition Appeal Court	✓	✓	✓
Switzerland	Federal Act on Cartels and Other Restraints of Competition (1995)	✓	✓	✓	✓	Competition Commission	✓	✓	✓

¹⁴ Other government agencies in New Zealand are responsible for competition advocacy.

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Tunisia	Competition law No. 91-64 amended by: Law No. 93-83 and Law No. 95-42	✓	✓	✓	✓	General Director of Competition and Domestic Trade Competition Council Courts	✓	✓	✓
Turkey	Law No. 4054 (1994)	✓	✓	✓	✓	Competition Authority	✓	✓	
United States	Sherman Act (1890), Clayton Act (1914), FTC Act (1914), Robinson-Patman Act (1936), Hart-Scott-Rodino Act (1976), and National Coop. and Production Act (1984, 1992)	✓	✓	✓	✓	Federal Trade Commission / Antitrust Division of the Department of Justice	✓	✓	✓
Venezuela	Law Promoting and Protecting the Exercise of Free Competition (1992)	✓	✓	✓	✓	PRO-COMPETENCIA (Superintendency for the Promotion and Protection of Free Competition)	✓		