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## **Institutional framework of global competition policy**

Increasing competition in the world economy seems to be a new serious problem which countries and international organizations have to deal with. Such situation requires a new approach to the issues related to competitiveness, understood as the ability to attract scarce strategic resources. Hence today's global challenge should focus on how to avoid unfair competition among countries and enterprises, and how to limit the dominant position of transnational corporations (TNCs), which could be abused in the relations with developing and least-developed countries.

One of the most proper levels on which consensus can be found in this matter, are international economic organizations, especially the World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), as well as a relatively new initiative called International Competition Network (ICN).

The author presents the competences of each organization and assesses their impact on the actions aiming global competition policy.

**Key words:** global competition policy, globalization, multilateral cooperation, political economy, WTO, OECD, UNCTAD, ICN.

## 1. Introduction

Increasing interactions between main players of the world economy cause particular consequences. They seem to be rather serious for many states to effectively cope with them. One of those issues is global competition, being the direct outcome of trade and capital flow liberalization. The cosmopolitan nature of transnational corporations (TNCs) is in turn one of the most important factors, when it comes to locating their businesses in places, where they bring the highest profit and not always in the country of origin. Thus, there is reasonable fear, that they may one day dominate the majority of the most important branches of economy and make the economic growth and development conditioned by realizing their private interests.

This generally outlined serious problem leaves a little hope that the potential of the competition process (so-called creative destruction) restrains the drift towards oligopolization and monopolization. International cooperation seems to be another good solution, because single institutions responsible for competition policy at the national (domestic) level do not have enough resources and competences to fight against these challenges. The most common support – information exchange or coordination of the activities – could be insufficient. So that is the reason, why international economic organizations have settled a number of rules, which should be the basis for the competition policy carried on at the global level and consequently lessen the threats connected with the excessive concentration of the market power.

The aim of this article is to outline the main principles of the cooperation established by the World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD) and finally International Competition Network (ICN), together with issues constituting the competition policy<sup>1</sup>. These deliberations may be a contribution for assessing the necessity and perspectives of the future cooperation in this matter.

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<sup>1</sup> The article is also the Author's next step towards the deepening and arranging his own work research (Michalski 2004a, Michalski 2004b, Michalski 2005, Michalski 2006a, Michalski 2006b), which final effect should be the monograph concerning the international coordination of the competition policy.

## 2. World Trade Organization

The World Trade Organization (WTO) is one of the organizations which could aspire, because of its range, scale of activities and previous achievements, to hold the predominant role in the global discussion and implementation of global competition policy rules. The WTO activity in the field of competition policy follows the decisions of Ministerial Conference in Singapore (9-13 December 1996), expressed in the declaration adopted on 13<sup>th</sup> of December 1996 (so-called Singapore issues). During the negotiations, a decision has been made regarding the appointment of some working groups. One of them – Working Group on the Interaction between Trade and Competition Policy (WGTCP) – has been given an assignment to deal with the issues appearing between the trade and competition policy. The main tasks of this working group are various matters of anticompetitive practices. Members of WGTCP focus on the discussion about the possibility of completion the multilateral framework of cooperation which would have to assure effective application of the competition law in the world economy.

There are obviously many significant differences in opinions. The fundamental divisions are related to the proper level, at which the measures should be taken, aiming the successful implementation of the competition law and policy: should they remain on the level of national institutions or there is a necessity to join these matters to the principles regulating the international trade system. Thus, competition policy determines itself as a next component of the economic policy essential for achievement the goals of WTO. This is especially important in the contemporary situation when main possibilities concerning the shape of international trade policy seem to be depleted. The importance of these issues influences the problem of the competitiveness of the economies, increase of economic effectiveness as well as final improvement of the consumers welfare and quality of life.

The jumping-off point for the analysis of rules and cooperation perspectives, concerning the WTO competition policy, is General Agreement on Tariffs and Trade (GATT), which has established a number of standards crucial for the process of competing, especially non-discrimination principle, being fundamental for all projects connected with the shape of the competition policy continued at global stage. Moreover, General Agreement on Trade in Services (GATS) and Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPs) contain solutions regulating the issues of national competition policy and point out the forms of cooperation as well.

From the core of the next fundamental solution – most-favoured-national treatment principle (MFN) – emerges that the countries, being parties of this agreement, are obliged to act fairly accordingly to positive comity, which presumes the respect shown in their acceptance of each other law systems. Analyzing the cases of the anticompetitive practices, having direct implications on economic relations or spoiling the strategic interests of the countries affected by the negative consequences, it has to be agreed with the country of origin, where the company charged with the law infringement is formally located. The MFN principle ensures also protection for countries having minor economic power and being more exposed to protectionist activities, intending to prevent foreign companies accessing the markets of bigger countries.

“The essence of the principle of national treatment is to require that a WTO Member does not put the goods or services or persons of other WTO Members at a competitive disadvantage *vis-à-vis* its own goods or services or nationals” (WTO 1999:4). It restricts the autonomy for directing the national economic policy and shaping beneficial conditions for foreign trade and constitutes quite big support for international business. From this point of view such measures are unavoidable. Key elements are: article III.4 GATT, article XVII GATS and article 3 TRIPS together with their broad interpretation. They are defined as follows:

- the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use (Article III.4 GATT),
- each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers; a Member may meet the requirement (...) by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers; formally identical or formally different treatment shall be considered to be less favourable if it modifies

the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member (Article XVII GATS),

- each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided (Article 3 TRIPs).

“This interpretation has revolved around the concept, that Article III:4 requires equality of competitive opportunities between domestically produced and imported products, because it protects expectations rather than specific outcomes in this regard and that it prohibits measures that might adversely affect the conditions of competition facing imported products relative to domestically produced products on the internal market” (WTO 1999:7-8).

Transparency principle remains inseparable element of every discussion about the internationalization of commercial law and trade regulations. Clear and consistent rules support fruitful relations and affect successful negotiations. This belief seems to be silent and effective tool for the unification of particular standards. The concept could be understood as (WTO 1999:14):

- the obligation to publish, or at least make publicly available, all relevant regulations, and, as a general rule, not to apply or enforce them until this has been done; often linked with this are provisions relating to the impartial administration of such regulations and the right of review of decisions taken under them,
- provisions on the notification of various forms of governmental action to the WTO and other Members.

An efficient information exchange is a good basis to avoid conflicts and to eliminate the intentions to potential disputations. WTO General Council has control-advisory competences regarding trade policy and none of the parties has theoretically the right to ignore the obligations. It reduces the uncertainty of dominant political position (see Hoekman, Kostecki 2002:45). The main GATT principle should generally strengthen the investment incentives and contribute to the further intensification of the world trade. All these regulations

are sometimes exempted, but only in the legitimate cases. For instance, regarding fair competition, it is allowed to apply anti-dumping and countervailing duties.

WTO has set up complex structure of processes which have to be realized regarding the establishment of an agreement concerning competition matters. The following components are stipulated (Janigan, Competition Policy; see also Ministerial Declaration 2001):

- a commitment by all WTO members to enact effective domestic competition legislation covering monopolies, mergers, and restrictive business practices,
- minimum procedural provisions, in particular on access to administrative agencies and rights of complainants,
- a requirement that illegal agreements should be made unenforceable before national courts,
- provisions giving the judiciary a clear enforcement role in competition policy,
- guaranteed access to national courts ensuring thus that there is no discrimination between domestic and foreign firms,
- basic standards of competition law enforcement such as transparency of domestic proceedings, application of sanctions and effective competition authority.

These proposals have to be shortly considered. According to the requirement of enacting effective domestic competition legislation, it is worth remembering, that there are serious restraints to achieve this goal: not every WTO member has established and implemented competition law (the problem concerns especially developing countries) and an extra-limiting factor are still existing discrepancies between the approaches to the law execution.

The next proposal takes presumption, that high-developed countries should give a good example and confirm by the measures undertaken, that all those legal issues related to the competition policy are handled seriously. At the same time, article XI.2 of the Marrakesh Agreement establishing the WTO says, that the least-developed countries, recognized as such by the United Nations, will only be required to undertake commitments and concessions to the extent consistent with their individual developmental, financial and trade needs or their administrative and institutional capabilities.

Because of two influential organisms from the point of world economy view – American and European ones – it is clear, that the WTO cooperation scheme will be affected by the

American and European law solutions. Attention should be paid to the thesis, that US and EU interest is to use the regulations of the competition law to promote export and keep down the scope on conflicts concerning the big company mergers. At the same time, they are less interested in exposing their own firms, operating on the foreign markets, to the international regulations (see Hoekman, Kosteci 2002:393). Thus it confines the completion of the assumptions mentioned above.

The next obstacle results from the distinction between geographical jurisdiction and geographical range of potential law infringement. Because of this, there is a pressure to establish international rules unequivocally and homogenously, thereby reducing the disputes about their legal interpretation.

As long as there are not any similar standards, WTO and its members have to adapt the rule of reason and case-by-case approach. It is evident that there is not any international executive. Every agreement is going to fail without the capable advisory institutions. However, there is an idea to set up International Competition Authority, but the real chances to complete this concept seem to be hardly perceptible and depend on the establishment of the “competition agreement” (see more European Commission 1996; Brodecki 2004:494).

The serious weakness of WTO might be the consequence of its nature – as an intergovernmental agreement – it has got limited resources to influence the behaviour of the private “players”, especially those ones, which activity has cross-border character and is superintended by several law jurisdictions. “That is because in the articles 9 and 10 of GATS and the preamble of TRIPs Agreement was pointed out the necessity of negotiating in the future some additional regulations and standards of this situation” (Stober 2002:328).

Some doubts are arising from the point of view of the national sovereignty caused by the obligation of information provision and exchange. There is always a risk, that they could be used against the essential interests of a particular country. Much more important seems the identification of the most common obstacles hindering the access to domestic markets and the way of reducing them. The problem of the abuse of dominant position by the national companies as well as by foreign ones also requires some reflections.

Many activities have been undertaken at the WTO level to avoid the deadlock in the negotiations and to bring the positions closer and closer. Every ministerial conference was ended with the declaration, which emphasized these new ideas and actions as well as the necessity of finding answers. Key settlements are consisted in the two declarations from Singapore (1996) and Doha (2001). Each underlines potential possible benefits which could

be achieved by the global agreement. Doha Declaration also points out the needs of developing and least-developed countries for enhanced support of technical assistance and capacity building, including policy analysis and development.

The experience gained so far could be used as a strong argument for convincing others that the WTO might and should serve as a negotiation platform where the objectives of both developed and developing countries could find a proper balance (see Van Miert 1998a).

### **3. Organization for Economic Cooperation and Development**

Organization for Economic Cooperation and Development (OECD) gathers the most developed and industrialized countries, being the forum, on which cooperation regulations regarding international economic policy are considered. One of the domains is the competition policy. As though all OECD members have achieved high standard of implemented economic law, which is permanently reformed, it might seem that there are not any complex barriers and the discussed matters could reach a common understanding.

Competition policy in high-developed countries has an important role to play, particularly in relation to the advanced liberalization process and domestic market deregulation. It is accepted, that the competition remains fundamental for the functioning of market economy and improves economic efficiency, creating innovations and their diffusion.

The whole OECD coordination network concerning the competition policy consists of seven basic principal recommendations (OECD 1997):

- adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation,
- review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively
- ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied,
- review and strengthen where necessary the scope, effectiveness and enforcement of competition policy,
- reform economic regulations in all sectors to stimulate competition, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests,

- eliminate unnecessary regulatory barriers to trade and investment by enhancing implementation of international agreements and strengthening international principles,
- identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Besides, OECD conducts a number of comparative studies, reviewing law and competition policy and evaluating the effects of many activities.

All these researches are carried out by working groups in the Competition Law and Policy Committee (CLP). At this stage, the project of recommendations appears and is then introduced for further discussions and final approval. The most essential cooperation domains are currently three issues:

- stabilizing international cooperation according to the positive comity approach,
- implementing leniency (reducing strong punishments for the participants of hardcore cartels, if the company reveals that kind of forbidden agreement and provides the competition authorities substantial information) and proceeding with the international cartels,
- notifications of transnational mergers.

Cooperation between OECD members is based on the regular information exchange, which consists of the following procedures: notification, coordination of conducted anticompetitive cases, assistance in providing and receiving information, assuring protection and secrecy as well as consultations and conciliation in the arguable matters.

In the notification procedure member states have been obliged to provide information at the time adequate to allow other countries present their point of view on the particular topic. The notifying party has a big challenge to deal with all possible circumstances. Notification should provide the evaluation of the likelihood of the negative consequences for national interest. If the party is going to examine or investigate the issue, it is required to describe it in details and estimate the amount of time needed for it. Coordination of open cases should not infringe the right to make an uninfluenced decision by each party. Any preventing actions shall be agreed in advance.

The assistance in providing and receiving information focuses mainly on analytical matters. It prevents other parties from seeking for information abroad, when it is not possible

to obtain it from the domestic sources. The providing party could condition the information secrecy.

The notification procedure has to lessen the scope of collisions or prevent them relatively. If they were unavoidable, there would be a capability to settle the arguable cases by the CLP through the conciliation. However, its proposals are not binding for the parties.

According to the principle of positive comity approach, it is worth saying that “positive comity” as such, has not been defined at all, despite of its common use in regard to the competition policy as a general term for cooperation (see more OECD 1999a). The OECD activities related to leniency are appraised positively and optimistically. “Leniency may mean any reduction in the penalty compared to what would be sought in the absence of full, voluntary cooperation; the clearest, most complete form of leniency is amnesty” (OECD 2001:2). It serves as a tool for breaking hardcore cartels through the proper system of penalties and incentives.

The discussion about the optimal construction of methods is driving towards the definition of efficient value of fines. Currently, it depends on the estimation of global detection of all those anticompetitive engagements. There is no coherent position in this matter, but the majority seems to tend toward the solution, that the penalties should be equal to the treble amount of expected profits. In the followers’ opinion, these proportions might force the companies participating on the illegal agreements to the careful consideration of potential gains and losses in case of successful cartel investigation. Additional difficulties are however connected with the calculation of losses being the effect of anticompetitive practices. “In its simplest form it can be approximated by multiplying the increase in price, resulting from the cartel agreement (the “overcharge”), by the amount of turnover (in units) subject to the agreement” (OECD 2002:6). Other suggestions take into account the Anglo-Saxon law experience and provide for the imposition of fines against natural persons involved in cartel conduct as well as the classification of violation as a crime, together with imprisonment or recovery of damages for the victims’ monetary loss.

The leniency policy should be obviously based on clear and certain regulations. It is highly important for the entrepreneurs, which could often fear for not only economic retaliation, but also the unjustified information provision to the undesirable authorities or people. For completeness of all those activities, effective fight against cross-border and transnational cartels is required. “The number of reported international cartels has been relatively small, which makes generalization difficult, but the markets also tend to be highly concentrated, to

involve homogeneous products and to have at the centre of the conspiracy an industry trade association” (see OECD 2002:8). The importance of this issue will probably increase, thus there is actually necessity to deal with it.

The harmonization of notification procedures may bring at least two benefits.

“Firstly, transaction costs for the merging parties would be reduced to the extent that the parties are able to prepare and present substantially the same information to the authorities of more than one country; and cooperation among national authorities examining a merger would be enhanced to the extent they are reviewing the same or similar information; secondly, in the longer run, harmonization of information requirements could contribute to enhanced international coordination of other aspects of merger control, such as convergence in waiting period requirements” (OECD 1999b:2).

“A drawback to this system is its relative subjectivity, resulting in inconsistency of information across enterprises, possibly including the merging parties, thus potentially masking horizontal or vertical aspects of the transaction” (OECD 1999b:8 appendix).

OECD supports the ideas, best practice and experience exchange through the annual meetings on the Global Forum on Competition (GFC) in Paris, arranged by the mentioned CLP. During the discussion, GFC defines the priorities for further activities – in particular implementing leniency policy, technical assistance for developing countries and new forms of cooperation between competent domestic authorities, responsible for competition policy. The WTO recommendations and regulations are discussed too.

More detailed studies carried on by OECD/GFC focus on the role of competition policy goals achievement, related with the world trade and capital flows (especially foreign direct investment) liberalization. Another domain of interests is the identification of competition mechanisms in the innovative sectors. “Problem, which may arise, involves the proper definition of the relevant markets, assessment of entry barriers, predictions how the markets will likely evolve, as well as setting the structural characteristics, i.e. concentration indices” (see more European Commission 2003:127-128). Other issues focus on preventing measures, approach to the global mergers and acquisitions and consumer protection. The subject of the debate is for instance virtues and drawbacks of the dominance test and the substantive lessening of competition test (see more OECD 2003). A presumption might be made here, that this forum is to be more suitable for the discussion about these matters, opposed to the

European Commission. It is a direct consequence of OECD character, gathering the most developed countries, so there is a good opportunity for meritorious discussion and to find an effective counterbalance against EU and its member states.

Technical assistance of OECD has been concentrated in recent years on the South-East Asian countries, united in APEC, China (especially regarding the problem of its WTO membership and Chinese-US economic relations), Russia, C.I.S, Latin America, Eastern Europe and Balkans. The main goal of this support is to enhance competition policy activities by tuitions and workshops for judges, lawyers, officials and legislators. There are many projects intensively promoted, aiming at more transparency and market integration. Assessed are the effectiveness and existing implementation problems. Many of those actions are undertaken together with UNCTAD and World Bank.

#### **4. United Nations Conference on Trade and Development**

The next platform for international cooperation is United Nations Conference on Trade and Development (UNCTAD). The specific goals of this institution are the result of the character of UNCTAD – integration of developing countries with the world economy along with taking into account their problems and distinct interests at every stage of debates. It is worth remembering, that unequal parties cannot be regarded as the equal ones. “UNCTAD has progressively evolved into an authoritative knowledge-based institution which work aims to help shaping current policy debates and thinking on development, with a particular focus on ensuring that domestic policies and international action are mutually supportive in bringing about sustainable development” (<http://www.unctad.org/Templates/Page.asp?intItemID=1530&lang=1>). The basis for cooperation in the field of competition policy settles the annex to the United Nations Conference Resolution of 22<sup>nd</sup> of April 1980, setting the multilaterally agreed equitable principles and rules for the control of restrictive business practices. This document has been considered as a recommendation (Brodecki 2004:497) and defines the following goals to achieve (<http://ec.europa.eu/comm/competition/international/3a04aen.html>):

- to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers

affecting world trade, particularly those affecting the trade and development of developing countries,

- to attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through: the creation, encouragement and protection of competition, control of the concentration of capital and/or economic power, encouragement of innovation,
- to protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries,
- to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries,
- to provide a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

There is defined term of “restrictive business practices”, which means:

an act or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which, through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact (<http://ec.europa.eu/comm/competition/international/3a04aen.html>).

Other regulations define the principles of international cooperation, having regard to the private companies, together with TNCs<sup>2</sup> as well as regulations according to the states at the national, regional and sub-regional level and miscellaneous international activities.

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<sup>2</sup>It is worth mentioning, that this resolution was established in 1980, when the economic power of TNCs was not so dominant as today (see UNCTAD 1997 and UNCTAD 2003:134-136).

The effects of cooperation are evaluated every year, accompanied by detailed analysis of all legal changes and reforms as well as the most important cases of law enforcement (see UNCTAD 2002a).

The institutional support for UNCTAD is provided by Intergovernmental Group of Experts (IGE) established by the mentioned resolution. They carry multilateral consultations, studies and research on restrictive business practices, assess other institutions publications, gather information, conduct surveys and analysis and spread out the results through the system of recommendations as well as through the annual reports on IGE's activities.

Another form of support is the Resolution adopted by General Assembly 55/182 from 20<sup>th</sup> of December 2000, which reaffirms the role of competition law and policy for sound economic development.

UNCTAD Reports have often educational dimension. They are compendiums of useful knowledge regarding the contents of the competition law and policy, the government's role and the relations with other instruments of economic policy, as well as principles of international cooperation. Publications contain descriptions of the substantial cases concerning the law enforcement in particular countries or integration groupings.

UNCTAD gives assistance in the process of modelling and implementing competition regulations. The structure of basic competition law consist of several key elements: objectives, definitions, scope of application, exemptions and exceptions, prohibited practices: horizontal and vertical merger control, the competition authority, sanctions and appeal procedure (see UNCTAD 1996:12).

Because of the contradictions between the goals of competition and industrial policy (see more Khemani 2002), attention is drawn to the analysis of the relationships between competition, competitiveness and other important economic issues (UNCTAD 2002b, Europäische Kommission 2001:111). This matter relates to the problem of defining the access of developing countries to new technologies, possibilities of using innovations with respect to the intellectual property rights. Last but not least, is the policy attracting the foreign direct investment inflows.

Facing these challenges, particular importance has been given to the technical assistance programmes. UNCTAD should support the best practice and experience sharing through specific seminars, workshops and visits. Benefiting parties are mainly African, Asian or East-European countries (Russia and C.I.S). The undertaken projects focus on the issues of

consumer protection, cooperation in the regional integration groupings and the institutionalization of the competition policy.

UNCTAD keeps in touch with the WTO in the debate about the internationalization of law to avoid the situation that new rules could reduce the potential of economic growth. All these matters are consistent with the Doha Ministerial Declaration. UNCTAD offers only additional chance to discuss them over and over. It is worth noticing, that this institution does not want to duplicate or substitute those activities, but to find new incentives for more effective continuation. The only ambition is “to provide competition authorities worldwide with a network” (Monti 2001).

## **5. International Competition Network**

The last platform of cooperation is International Competition Network (ICN). This specific (project-driven) organization was established on the 25<sup>th</sup> of October 2001 in New York. Time needed for the complete realization of the idea was short comparing with similar international initiatives. “This is the first time, so many competition authorities have taken an autonomous initiative designed to enable them to share experience and exchange views on competition issues deriving from the ever-increasing globalization of the world economy” (European Commission 2002:121) and “the consequent growing inter-dependence of national and regional economies” (Devellennes, Kiriazis 2002:25).

Existence of various competition regimes and absence of internationally accepted competition standards, presents a double challenge: on one hand, it complicates the task of enforcement agencies, that wish to cooperate in the investigation of potentially anticompetitive behaviour, given the often divergent procedural and substantive rules; on the other hand, the mushrooming of enforcement for business whose activities affect more than one jurisdiction (Roebbling et al. 2003:37).

“The concept for the ICN came directly out of the recommendations of the International Competition Policy Advisory Committee (ICPAC), a group formed in 1997 [...] which was commissioned to think broadly about international competition in the context of economic globalization and focused on issues like multi-jurisdictional merger review, the interface between trade and competition, and the future direction for cooperation

between antitrust agencies. Recognizing that the best way to promote sound and effective antitrust enforcement in the wake of increased economic globalization is through a network of competition authorities and other specialists from around the globe, government officials and members of the antitrust bar embraced ICPAC's recommendations for a Global Competition Initiative" (see more <http://www.internationalcompetitionnetwork.org/index.php/en/about-icn/history>)<sup>3</sup>.

This new project has received a big support from the EU and USA, which helped it to gain more political prestige and energy. It confirmed the necessity of that kind of cooperation in the competition matters. The ICN was launched by the top antitrust officials from 14 jurisdictions - Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States, and Zambia. It is worth mentioning that after one year, 77 competition authorities from 68 jurisdictions have joined the ICN (in 2005 there were just about 90 authorities).

"The ICN does not have any institutional structures and it is guided by 15-person steering group, composed of representatives of ICN member agencies. The initiative is project-oriented, flexibly organized around working groups, the members of which work together largely by Internet, telephone, fax machine and videoconference" (<http://www.internationalcompetitionnetwork.org/index.php/en/about-icn>). The idea promotes awareness of many barriers, focus on the international merger control and recommendations without rules-setting (technical assistance) stressing the need of better commitment for cooperation between specialists and practitioners, consumer organizations and academics. In that way, the initiative has been seeking for enthusiastic response and providing information to those, who would be interested in what could be supportive for experience sharing.

"The work is meant to complement that of other international fora like the OECD, WTO, UNCTAD, and World Bank and it is designed to fill gaps, not to overlap or duplicate" (von Finckenstein 2002). "It ultimately aspires to recommend concrete best practices that are experienced to help to enhance governance on the globalizing world" (European Commission 2003:126). "Members have obliged themselves to organize annual conferences, which are good occasion for making evaluation and setting new goals and task to do. It is left to the individual competition authorities to decide whether and how to implement the

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<sup>3</sup> About mission and main activities of ICN see Memorandum on the Establishment and Operation of the International Competition Network.

recommendations, through unilateral, bilateral or multilateral arrangements, as appropriate” (<http://www.internationalcompetitionnetwork.org/index.php/en/about-icn>).

The work concentrates at many important issues represented by the following working groups:

- cartels (with subgroups: general legal framework, enforcement techniques),
- competition policy implementation (with subgroups: effectiveness of technical assistance, enhancing the standing of competition authorities with business experiences of young agencies),
- mergers (with subgroups: notification and procedures and mergers investigations and analysis),
- unilateral conduct,
- operational framework.

The best effects in the early stage were made – according to the defined goals – by the Working Group on Mergers, which has set many recommendations related to the notification procedures (information gathering and providing, time schedules, assessment of the system efficiency etc.) and key principles in this matter – investigations, procedural fairness, secrecy and activities coordination.

The realization of the second goal – technical assistance – was committed to enhancing domestic competition authorities, consumer advising, supporting educational initiatives financed by private resources, aiming at improvement in communication between government and private sector. The biggest contribution in this field was made by the EU officials, as though the European representatives were appointed to accomplish it. Such a long-term approach was in line with the good experience that the European Union has made with the so-called “twinning programs” organised by the authorities of the Member States for many of their counterparts (see Monti 2003). More than a half of all those projects in the world economy are realized by the EU.

So, the following opinion seems to be true: “ICN is much more a venue designed to spread competition culture amongst competition agencies in all parts of the world” (Develennes, Kiriazis 2002:26).

## 6. Conclusions

The challenges of globalization strongly determine the question, if and how is it possible to react and deal with negative consequences. Important trend in the activities seems to be the global governance sustaining the persistent rules of cooperation. In the broader context the questions focus on the reformist approach to the process of globalization intended by the proper directing of its dynamics, especially according to the benefits redistribution and interests of developing countries.

The whole debate about these matters containing different opinions divides into two opposing groups. The first one, represented by the international organization or expansive regional integration groupings expressing some kind of optimism and enthusiasm, together with specific “propaganda of success” according to the real achievements. The latter one remains more sceptical and critical. It stresses at every occasion the problem of democratic deficit and the lack of coherent future vision.

Law and policy harmonization requires the choice between unilateralism and multilateralism. This is the consequence of increasing bipolar order of the Western world. While U.S. approach assumes the American leadership in this process (American unilateralism), the European model of cooperation is based on the constant necessity of compromise and establishing the international agreement in a way to secure an equal decision power or thereabouts. The variant domestic policies and the regionalization of the world economy remain the most important obstacle for the sound and homogenous competition law.

Another substantial issue is a fact, that competition law in the most countries was established as a consequence of different theorems and political ambitions. “Diversified approaches do not always match to the standards adapted in the EU or USA” (Neumann 2000:216). “Even within a particular national system, the goals of competition law may evolve and transmogrify, often depending on the state of industrialization of the economy, the strength of the political democracy, the power of the judiciary and bureaucrats, and the exposure of domestic firms to global competition” (Fox 2002:219).

Many countries can stand the anticompetitive practices if they find the reason on the base of trade policy. It confirms the lack of coherency and inconsistency. “If governments turn a blind eye and refuse to take action to restore the balance, then inevitably private anti-competitive practices become a barrier to trade and, to some extent at least, will negate the benefits we should be reaping from trade liberalization” (Van Miert 1998).

The pragmatic cooperation is contemporarily preferred despite of permanent insufficiency of those one who insist on the concrete effects. The discord between expectations and results should be the incentive for more effective activities. There is a controversial thesis too, that the contemporary law does not often follow the challenges of the world economy. Required situation should be exactly opposite or at least assuming the stable law reform (so-called law-in-action trend). The difficulties are related to the possibility of making predictions in the context of the high sensitivity of the global system (so-called butterfly effect).

“In the absence of a specialized world-wide competition organization and in view of the complementary relationship between trade and competition policy, the World Trade Organization is the institution best suited to house an International Competition Agreement” (Monti 2002). This kind of cooperation structure would have three (relatively two) levels – international, regional and domestic.

„Therefore, the introduction of an international level of protecting competition does not imply the necessity to introduce simultaneously international competition rules, an international competition authority and an international court. Instead, the problem of protecting competition on international markets might also be solved by international procedural rules on the first level, which ensure the enforcement of second-level competition laws by second-level enforcement agencies” (Kerber 2003:9).

“It is conceivable to develop an elaborated concept of legal federalism, i.e., a concept of multi-level legal systems, in which competencies for the making of legal rules exist on different levels of jurisdictions” (Kerber 2003:17).

The key domains of the cooperation in the matters of competition law and policy are trans-border, exceeding the domestic jurisdiction over cartels, transnational mergers and acquisitions and technical assistance. The latter, despite of laudable goals, might be also regarded as a tool of competing for prevailing one concrete approach in the law enforcement. The international community should define what “sound law” means, especially in the context of industrialization and economic development as well as of the avoidance of law worsening (so-called race to the bottom) (see more Jenny 2002:211; Fox 2002:226-229). It is obvious that these factors are strong incentives for the foreign direct investment inflows.

To ensure that the process of law and policy harmonization will be reasonable, the following facts have to be emphasized – the still undertaken activities depend on the political

willingness, effective compliance with international agreements as well as on commitment for comparable adjudication.

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