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COMPETITION POLICY IN TIMES OF GLOBAL CRISIS

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By Juan Antonio Rivière¹

Globalisation

"Globalisation" in the 21st century connotes the greatest ever worldwide interaction of inter-state trade and investment. On this basis, unrestricted national economic opening to competition has been justified and thus competition policy has become internationalised. Which the limitations to globalisation are has not been discussed, although facts themselves have confirmed such limitations, furthered by the disparate circumstances existing between countries still sovereign, though ever more economically interdependent. It is thus necessary to look deeper into the obstacles hindering the achievement of reciprocity in the application of international competition law.

Most countries worldwide function on the basis of market-oriented economies so competition rules are being applied. Even countries with planned economies have confirmed their gradual approach towards economic and commercial freedoms. Finally, there is another large group of countries whose development has been prevented by government economic interventionism or by extreme poverty. All these countries are a component part of the current world (global) economic inter-relationship and, as such, participate in its competitive dynamics, irrespectively of not applying the same rules.

Given that competition policy is not an exact subject-matter and that its implementation evolves gradually, and given that it acknowledges the individual freedom of economic actors in pursuing to profit from capital as its fundamental tenet, there is the risk that its basic premises may be brought into question in cases of economic turmoil and global recession, or where extreme poverty prevents a society from raising minimal resources for providing solutions itself. It is not therefore certain whether capitalist investment accepts or is in a position to accept losses' inherent risks when the overall economy collapses disproportionately or when altruistic efforts do not lead to economic growth, since these situations are too far removed from investors' rational risk assumption expectations.

Global Financial Crises

The most recent proof is visible in the drastic reduction in interbank confidence² and in the need to provide the financial system with liquidity to restore that confidence³ – a liquidity made-up of billions⁴ governments rise in tax revenues and temporarily earmark to preserving the banking system⁵.

¹ The opinions expressed are not those of the European Commission. This article was published in Spanish in May 2008 in the Latin American Competition Bulletin BLC24 page 117. The English translation was a generous contribution of Mrs. Marta Haines Ferrari, Visiting Fellow, British Institute of International and Comparative Law (BIICL).

<http://ec.europa.eu/comm/competition/publications/blc/index.htm>.

² "It was said that central countries were sheltered from this financial crisis, but my perception on the implications of the globalisation phenomenon, led me to say that it would perforce end by contaminating those countries' financial markets." Felipe González, "Crisis and priorities" *El País*, 7 May 2008.

³ "The situation in financial markets is not yet stabilised, and a slowing down in growth is unfolding. Our economy will not fail in being affected. Banks' risk measurement and management tools have been surpassed by a crisis initially limited to the U.S. mortgage market only. (*And from which*) conclusions on the banks' limited risk measuring capacity and on the authorities' modest capacity to supervise them, should be drawn." Mr. Jean – Pierre Roth, President of the BNS –Banque Nationale Suisse. *Le Figaro*, April 26-27, 2008.

⁴ "Central banks must recover the copious monetary handouts made available to calm financial markets. They must again restrict their loans to banks, and not too late." *Le Temps*, May 17, 2008 "Un monde sans inflation," by Beat Kappeler.

⁵ The "special liquidity scheme" launched this week puts Britain's central bank at the forefront of international attempts to arrest the financial crisis. Melvyn King, the Bank of England's governor, said on April 21st that the

"A posteriori", governments propose improving the regulatory framework of the financial sector - once public money has already been spent on specific unbudgeted purposes⁶ or in other sectors on justification of the general public interest protection⁷. Competition policy finds in these situations the evidence that its implementation cannot secure the imposition of the concept of market efficiency as a referential parameter, and that it is debatable whether those measures provide any benefit to consumers at all.

Some distinguished authors have insisted in explaining again that the ultimate purpose of competition policy is to protect consumers⁸ which, while being totally true, is still far from being a reality since regardless of consumers' diminishing purchasing power and of their difficulties in liaising to achieve a solid common representative basis, competition authorities are aware of those difficulties⁹ and in applying competition rules, do endeavour to protect consumers' needs. Governments, in contrast, have no easy access to key market-efficiency¹⁰ improvement solutions or it is not their first priority¹¹.

The global market becomes unpredictable

A global crisis reveals the limits of competition policy and its unavoidable inter-relationship with the rest of government policies and sectors. To a certain extent, competition policy itself finds its development being determined by external factors. This situation leads us to question how competition policy is to evolve in the medium- and long-term and to what extent its independent implementation in each country has the prospect of attaining results useful on a worldwide level.

Should competition authorities claim to be independent in implementing competition rules, they must strive in controlling those obstacles to efficiency and consumer welfare developments that originate in their own governments. Carrying-out their own self-criticism or alerting their own governments on the lack of regulatory provisions or views on their economic policy is urgent¹².

scheme was "designed to improve the liquidity position of the banking system and raise confidence in financial markets while ensuring that the risk of losses on the loans they have made remains with the banks". The Economist 24 April 2008 "A life for Banks".

⁶ E.g.: the nationalisation of the Northern Rock bank in the United Kingdom.

⁷ The nationalisation of various service sectors in Venezuela and Bolivia or of energy sectors in Russia.

⁸ "The primary goal of antitrust is to protect consumers from paying higher prices to firms that have unfairly gained or maintained market power.... "When conduct presents a conflict between protecting consumers and promoting the efficiency of the economy (e.g., a merger that raises prices but reduces costs), the courts have always chosen consumer protection over efficiency." John B. Kirkwood & Robert H. Lande. *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency*. March 2008.

⁹ "In this age of the global economy, the fight to promote consumer rights is one of the great battles of our age", Mrs Neelie Kroes, European Commissioner for Competition Policy in the address to the European Consumers Association "Consumers at the heart of the EU Competition Policy. Strasbourg 22nd April 2008.

¹⁰ "Taxpayers will have to pay only if a bank defaults and the central bank has incurred losses on its swaps". The Economist 24 April 2008 "A life for Banks".

¹¹ "Citizens pay. That is to say, the burden of the crisis will be shouldered by people themselves, towards which the European monetary policy has for years been diverting the international economy's mismanagement whether owing to its main supporters' perverting the capitalist model - e.g. 'Junk mortgages' and their sale as assets by holders to obtain risk protection - or owing to the very dark oil business, where participation is not for the many and payment are almost entirely in dollars. The current escalation of crude oil prices is partly explained by the dollar devaluation: producer countries, which charge in dollars, increase prices because this currency has hit rock bottom. Hence, in Europe, car-petrol buyers are charged in Euros indexed on devalued dollars, but nobody in the EU seems willing to question this perverse mechanism." Fernando Pescador in "*La crisis pasa factura*" *El Correo digital*, April 29, 2008.

¹² "Regulators a partly to blame when the credit boom was roaring in 2005 and 2006, central banks did make pointed comments about the 'under pricing of risk' -in plain English, that banks were not charging borrowers enough. But they did nothing about it; indeed, by keeping nominal interests rates low, they encouraged the credit excesses". The Economist 24 April 2008. Bank Capital "Joseph and the amazing technicalities" Adjusting

Political plans with new proposals and intentions have been repeatedly put forward but little is known about their outcome. Unsuccessful proposals are replaced by new proposals and institutional changes in a continuous search for new solutions. The contours of global framework of the applicable rules of the game (the level playing field), so often used to express where competition policy is applicable, remain imprecise¹³.

Background of the industrial global crisis

Not everybody has experienced other similar situations in the past. The great industrial crisis resulting from the "blows" from increases in oil prices that begun in 1973, is sufficient an example. Entire industrial sectors of the former European Community and neighbouring countries found themselves before the utmost urgent need to adjust their fixed costs in view of a generalised reduction in demand. To avoid their bankruptcy, companies or industrial groups were brought under state control whereby large amounts of public money were injected set-against industrial restructuring plans commitments. The fact that those plans involved some restructuring of future companies was the way for justifying the authorisation of public aid and for avoiding the discriminatory treatment of other competitors. But what was significant was that those companies were provided with financing at a time when nobody else in the financial market would had been prepared to make available, and that even the express prohibition of a community Treaty had to be adapted to those circumstances. In theory it was said that this public aid might be partly recovered once a restructured company quoted on the stock exchange and its shares were sold to third parties. But taxpayers' money risked being lost because on entering the stock exchange, those restructured companies became vulnerable to financial predators for their lack of historic profitability records, resulted in their quoted values not reflecting their assets' actual capital values. And a company acquiring control over one of those enterprises would acquire assets enough to partly finance its purchasing investment¹⁴.

Under the predominating ideas mandating accepting globalisation and not favouring national or European champions but rather of favouring global champions, the monitoring of industrial groups has been transferred outside the European Union and hence the process initiated thanks to public financing, has been terminated. In this process of industrial and financial restructuring that initially attempted to maintain companies efficient and employment, no assessments were made on the long-term consequences of the loss of European monitoring of large industrial groups which - from the perspective of industry, of investment cycles, and of employment creation - might lead to the loss of European control over large industrial groups, because of consenting to economic globalisation and international capital markets, notwithstanding that the EU's openness was not replicated by other countries worldwide. Here, then, is how the search for market efficiency (national or Community) - that was the referent for confronting a major industrial crisis through industrial restructuring, deprived national taxpayers contributing to the industrial rescue package, from specific benefits, while the market's dimension expanded and it became a worldwide competition¹⁵.

banking regulation for the economic cycle.

¹³ " How new circumstances are going to be dealt with and what their effects upon major world relations will be, is difficult to predict; but inevitably we have to take them into account because they directly affect us as a country as they affect the European Union area of which we are members." Felipe González in "Crisis y prioridades" El País, May 7, 2008.

¹⁴ "Mittal avails itself of an advanced production tool, of the most effective world research teams, and of disposable cash, allowing it more than comfortably, to restructure and modernise its own group, which was set-up during some years at a pace constrained by purchases of old inefficient tools, though often having the advantage of being close to mines and located in emerging countries, with strongly growing markets" *Le mondial de l'acier par Sabine Delanglade. L'Express* June 27, 2006.

¹⁵ "The conventional wisdom in the antitrust community is that the purpose of the antitrust laws is to promote economic efficiency. That view is incorrect. As this article shows, the fundamental goal of antitrust law is to protect consumers." John B. Kirkwood & Robert H. Lande. *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency*. March 2008.

Large crises (financial or industrial) bring into question the stability of the "level playing field," and, in turn, the behaviour or structure of companies becomes directly affected. This is to say that the responsibility for the achievement of the dynamics of competition falls upon government authorities themselves. In this "optimisation" of the level playing field, it may be asked of competition authorities not to remain silent in the future. Merely stating that cartels and any abuse of dominant positions will be attacked and that mergers will be controlled does not solve in the medium/long-term the major problems competition policy's interaction with other government sectors. In the European Union, the obstacles and imperfections of the concept of internal market that has been developed for some time now, continues showing daily its need for further efforts over certain goods or services¹⁶. Since some goods or services lack a consolidated internal market, the dynamics of competition are not perfect, and this is not solved merely by taking the differences or the conflicts of interests on competition policy or other policies before the Court of Luxembourg to resolve their interpretation. However, in order to definitively advance on the European internal market, it is necessary to continuously convince and build consensus between the European Commission and the Member States, acknowledging that the international context is becoming ever more closely interrelated. This same approach on consensus-building is required at world level if achieving an authentic global market is aimed at.

The "laissez-faire" of globalisation hinders companies' legal security to compete under conditions of reciprocity

Knowledge of government policies of countries applying competition policies is one of their significant components but certainly not the only one. Most countries act at world level knowing that competition conditions will differ and that competition parameters will be affected. To consider under such circumstances, in the analysis of competition, that certain relevant markets are global can result in an insufficient determination. Not only do major crises call into question the rules of the "global market" economy¹⁷ and the future of competition policy, but also many factors artificially interfere one another in the dynamics of world competition¹⁸.

Some examples:

- The Kyoto protocol and the CO₂ quota market. The buying and selling of CO₂ quotas have been artificially established under internationally agreed regulation. The credibility and acceptance of this market is as yet unwarranted and for this reason, as long as polluters do not pay out¹⁹, distortions to global competition will subsist. In the European Union discussions on ways for

¹⁶ European Parliament Members requested the adoption of measures enabling the 27 EU mini-national markets to truly become the world's largest retail market. May 2008.

¹⁷ "... Suddenly, a real estate financial crisis in the North and a food crisis in the South have exposed all the contradictions of deregulated globalisation. Suddenly, markets have begun to speculate on food products because of their enormous profit margins. When in seven weeks the price of rice escalates from 400 dollars to 1,000 dollars, no bio fuels can justify such a price explosion. That is purely and simply the market, the sacrosanct market, which, after speculating with housing and having ruined millions of debtors, now speculates with food, because there is where money is to be had: 1.000 dollars per rice ton ! This world needs a little less of the market and some more of regulation. Globalisation cannot continue developing through blows causing disasters such as these; it needs to be governed, and to govern globalisation today means, among other things, to stimulate Africa's agricultural production capacity." Joseph Borrell Fontelles, European Parliament Delegate participating in a debate on food price increases in April 2008.

¹⁸ "...capitalism is a means, and nothing more; and I am agreed with the statement that market economy and capitalism can never be beneficial if there is no public power to establish the rules, ensure their compliance, and properly and equitably redistribute the wealth created." M. Louis Michel, member of the European Commission in charge of the Strasbourg Development Debate on April 22, 2008

¹⁹ A European Parliament report of May 2008 indicates that "a major part of environmental taxation is imposed upon households, while other sectors are the main energy, water and transport consumers" The Parliament proposes including environmental costs in the price of products and refused to request the European Commission to submit a legislative proposal in 2008 for a minimum tax on CO₂.

strengthening the environment protection strategy through broad dissuasive measures²⁰, are underway.

- The concept of Fair Trade in international transactions has ethical bases in support of development, but this has not been upheld by the World Trade Organisation as a principle applicable to all its members. Members not applying it, enjoy greater leeway in competing internationally. Concurrently, the World Trade Organisation (WTO) became under European Parliament scrutiny when it adopted MEP Cristiana Muscadini's report on preparations for the post-Doha phase, where recommendations for increasing the WTO's efficiency and democratic legitimacy, were made²¹. These stressed, *inter alia*, that ensuring to trade rules fully respect human rights law and social and environmental standards²², should be the most challenging requirement for the WTO.

It remains to be seen how a new reform of the WTO²³ will confront all these factors that as national economies open more and more to the world market, do have an impact on the level playing field of global competition²⁴. Currently, however, no common response by all member countries has been

²⁰ For example the report of the European Parliament Member Harmut Nassauer "Environment Protection through criminal law" 15 May 2008. The preparatory documents for the plenary session reads: "Criminal sanctions should be employed to punish all severe offences committed against environment to ensure EU legislation in this field is properly applied."

²¹ "The WTO is the first worldwide organisation attempting to put some ethical order into commercial exchanges!" Mr. Louis Michel, Member of the European Commission in charge of Development. Strasbourg Debate, April 22, 2008.

²² A European Parliament resolution of April 23, 2008 on China's policy and its effects on Africa, states that "whereas the European Union is China's main trading partner and its largest investor and China is the EU's second largest trading partner; in its dialogue with China, questions relating to democratic reforms, respect for human rights and the rule of law, must no be displaced into second place by economic and commercial relations."

²³ Resolution on the reform of the World Trade Organisation adopted by the European Parliament in its Plenary session of April 24, 2008 Some points of interest:

" 5. It believes that a strong WTO, with a regulated international trade system, offers opportunities for developing countries to eradicate poverty; it regrets that limited resources mean a disadvantage for the developing countries when negotiating; it emphasises that the European Union should support a strengthened WTO Secretariat and increased resources for technical aid, especially destined for developing countries members of the WTO so that they may address their specific problems;

6 It indicates that the WTO is the only world organisation with the ability to establish regulations that is not part of the United Nations system and that, consequently, the competences of the WTO are limited to mere trade policy; it asks the Commission to grant priority to this structural dilemma in the reform programme of the WTO;

7 It considers that, in the interest of mutual support and consistency with actions that other international organisations carry out, the proposed exercise should refer, first of all, to the aims of the multilateral commercial system, and that it is necessary to strengthen, in particular, co-ordination of the activities of the WTO with those of the IEO, the United Nations Food and Agriculture Organisation (the FAO), the UNEP (United Nations Environmental Programme), the Programme of the United Nations for Development (PNUD), the World Health Organisation (the WHO) and the Kyoto Renewable Energy Programme, in order to improve the consistency of the decision-making process of those organisations; it considers that, in this area, the IEO must be granted the status of observer before the WTO and a worthy Committee on trade and work must be created, similar to the Committee on trade and environment;

8 It requests better integration of non-commercial concerns to be examined carefully in the area of implementation of the regulations of the WTO, in order for the members to pursue legitimate political aims and, at the same time, preserve access to the market; it underlines, in this regard, that the European Union should give its firm support to the adoption of international criteria and that necessary aid should be given to the developing countries to allows them to respect those criteria;

9 It asks, within the United Nations and in relation to the WTO, that new links be examined among the multilateral organisations in order to coordinate their actions and the different international regulation agreements and pacts to established in service of sustainable development and the eradication of poverty;

10. It considers that, for consistency between the systems of the United Nations and the WTO, the most difficult requirement for the latter will be to guarantee that the commercial rules fully respect human rights laws, as well as social and environmental regulations;"

²⁴ "National economies are open on the world market, and technology pushes businesses to innovation and

forthcoming. The example from the Doha Round negotiations on agricultural trade reform suffice enough for realising how slowly a process reaching worldwide consensus is.

- The application of energy safety criteria entail price increases after-effects for consumers. Proposed budgets for the introduction of new energy policies have followed the simple formulas of increasing taxpayers' contributions or accepting the after-effects brought about by price increases in goods or services. Few voices have insisted on rationalising public expenditure and re-directing it towards new priorities without tax pressure increases or purchasing power reductions.

Even in some energy exporting countries, opinions questioning this strategy have been surfacing²⁵. It has been explained that every European pays 3 Euros weekly to support energy policy improvement plans on climate change - seemingly insufficient information to consumers. How much will the "energy contribution" of a European family go up to if the programme lasts for twelve years?

- The food crisis resulting from price increases in food products²⁶. Consumer organisations in the European Union were among the first to raise the alarm on the loss of citizens' purchasing power. Subsequently, several scholars have focused their analysis on the interference of bio-fuels' production on food price increases²⁷, triggered by the use of cereals in ethanol production- beet, soy or sugar cane. Later, the International Monetary Fund, the World Bank, and the United Nations have established its direct link with the problem of world hunger, and this issue was discussed by the European Parliament in April 2008²⁸.

If the causes for price increases²⁹ rooted in restrictive exporting measures, we can see again that in face of a food crisis, no workable concept of globalisation exists. These are pressing circumstances whereas the so-called "climate change" is a long-term issue that should not have the same relevance on the situation –though its emergency alarm and the expectation of using food in bio-fuel production, may have prompted such price increases. It is difficult to see where the efficiency of the world food market lies at a time when assistance in feeding those unable to pay for food, must be provided. Likewise, competition policy performance becomes problematic when certain governments intervene in the economy via price policies, quotas and export restrictions, indirectly

emulation. The intensity of competition is reinforced. No new inflation is to be feared on this side, and price movements worrying at present may be considered as price increases." *Le Temps*, May 17, 2008 *Un monde sans inflation* by Beat Kappeler.

²⁵ "Gazprom urged to rethink strategy. Gazprom the Russian state-controlled gas monopoly and main supplier to the EU should concentrate on supplying its domestic market to avoid shortages at home, one country's leading liberals has argued. Anatoly Chubais, architect of Russia's 1990s privatisation programme and now the head of its former electricity monopoly, said: 'I think, in strategic terms, our priorities should not be Europe or China'." *Financial Times* May 18, 2008.

²⁶ "Lower inventories can partly be attributed to fewer distortions in the agriculture system and improved supply chain management. However, as some price distortions disappear, others appear. Export restrictions have been implemented by countries such Australia, Russia, Ukraine, Argentina and Kazakhstan. Therefore, the rise in the wheat price from \$ 8 a bushel to more than \$ 12 a bushel in the first two months of this year can be mainly attributed to political decisions as grain-exporting countries seek to protect their own food supplies" *Financial Times* insight by Richard Ferguson 1st May 2008.

²⁷ There are some more optimistic opinions. In *El Mundo* of April 29, 2008, María Ramirez reflects in her article on cycle changes that "the (European) Commission relies on food prices beginning to decrease by the end of this and of next year "

²⁸ "Since 2000, the dollar price in wheat has tripled and doubled for rice and corn, with a further 20% increase at the start of 2008, raising concern both in industrialised countries about their purchasing power, and in developing countries about a famine risk on entire populations. When you live on less than a dollar a day and nearly the entirety of your income is destined for food, such increases are clearly and simply unbearable." Louis Michel, member of the European Commission in charge of Development aid.

²⁹ "It is agreed that the major part of price increases arise from energy and food costs. Energy is scarce, and cultivated fertile soil as well. These price increases thus reflect a palpable scarcity and not a surcharge on sale prices themselves. Things are becoming more expensive." *Le Temps*, May 17, 2008 *Un monde sans inflation* by Beat Kappeler.

consolidating world price³⁰ increases. It is difficult, additionally, to control interferences from speculative manoeuvres.

- The liberalisation of services. For over more than two decades, the EU has been committed to a policy of public services liberalisation whereby it had to eliminate monopolies of a commercial nature within the Community internal market. This action coincides with a similar worldwide process where public services liberalisation and their transfer to the private sector, were understood as measures necessary to their management improvement. During this privatisation process, new problems arose regarding the quality and price of services, the prospect of investments in dealing with the increase in consumption³¹ and the minimum guarantee of what we Europeans describe as "universal service" for everyone. Consumers were expected to be the great beneficiaries from those changes but it is unclear whether they have been so regardless of technological developments providing new advantages and services, as it is not less unclear whether they will be in the near future if solutions to demand and investment growth, triggered by population growth or by a larger popular access to an enhanced purchasing power, are not forthcoming. While in the EU, discussions on what remains to be done are still ongoing, both the World Bank – that criticised and alerted on some of those liberalisation methods – and the European Parliament, have recently³² urged avoiding the defects in the globalisation of this policy. This still remains a sensitive topic even in trade agreements negotiations where the opening of public services to foreign investment is a chapter subject to close examination. Although the concept of the internationalisation of services has been broadly enlarged – for example to air transport – the prerogatives of sovereign governments are still the object of special consideration³³.

- The "return" to economic interventionism and the popular movement for development. In certain countries, democratically elected governments must face serious development problems in their market economies where social poverty had not been adequately dealt with in the earlier stages. Adopting this situation as justification, new State interventionism's attempt to respond to developmental emergencies with interventionist methods of nationalisation of activities and subsidies, of which their limited and ineffective results have been demonstrated in the past. The risk for multinational corporations investing in these countries over their investment is apparent. Little is currently being done at the international level to reduce such legal insecurity³⁴ vis-à-vis globalisation.

- The long term consequences of the existence of a world organisation of producer countries whose members are States that have no domestic competition rules or that do not apply them to the effects of their actions on third countries. An example might be that of an international organisation whose legitimate objectives of evaluating world oil demand, its reserves, and production prospects to guarantee a stable world supply, have resulted in maintaining the status quo between producer

³⁰ The United Kingdom government submitted a proposal at the "International Dialogue on Rising Food Prices" on May 19, 2008, designed to analyse the impact of bio fuels production on world food production, suggesting the adoption by the G8 of an international strategy dealing with these many problems.

³¹ Demand for infrastructure is set to continue to expand significantly in the decades ahead, driven by major factors of change such as global economic growth, technological progress, climate change, urbanisation and growing congestion. However, challenges abound: many parts of infrastructure systems in OECD countries are ageing rapidly, public finances are becoming increasingly tight, and infrastructure financing is becoming much more complex". OECD Policy Brief "Infrastructure to 2030." January 2008.

³² Point 29 "expresses its concern with the interpretation of the criteria on economic and social governance; it opposes the imposition of "hidden criteria" on economic and social matters and considers that the analysis of legislation and public policies in this area cannot lead to demands for liberalisation and deregulation; it recommended adding further criteria to governance profiles linked to the existence and the quality of public services." Resolution of the European Parliament of April 23, 2008, on the implementation of planning for the 10th European Development Fund.

³³ "...it is timely to reassess whether there is anything about the current face of globalisation which could increase the vulnerability of workers to foreign competition and, if so, how government should react". OECD Brief "Globalisation, Jobs, and Wages" June 2007.

³⁴ As the former Director General of the IMF recently concisely expressed, there are those who are being asked to "blow hot and cold" at the same time.

countries and their quota sharing. In the long term, this situation will produce price tensions because coordinated production strategies prefer to maximise profitability rather than to compete with each other on quantitative terms. Although nowadays many producer countries may not join such international organisation, they are not being prevented from indirectly profiting from the organisation's leadership. Sovereign States are fully entitled to adopt any independent strategy in their national general interest, but where limitations to competition do arise, is in the context of the behaviour standards of producer companies competing in the international market, since their actions have been pre-determined by governments' production quotas, pre-set in coordination with the organisation's objectives. Only a generalised and reciprocal implementation of competition rules may change this tendency of anticompetitive effects. These become exacerbated over time if demand growth assessment and new investment expansion, are not within the competing interests³⁵ of same-sector companies with independent commercial strategies. Given that global consumption increases are not controllable, they will surpass the organisation's controlled production, and thus the tendency to price increases, is facilitated.

- Sovereign funds seek profitability beyond their borders. It is said that at present there are \$3.500 billion³⁶, of which around 40% correspond to China, followed by Russia, Taiwan and Brazil. At this rate, it is expected that within eight years these funds will exceed the gross national product of the EU. Responses have not been slow in coming, and the United States and the EU as well as other countries are looking into ways for adapting their investment legislation, so that certain strategic activities do not end up under a foreign country control, prevailing over the whole economy. It may therefore be ascertained that financial globalisation has political limits stretching beyond the traditional concept of market economy and which are far-removed from the search of market efficiency. Another specific example is that of the "freedom" of investment in infrastructures, which has been slowed down by political factors on account of a fund's provenance. This is an international trend but it also generates tensions, including in the European Union itself. Recent examples involving ports, airports, and energy companies sectors, or gas distribution networks³⁷, reflect their strategic significance for countries' general interests. By limiting control over infrastructures, the concept of globalisation is brought into question and the dynamics of global competition is limited. That is to say, the concept of territorial sovereignty continues pre-empting that of economic freedom. To take a multilateral qualitative step, it will be necessary to agree on common rules.

- The consumer protection movement³⁸ is consolidated and tends to arise in many countries. Based on MEP Lasse Lehtinen's report, the European Parliament's resolution of 20 May 2008, proposed introducing the office of "European Consumer Ombudsman" and supported the idea of appointing Consumer Relations Advisors entrusted with Consumer Relations at the Directorates-General of the European Commission (pursuant to the 2007-2013 strategic consumer programme of the Directorate-

³⁵ "The International Energy Agency is studying depletion rates at about 400 oil fields in a first-of-its-kind study of world oil supply, chief economist Fatih Birol said. ...'The prices are very high, and demand did not respond in the last few years as much as one would have expected', Birol said. 'The growth in terms of production was not great. We did not see enough investment'...The IEA is part of the OECD, which brings together 30 rich nations. It has no links to OPEC, and its review may challenge the Organisation for Petroleum Exporting Countries' view that the world is well-supplied with oil." In *Analysts foresee 'new world energy order'* on CNN.com 05/23/2008 Paris, France (AP).

³⁶ "Armed with such amounts of liquidity, which they do not need to reimburse, sovereign funds are the new masters of ceremony of finance," states an expert of Global insight. *Les Echos* 4/30/2008 "*Les fonds souverains pèsent 3.500 milliards de dollars.*"

³⁷ "Gazprom also sees its own strong foothold in the EU endangered by the Commission's plans-and reserved a threat of reciprocal measures against companies seeking to invest in Russia if it is blocked for expanding in Europe" Herald tribune 21 May 2008.

³⁸ "Consumer protection must be considered in every EU legislative action and must not be considered as a specific area." Lehtinen Report to European Parliament May 20, 2008.

General for Consumers), because it would facilitate the implementation of Article 153³⁹ throughout all Community activities and policies. During the two last years, this attitude towards dialogue between national consumers' organisations and competition authorities has become widespread both institutionally and via more flexible and informal relations. This change of attitude from both sides is a very positive signal towards achieving the implementation of a competition policy benefiting consumers. It connotes a more active participation by consumers and their associations in reporting the many problems requiring solutions. Such participation varies in relation to each country's development levels, but it indicates we are heading toward an important qualitative change whereby citizen consumers' rights must be respected pursuant to the democratic principles of modern societies. We are progressing, but it is insufficient to passively state that competition policy implementation pursues consumer welfare. Instead, it is for consumers themselves to be actively involved in having their rights recognised⁴⁰. The process towards consumer protection has been endorsed by western economies – though it still needs to be upgraded for improved results – and it is only a matter of time for this trend being extended into emerging economies.

- Global poverty

The major problem posed to globalisation is that of citizens not possessing the means to become consumers given that their extreme poverty level prevents them from participating in a market economy – an economy which does not recognise them as consumers, insofar as they do not have or cannot earn a disposable income. This is a major pending problem that, notwithstanding good examples of circumstantial improvements⁴¹ in some countries, risks being aggravated further by factors such as food and energy price increases, climate change, developed-countries' inaction towards part of humanity's misery, armed conflicts, etc. This is a problem which current competition policy implementation in itself cannot solve at the global level because those citizens have no purchasing power and their human rights must be respected. At the 5th Latin America and Caribbean-European Union summit of 16 May 2008, such an important link between economic development and poverty was highlighted in the Lima Declaration⁴². Likewise, Latin America showed again its willingness in jointly promoting its population education through the establishment of a cohesion fund⁴³. In enacting rules for the functioning of their economies, governments can contribute

³⁹ "1.- In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests. 2. - Consumer protection requirements shall be taken into account in defining and implementing other community policies and activities."

⁴⁰ See the White Paper initiative on damage actions in view of competition infringements proposed by the European Commission.

http://ec.europa.eu/comm/competition/antitrust/actionsdamages/files_white_paper/whitepaper_es.pdf

⁴¹ "Political, technological and commercial forces are driving growth in the international exchange of goods, services, jobs and people. These changes have resulted in very significant growth in economic prosperity and some major reductions in global poverty. The BRIICS (Brazil, Russia, India, Indonesia, China and South Africa) and other emerging economies are playing a major part in these efforts. The opening up of the BRIICS countries, for example, is drawing nearly a half of the world's workforce into the international arena. Economic resources are now generally better allocated around the globe than they used to be (with some important exceptions). Furthermore, policy systems are now better aligned to keep reallocating global resources to best advantage in the future." Global Forum on Trade. Globalisation and emerging economies. OECD 25-26 June 2008.

http://www.oecd.org/document/42/0,3343,en_2649_33727_40372074_1_1_1_1,00.html

⁴² "We propose promoting the welfare of our peoples in the attainment of more inclusive and united societies, where respect for the rule of law, the values and principles of democracy and human rights, prevail within a framework of solidarity and equality."

⁴³ "It is necessary to be united in order to have the sufficient force to compete with the rest of the world. This is the policy that the 21 countries of Ibero America have decided to adopt to impel the region in a decade. How? Starting by a "rapid and deep renewal in education" to train the best generation in its history."... "The agreement pursues stimulating its competitiveness in 11 years for which a structural cohesion fund will be created, similar to that of the EU, of 3,000 million dollars (2,000, in Euros). This implies a commitment by the most resourceful countries to finance countries in a situation of greater distress." Article of S. Pérez de Pablos - *Madrid* -

in promoting development through policies of good governance, including competition rules thereof, and enacting measures encouraging private enterprise initiatives as an additional referent favouring investment and growth.

– **Can we jointly build the future global competition policy?**

The concept of reciprocity in international economic relations has always been present in trade negotiations. It consistently follows that in today's global dimension, reciprocity should be extended to all areas composing the global economic context – though while taking into account the asymmetries at the root of each country's situation. More than ten years ago, this context was known under the concept of "trade-related matters" but it has now become a separate concept on its own. For example, where competition rules are applicable to trading-partners relationships, their correct enforcement is of the utmost importance if their commercial relations are to prosper at all. Demanding reciprocity in the application of competition rules among international trading partners is a pre-condition for commercial or institutional relationships to develop under a stable framework and legal security. Competition among companies and countries, on the other hand, is based on a broader context and is not limited to a specific market's price-offers⁴⁴, but this should not prevent cohesion and support relationships for economic development being established as a factor in reducing asymmetries and strengthening long-term bonds. The formulation in the European Union of certain internal policies, such as on regional development and Cohesion funds, has been decisive for harmonious economic growth. The experience of these mechanisms is adaptable worldwide and compatible with competition policy, but it needs to be enforced between commitment-willing partners.

At the beginning of the 21st century, competition professionals reached consensus for launching an international competition network (ICN) to address the effect of economies' globalisation. In its search for a common competition policy concept, this informal group worked on the convergence of practices through annual meetings and working groups, but debates were not centred on their international applicability framework. Consensus-based working pre-determines the speed of conceptual progression because it is led by the most advanced specific experiences. Sadly, no mid/long-term strategies for an international competition policy where countries set-up their own goal-implementing agendas, were devised. Also, no sufficient thought was devoted to the competition policy most suitable to be adopted on account of a country's economic development. Those first eight years were an initial stage of "informal" collaboration which is in need of a new institutional impetus to confront the influence of factors artificially affecting the world economy.

In order to envisage a new mid- long term strategy it is essential to start by identifying existing problems and available resources, and the extent to which we are prepared to go ahead together in achieving common applicable competition rules⁴⁵ – rules giving due consideration to all those factors bringing instability on the world macro-economic context. In identifying the problems to competition policy implementation, it might to be advisable to initiate a vast consultation process to competition authorities and governments, firms and consumers' organisations, competition professional specialists

05/21/2008 El País.

⁴⁴ " Competition in anticipating the future, competition in acquiring competitiveness, and competition in framing an industry's coalition-based evolution, are examples of how competition takes place outside the market, i.e., of non-market-based competition. The fact that this competition happens outside a "market" does not make it less real. Insensitivity towards this more general vision of competition can prevent a company from duly preparing for the future." Gary Hamel and C.K.Prahalad "Competing for the future. Crucial strategy to create the markets of the future ". May 1995 Harvard Business School Press. Spanish Version Editorial Ariel.

⁴⁵ We live in a globalised economy and must probably adapt our approach to antitrust to distinguish what is truly anti-competitive behaviour by monopolies and oligopolies from what it is fair for large companies to accomplish, which need to be large to support international competition." Declaration by Illinois Senator Barack Obama on May 18, 2008. Le Monde 05.19.2008.

– lawyers and economists – and academics. That is, to obtain their views on the existing gradual reality on the bases of which we can work and agree on solutions to the globalised world.

A world consultation coordinated by the most experienced organisations or institutions such as the UNCTAD, the WTO, the World Bank, the OECD, the ICN, IBA and CI may be useful given that implementing competition is pre-determined by the presence of differing levels of economic development and governmental policies. Moreover, it is important to seek solutions to the contradictions or asymmetries inherent⁴⁶ in international economic relations. A new consensus⁴⁷ stage for advancing on the practices supervised under competition policy may provide new answers and contribute in overcoming human poverty by a large part of humanity. This approach would provide the concept of the ultimate purpose of competition policy with an ethical content in benefit of consumers and citizens.

Co-ordination of the competition policy in the European Union is a preliminary step to the achievement of international consensus⁴⁸.

A new stage is underway for action on the common future of international competition policy which can only be carried out by the Member States of the European Union through substantial internal reinforcement of national competition authorities and the European Commission's activities. This implies organising for the medium term, the joint work of the almost four thousand civil servants from national competition agencies and the European Commission, including in this collaboration both national sector regulators and national consumer protection authorities.

This action would attempt to consolidate the leadership of the concept of social market economy and of economic integration of countries via the completion of the internal market. The European Union can thus bring the contribution of a modern open vision to the rest of the economies of the world, a vision apt for confronting the global economic recession.

⁴⁶ "Equitable competition conditions do not prevent reciprocity. Rejecting protectionism implies applying the same rules to everyone, at home as well as in the rest of the world." Mrs. Neelie Kroes, Member of the European Commission on competition. Hearing before the French Senate. "*N'ayez pas peur de la concurrence*" (Don't be afraid of competition) April 29, 2008.

⁴⁷ "I am not a partisan of globalisation, I'm simply saying that globalisation exists and cannot be restrained. Now, that rules can be established, precisely through the WTO, the United Nations, through a series of international entities, yes, but to say that from one day to the next we can regulate all that and correct by regulations that you don't have the power to establish, all the departures of a system, I don't know how that could be done." Louis Michel, member of the European Commission in charge of development aid. Debate in Strasbourg, April 22, 2008.

⁴⁸ Those lasts 3 paragraphs had been added in November 2008.