UNCITRAL

United Nations Commission on international trade law

Presidents:
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1. WELCOMING LETTER:

Dear delegates,

We, Clemente Gutiérrez and Manuela García, as your presidents want to welcome you the fourteenth version of VMUN and its committee UNCITRAL, in which we hope you can exploit your capacities and broaden your knowledge while taking advantage of this memorable opportunity to connect with new people and to listen to new perspectives in order to "Work for Change". For us, this model is a life changing experience that challenges you and allows you to learn more about yourself and others, and we hope it becomes an amazing experience for you as well.

In VMUN we aim for the preparation of humane delegates and citizens of the world, individuals aware not only about their surroundings, but also of the actions they can make for the development and benefit of the community.

Furthermore, as your mentors and figures, we'd like to accompany and support you through any parts of the process. We are at your disposal, any question or help needed. do not hesitate to communicate it to us at any moment.

Finally, we desire that you cherish the effort that our team has made to bring you an enjoyable event and we'll wait for you in further versions of this model.

Best regards,
President Gutiérrez and President García.

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2. ABOUT THE COMMITTEE:

The United Nations Commission on International Trade Law (UNCITRAL), as stipulated by the UN, is the “core legal body of the United Nations system in the field of international trade law” (UNCITRAL, 2021). It was created in 1966 with the specific purpose of promoting the progressive harmonization, modernization, and consolidation of the law regarding international trade by “preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law” (UNCITRAL,2021).

This committee’s main objective is to ensure the facilitation of international trade law and to reduce all legal barriers in trade flow, therefore, it focuses on globalization and digitalization, ensuring they are harnessed rather than rejected. Thus, it encompasses issues such as e-commerce, the use of cryptocurrencies, among other similar topics related to the commitment to the Sustainable Development Goals specified by the UN.

The committee is fundamentally based on the constant improvement and revision of the commercial law, striving to achieve its unification terms, given the fact that the nations often have very different approaches to trade themselves.

In summary, UNCITRAL is responsible for all changes made to international trade law, as well as addressing all types of related issues, from arbitration to globalization, while ensuring that international trade is kept simple. It strives to have a solid international framework that is progressively developed.

3. TOPIC 1: Evaluation of the legal frameworks on PPPs for sustainable development.

Public private partnerships, also known as PPPs, are a private capital linking instrument, which is materialized in a contract between a State entity and a natural or legal person under private law, for the provision of public goods and related services. In other words, long-term arrangements between a government and a private sector institution for financing and implementing infrastructure projects in many countries. The aim of PPPs is to leverage private sector expertise and resources to deliver public services and infrastructure projects.

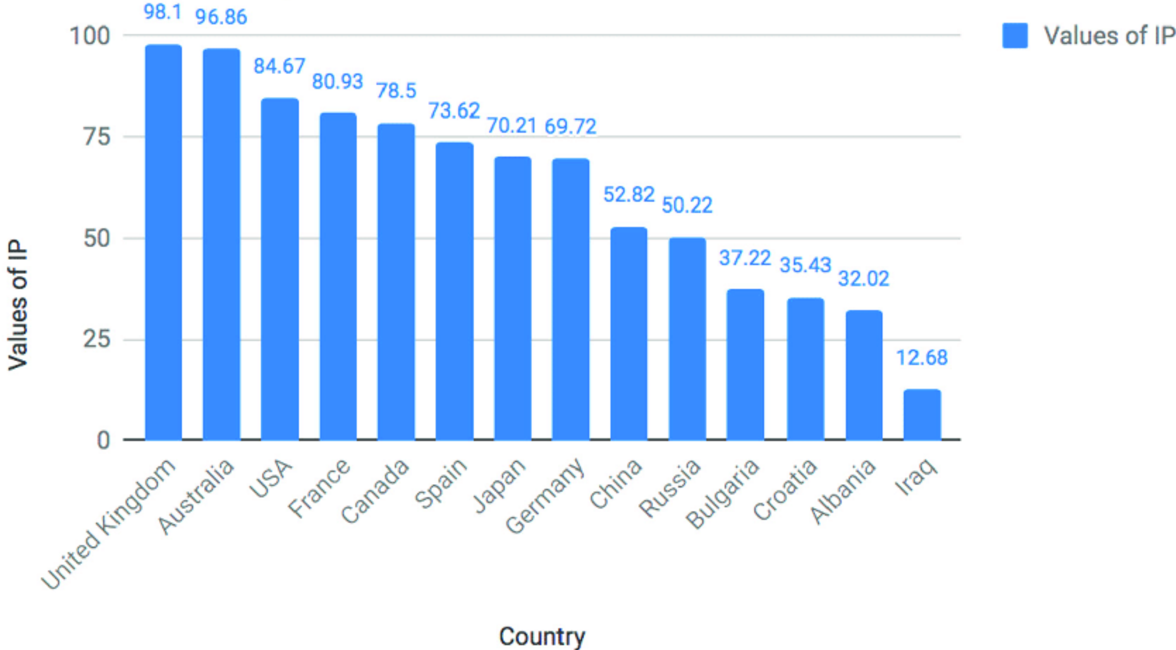

Image 1: (2018) https://www.icao.int/sustainability/pages/im-ppp.aspx

PPPs have become an increasingly common model in a number of areas, such as infrastructure construction, public service provision and development project management. These partnerships bring together the resources and expertise of the public and private sectors, enabling risks sharing and the search for innovative solutions. Giving a transcendental purpose to capitalism, making it conscious, sustainable, and collective. These partnerships offer a form of collaboration between the public and private sectors, where both parties agree to work together to achieve common goals. They can increase a

country's economic and social development exponentially, reducing unemployment, corruption, poverty, inequality, and others. Furthermore, the legal frameworks for these kinds of relationships can vary greatly from country to country and can have a significant impact on the success of the partnerships, particularly in regard to sustainability. Therefore, multiple aspects must be evaluated and regulated to avoid that the aforementioned benefits are not reduced but increased.

Some key considerations when evaluating some legal frameworks for PPPs are:

- Clarity of objectives: The legal framework should clearly define the objectives of PPPs in relation to sustainable development. This includes incorporating environmental, social and economic considerations into the purpose and scope of the PPP.

- Alignment with the Sustainable Development Goals (SDGs): The legal framework should be aligned with the SDGs to ensure that PPP projects contribute positively to sustainable development outcomes. This alignment should be evident in the selection, design and implementation of PPP projects. Including environmental and social safeguards, the legal framework should incorporate them to mitigate the potential negative impacts of PPP projects. This may include requirements for environmental and social impact assessments, and the adoption of sustainable practices throughout the project life cycle. Thus, returning to the idea of conscious and integral capitalism, giving transcendental purpose to interest generation and capital accumulation.

- Risk allocation: The legal framework should clearly define the allocation of risks between the public and private sectors in a PPP arrangement. It should ensure a fair distribution of risks, taking into account the long-term sustainability of the project and the protection of public and private interests.

- Stakeholder participation: The legal framework should encourage meaningful stakeholder participation, including public participation, in PPP-related decision-making processes. It ought to provide avenues for affected communities, civil society organizations and other stakeholders to express their views and concerns, fostering democracy and reducing corruption.

In this guide, we provide a further look upon some common mistakes encountered by delegations that are working for sustainable development through public-private partnerships, and provide key elements to identify the reasons and misapprehensions that need to be addressed

3.1. BALANCING PUBLIC-PRIVATE INTERESTS

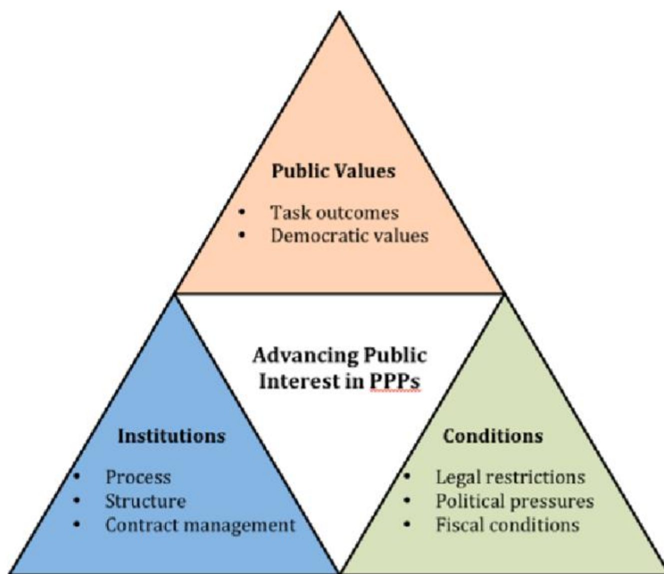

Image 2: https://www.semanticscholar.org/paper/Advancing-Public-Interest-in-Public-Private-of-Zhao-Saunoi-Sandgren/453119a0b074df2702c529e1da36c76e6aa8a242

In the current socio-economic landscape, public-private relations play a fundamental role in the development and progress of societies. These strategic alliances between government entities and private companies can generate numerous benefits, such as promoting investment, boosting infrastructure projects and fostering innovation. However, finding the right balance between public and private interests is essential to ensure that these collaborations are fair, transparent and beneficial to all parties involved. On the one hand, government entities seek to ensure that projects are carried out in the public interest, guaranteeing the quality of services and efficiency in the management of resources. On the other hand, private companies expect a fair return on their investment and an environment conducive to the development of their business activities.

Main principles for an equitable balance:

1. Transparency and accountability: It is important to establish clear transparency mechanisms in the management of public-private relations. This implies the disclosure of relevant information, such as contract terms, associated costs and expected benefits. Adequate accountability mechanisms must also be established to ensure that the parties fulfill their commitments and act ethically.

2. Citizen participation: The active participation of civil society and affected communities is essential to balance interests in public-private relations. Mechanisms should be established to allow for consultation and participation of citizens in decision making, especially in projects that directly impact their lives and environments, promoting democracy.

3. Rigorous evaluation of costs and benefits: Before establishing a public-private partnership, it is crucial to carry out a rigorous evaluation of costs and benefits for both the public and private sectors. This involves analyzing financial, social and environmental risks, as well as potential long-term impacts. A thorough assessment ensures that the arrangements are fair and that the benefits outweigh the costs for both parties.

A proper balance of interests in public-private relationships can generate a number of significant benefits. These include:

1. Efficiency in public service delivery: Public-private partnerships leverage the expertise and resources of both parties, which can result in more efficient and higher quality service delivery.

2. Risk transfer: Public-private partnerships allow for the sharing of financial and operational risks between government entities and private companies, which can

reduce the financial burden on the public sector and encourage innovation and efficiency in project delivery.

3. Economic stimulation: PPPs can boost economic growth by encouraging private investment, generating employment and promoting competitiveness in various sectors.

3.2. TRANSPARENCY, ACCOUNTABILITY, ENFORCEMENT AND IMPLEMENTATION

To ensure the success and sustainability of the initiatives of the PPPs, transparency and accountability at all stages of the process are essential. Transparency is a fundamental principle in PPPs, as it implies that all parties involved should share information in an open and accessible manner. This includes the disclosure of contract terms, bidding procedures, financial reports and any other relevant documents. Transparency builds trust among stakeholders and helps prevent corruption, favoritism and mismanagement. It also allows civil society and citizens to monitor and evaluate the performance of PPPs, which promotes accountability and citizen participation.

Accountability implies that all parties involved in a PPP are responsible for their actions and must assume the consequences of their decisions. In the context of PPPs, this implies that both the public and private sectors are accountable for their financial management, compliance with deadlines, quality of services and fulfillment of established objectives. Accountability promotes efficiency, effectiveness and responsibility in PPPs, as each party must demonstrate its ability to achieve results and fulfill its commitments.
To achieve effective transparency and accountability in PPPs, sound legal and regulatory frameworks need to be established. These frameworks should include clear provisions on information disclosure, independent monitoring and evaluation, as well as mechanisms to address any irregularities or non-compliance. In addition, citizen participation mechanisms should be established to enable citizens to engage in and monitor PPPs.

Successful implementation of transparency and accountability in PPPs requires a strong commitment from all parties involved. The public sector must ensure the disclosure

of relevant information in a timely and accessible manner, as well as establish effective monitoring and evaluation mechanisms. On the other hand, the private sector must dedicate to operate in a transparent manner and comply with agreed standards. In addition, civil society and citizens must be aware of their role in monitoring and accountability.

3.3. HUMAN RIGHTS VIOLATIONS TO MARGINALIZED COMMUNITIES

As States around the world seek to expand their economies and propel their development, a new form of PPPs has taken place. Said partnerships are diverging from the traditional public procurement relationships, and falling into codependency penchants[1] between parties, whereby the State may be almost entirely reliant on a private entity. These circumstances are alarming, not only because States lose autonomy to make democratic decisions for their citizens, but also because private sector actors, who withhold great power over those decisions, often tend to prioritize profits over human rights, and marginalized communities become susceptible to bear a disproportionate share of negative impacts.

For instance, many public-private partnerships are arranged by governments with the purpose of ensuring that infrastructure services (such as water, electricity, sanitation and transportation) reach vulnerable populations. However, laws and regulations developed by the judicial system in order to comply with said objectives are often inconsistent and, unwittingly, hurdle the penurious ability to access those essential services. Low income customers, who often live in informal and inaccessible settlements, are less likely to be supplied with resources by formal providers, so they resort to buying services from unofficial suppliers. The problem with this substitute service is that most regulations in PPP's arrangements give exclusivity to incumbent providers in a specific service area, outlawing alternative providers and limiting competition, which translates into the

[1] Synonym: tendencies.

monopolization of said services. Even if the customers manage to acquire these unconventional services, the quality of the resources provided do not meet safety or public health standards. (World Bank, 2020)

The case of the South African delegation is an evident example of this issue. As a country that has inherited a massive backlog in terms of service supply, it has found in the PPPs policy trend an opportunity to enable legislation that includes private sector's participation into the process of upgrading previously neglected areas under their jurisdiction. In 2009, President Montlathe reviewed the government's processes in some essential services, and stated that water supply in the region had improved 26% from 1996 to 2008, along with a 21% increase of coverage in access to basic sanitation during that same period of time (Loughborough University, 2009). Nonetheless, as impressive as this advancement is, there are still millions of people living without access to potable water or sanitation, and the introduction of new strategies like the pre-paid meters have worsened these vulnerable human rights conditions. According to the South African High Court, not only do previously mentioned strategies operate through unconstitutional practices as the water supplied to residents is not enough to satisfy their basic necessities; but they also cut off water supply above the monthly limit meter if no payment is made.

These circumstances are dismaying as they violate the right of the less fortunate to have access to fundamental resources that satisfy their necessities and to live a dignified life. Furthermore, just like this situation there are plenty of scenarios in the Public-Private partnerships wage where human rights are violated. Another recurrent example is the violation of labor rights. Whether because of the profit-driven approach of the private sector or the inadequate enforcement of the regulatory frameworks. A nonfunctional partnership, as such, usually translates into the violation or negligence of the worker's fundamental rights, which includes exploitative working conditions, forced labor, non or delayed payment of wages, discrimination, lack of social insurance and even child labor.

Some examples are: India, in which workers involved in electricity distribution and sanitation are exposed to several health and safety risks, have bast social security benefits

and sometimes, are not paid for their labor. And Bangladesh, where in the process of massive production of supplies used for international commerce, workers have witnessed factory collapses and unsafe working conditions that often result in injuries or fatalities.

These are only two examples of human rights violations that could occur in poorly managed or structured public-private partnerships, but the list could go on and on. In order to stop this from happening, it is crucial for governments to establish robust legal frameworks to strengthen and protect human capital, taking into account international sources such as the UN Guiding Principles on Business and Human Rights, and complement it by holistic, safe, effective and efficient programs that monitor and enforce human rights standards so they can address the root causes of these infringements and provide a sustainable approach.

3.4. LONG-TERM SUSTAINABILITY

There is a recognized need to incorporate sustainability considerations in infrastructure projects delivered through public–private partnerships, after all, that is what ends up giving them competitive leverage. However, the achievement of this sustainability is particularly hard to achieve because of the barriers that factors such as politicians, focused on maintaining their power, and the business sector, lured by the siren call of market fads and bubbles or becoming a victim of the status quo bias, imposed into these processes. Notwithstanding, the government can also become too entangled in day-to-day management and thus weaken its advantage. While the government has a role to play in helping its country focus on the future, it needs structures and processes that allow it to leverage its advantage.

A well established and strong PPPs framework includes a credible funding plan for each project and a consistent infrastructure funding policy, that takes into account and addresses expenditures, revenues, public debts, public sector balance sheets and possible

fiscal risks [2]. This is specially true because public-private procurement differs substantially from the traditional one. As, in this case, the private partner is responsible for financing and building the asset, and is compensated either directly through public sector payments, or indirectly through the public sector allowing the private partner to charge user fees (such as taxation). Fiscal illusions[3] should be diluted after the construction phase once revenues and payments reduce public sector cash balances. If this does not happen, then the illusion may be permanent, increasing fiscal risk and, successively, diminishing the government's capacity to stabilize economic activity and support long term growth. These risks include:

	Fiscal Costs	Fiscal Risks
Explicit	• Liabilities and fixed assets (estimated construction costs) when the government controls the asset and/or bears most of the risks from the contract • Prior or contractually agreed commitments to buy land, resettle people, reestablish utility connections and other infrastructure, or compensate affected entities • Up-front capital payments for viability gap funding and other contractually agreed predetermined firm payments during the construction phase • Availability payments, service payments, viability gap funding, and other contractually agreed firm payments during the operational phase • Payments by public corporations or subnational governments related to purchase agreements (power, water, etc.)	• Explicit guarantees (e.g., minimum revenue, exchange rate, reinstatement of economic equilibrium) • Early contract termination (e.g., paying for assets, compensating investors, reestablishing service) in case of concessionaire bankruptcy, underperformance, force majeure, or public interest reasons (e.g., privatization) • Legal disputes • Asset condition at termination
Implicit		• Implicit guarantees: government will strive to maintain infrastructure services

Image 3: https://www.elibrary.imf.org/view/journals/087/2021/010/article-A001-en.xml#RA01tab02

It is important to highlight threats to sustainability are present in well structured PPP contracts as well, mainly as they are exposed to optimism bias or optimistic project planning scenarios, where project costs are underestimated and revenues are overestimated. Furthermore, this obstacles can be overcome by the implementation of critical government elements such as the inclusion of a getaway process governing the preparation and procurement of PPP projects; a proactive fiscal risk function in the Ministry of Finance; budgeting, accounting, and reporting standards and practices that ensure fiscal transparency, and enabling a clear and consistent legal framework.

[2] Deviations of monetary outcomes expected at the time of budget formulation. (World Bank, 2023)
[3] "Tendency to think in terms of nominal rather than real monetary values". (the Quarterly Journal of Economics, 1997)

3.5. SUGGESTIONS FROM THE CHAIR:

This topic is highly controversial as, although implemented in a great part of the International Community, it is still a pretty new concept among nations, and its functioning and effectiveness is still on probation. PPPs are considered by many as a way to foster innovation, efficiency, and effectiveness in project delivery, leading to improved service quality and economic development. However, critics raise several concerns such as the lack of resources in many countries to establish trustworthy partnerships where the public sector's needs are left out of the picture, along with a coherent and overall well structured legal framework, which leads to social, economic, and environmental risks.

For this debate, we advise you to look closely into legal provisions implemented in delegations with public private infrastructures, to revise the veracity of said provisions and to look for possible principles of international law that should be applied to these strategies. Henceforth, it is also important to discuss the actual implementation of these projects, making sure they are meticulously followed and corruption free, without leaving aside the evaluation on the impact that they withhold within economical and sustainable development, and society's needs and rights, especially in developing countries. Finally we would like you to identify if the already existing guides made by UNCITRAL on the matter are substantial, or if new regulations and/or consensus need to be settled.

3.6. QARMAS:

- What kind of Public-Private Partnerships does your delegation have?
- How is the relation between the private sector and the public sector in your delegation? How do they balance their interests?
- How does PPPs affect your delegations in a social and economic context?
- What is your delegation doing to prevent corruption and tax evasion?
- What steps have been taken to evaluate the effectiveness of your country's legal framework on PPPs for sustainable development?

- Has Public-Private Partnerships improved the delegation´s development rates in recent years?
- What legal measures or safeguards has the delegation placed to prevent and address structural and management risks?

3.7. USEFUL LINKS:

For context:

- https://repositorio.cepal.org/bitstream/handle/11362/2562/10/S0900893_es.pdf
- https://www.elibrary.imf.org/view/journals/087/2021/010/article-A001-en.xml#RA01tab02
- https://privacyinternational.org/sites/default/files/2021-12/PI%20PPP%20Safeguards%20%5BFINAL%20DRAFT%2007.12.21%5D.pdf

UNCITRAL's legislative guide:
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-10872_ebook_final.pdf
UNCITRAL's model provisions:
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11011_ebook_final.pdf

General:

- https://ppp.worldbank.org/public-private-partnership/overview/international-ppp-units
- https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/ppp_eval_updated2.pdf

- Latin America: https://ppp.worldbank.org/public-private-partnership/library/financing-public-private-partnerships-best-practices-latin-america
- North America: https://ppp.worldbank.org/public-private-partnership/country-profile-north-america-na
- Europe: https://www.eca.europa.eu/Lists/ECADocuments/SR18_09/SR_PPP_EN.pdf
- Asia: https://www.adb.org/sites/default/files/publication/29819/evaluating-environment-ppp-2011-infrascope.pdf
- Africa: https://www.treasury.gov.za/documents/national%20budget/2021/review/Annexure%20E.pdf

4. TOPIC 2: Evaluation of the legal frameworks concerning competition and regulatory measures against irregular acquisition of companies.

In a world of constant globalization and development like ours it is indispensable to understand how free and competitive markets work, as they have become the central focus in most countries, whether developing, developed or in transition. This comes from history and economic analyses, which have shown that whether at the national or international level, free and open markets are a necessary tool to achieve economic development and growth.

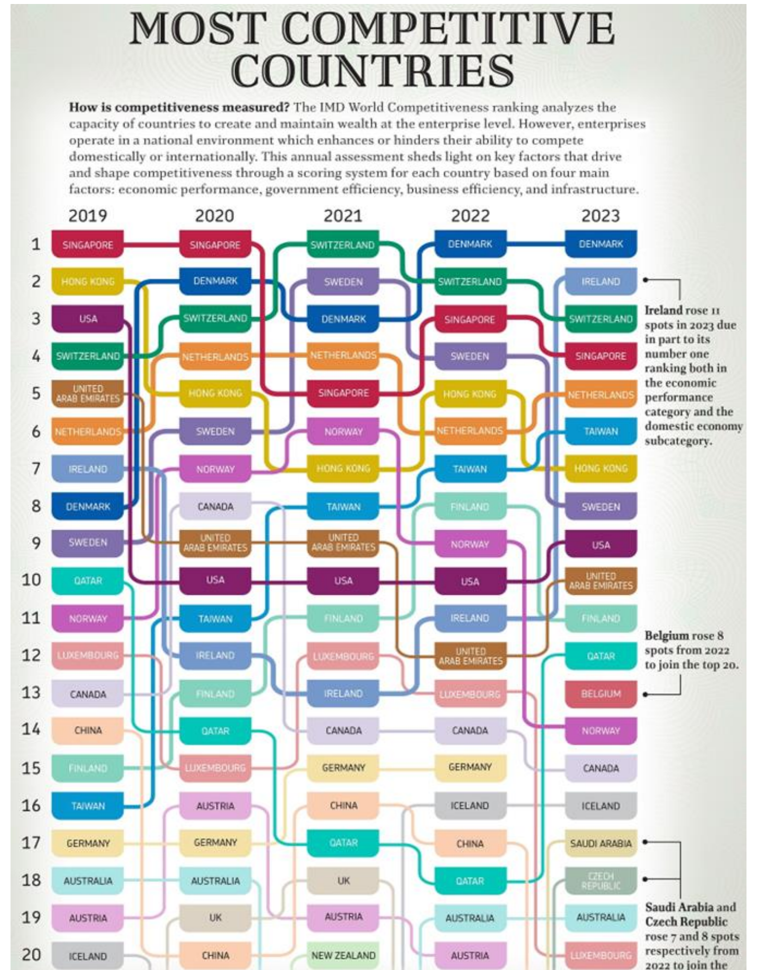

Image 4: Progressive ranking of the most competitive delegations from the International Institute for management development. https://www.imd.org/centers/wcc/world-competitiveness-center/rankings/world-competitiveness-ranking/2023/

To give a little bit more context, an open market is an economic system with no trade barriers to free market activities, including unfair licensing agreements, arbitrary taxes, subsidies, and other regulations that affect regular market operations (Corporate Finance Institute, 2020). The conditions that these markets provide are ideal for developing perfect competition markets where *Pareto Efficiency*[4] is

[4] *Pareto Efficiency* or *Pareto Optimum* refers to an economic State where no action or allocation is available to make one individual better off without making at least one individual worse off.

reached, meaning that the market is at an equilibrium point where the quantity supplied for every product or service equals the quantity demanded at the current price.

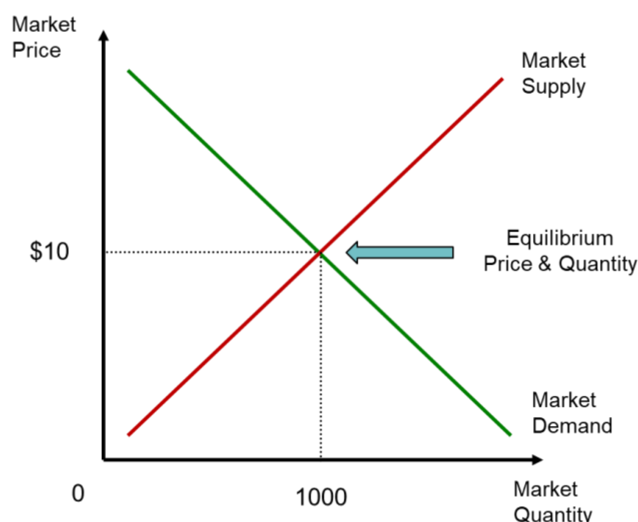

Image 5: Perfect competition graph.
https://www.economicsonline.co.uk/all/graph-of-perfect-competition.html/

Moreover, this theory is as marvelous as idealistic. Since most businesses tend to take actions that limit, restrict, or eliminate competition in a market, generally to gain an unfair advantage or dominate the market; this conduct is also known as anticompetitive behavior. Consequently, the International Community has adopted as one of its main objectives to create competition policies or antitrust laws, which seek to prevent companies from reducing the efficiency of market mechanisms. These laws are aimed at keeping firms from forming cartels or monopolies and from abusing a dominant market position, while ensuring that mergers and acquisitions are subjected to proper scrutiny, as these practices often limit competition and take away incentives to excel, innovate, reduce prices, and improve customer service.

As surprising as it sounds, competition policies have already walked a long path. According to some scholars, the first anti-competitive measures date back to the medieval ages, when cartels, or guilds, were created in major European cities. The earliest limitation on trade restraint contracts can be dated back to English common law in the early fourteenth century. And it still has a long way to go to protect todays and tomorrow's world economy.

In the following sections we will provide a further look into multiple anticompetitive practices as well as some of the most relevant policies at the moment with the aim of giving each delegate the information necessary to comprehend one of the most important structures of economy like competitiveness and analyze how can the legal resources that the International Community withholds protect and improve the efficiency of these practices.

4.1. ANTI COMPETITIVE PRACTICES

As previously mentioned, anti-competitive practices are those that involve the reduction of the competition degree in a given market, either by a government or firm. These operations can be grouped into two classifications: Horizontal agreements, which regard anticompetitive behavior that involves competitors at the same level of the supply chain, including mergers, cartels, collusions, price fixing, price discrimination and predatory pricing. On the other hand, the second category is vertical agreements and single firm conduct, which implements restraints against competitors due to anti-competitive practices between firms at different levels of the supply chain, including exclusive dealing, refusal to deal/ sell, resale price maintenance and more. For the purpose of this guide, we will explain only the most recurrent anti-competitive practices at the moment.

Practice	Definition	Potential adverse impact on developing country suppliers
Cartels	Price-fixing or market allocation arrangements between competing suppliers in a market	Raise prices or reduce availability of industrial inputs or infrastructure services needed to market a product
Abuses of a dominant position	Practices by a dominant firm in a market that extract excess profits from users and/or exclude potential competitors	As above. Can also prevent new entrepreneurs from entering a market dominated by an entrenched supplier
Anti-competitive mergers	Combining of two firms (usually when one purchases the other) to create a monopoly or dominant position	Can reduce supply, raise the prices of necessary goods and/or make abuse of a dominant position more likely
Anti-competitive vertical market restraints	Contractual or similar arrangements between firms at different levels of a production chain that limit competition or entry by new suppliers	As above. In particular, such arrangements can form a direct barrier to export market penetration by developing economy businesses.

Image 6: International Trade Center. https://intracen.org/file/combatinganti-competitivepracticesenglishpdf

Firstly, vertical agreements encompass a wide range of arrangements between suppliers and resellers that undermine the effectiveness of the market mechanism and impede new market entry. The majority of these contracts are restrictive in nature, limiting free price creation and competition. Contracts with restrictions are unlawful, and participating businesses may face fines. However, not all vertical agreements are completely limiting.

A company or a group of companies may demand unreasonable conditions from its sellers and resellers, sometimes using the threat of boycott[5] to enforce these demands, including the following conditions:

- Reciprocal exclusivity, which prohibits a reseller from selling the products of competing firms (also called captive distributorship or exclusive dealing).
- Bounded sales, in which a company forces its resellers to hold or to purchase more than they find necessary.
- Tying, in which the sale of a given product is bound to other products, or even to a whole range of products.
- Resale price maintenance by fixing consumer prices and retail margins.
- Prohibition of discounting.
- Predatory pricing, which involves selling goods at a very low price, to drive competitors out of the market, or selling inputs to competitors at excessive prices. (CEPAL, 1999)

In the same context of single firm conduct there are also monopolies, which arise when a single seller has complete control over the sale of a product with no near substitutes. If there is no threat of new entrants into the market, a monopolist can maximize profits by raising prices and limiting output[6]. Furthermore, a monopoly has a negative impact on welfare if the market is protected by entry restrictions or government regulations.

And finally, dominant firms, which can influence the behavior of other firms, set their prices above perfect competition levels and demand unreasonable conditions to its resellers, as can the monopolist. The industry's other producers are presumed to be followers or to constitute a small competitive fringe. The dominating corporation can even limit the choices of other enterprises through strategic behavior, such as threat methods like the prospect of a pricing war, which can ruin competitors with lower financial resources. As a result, the other companies are pushed to follow.

[5] To stop buying or using the goods or services of a certain company or country as a protest.
[6] Amount of something produced by a person or industry.

Now, in a more horizontally oriented focus, there is a pretty famous movement: cartels and concentrated behavior. When collaborating is more profitable than competing, firms in a free market may be eager to cooperate among themselves. Collusion[7] can take many forms, including the formation of a binding cartel, covert collusion, pricing leadership with threat and counter-threat methods, and even mergers or acquisitions of direct competitors. For example, a cartel can fix prices or supply conditions among its members. It can allocate markets per area or per groups of customers, and it can set aside "combat funds" to eliminate outsiders, for example by systematically underbidding them.

Cartels are typically forbidden due to their harmful effects on welfare. Certain sorts of business partnerships, on the other hand, can be helpful to society. In the case of research and development, for example, if two companies can share the risks and costs, more research can be performed. Small businesses may be unable to resist the severe financial consequences of a failed conclusion.

As a complement of the aforementioned practice, there are also mergers and acquisitions.

When cartels are prohibited by law, companies can circumvent this prohibition by merging with or acquiring their competitors, having the same negative effects on social welfare as the formation of a cartel. However, mergers may have a positive impact on welfare. Through economies of scale, improved integration of production facilities, distribution systems and other services, the post-merger corporation can reduce its costs per unit.

Three broad categories of mergers can be distinguished, each with different effects on social welfare: horizontal, vertical, and conglomerate mergers.

Horizontal mergers involve firms at the same stage of the production process. The positive effects of these mergers are generated from the increased scale and scope economies. The negative effects on social welfare are the increase in market power and the subsequent risk of abuse of the market position.

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[7] Secret or illegal cooperation or conspiracy in order to deceive others.

Vertical mergers occur between firms at different stages of the production process. These mergers can generate efficiency advantages. However, a vertically integrated firm can increase its monopoly power over upstream inputs which it does not directly control, along with those that are acquired. This happens when two or more inputs are needed to produce a finished product. When the producer of an input acquires the end producer, the integrated firm may be able to control the demand of the other inputs and consequently extract rents from their producers.

It is difficult to assess the whole impact of two enterprises merging in separate marketplaces in the case of a conglomerate merger. Aggregate concentration[8] may shift, influencing price and output while strengthening the firm's market power. Positive scale efficiencies may occur as the conglomerate firm can borrow capital[9] at a lower interest rate and has a more efficient internal labor and capital market. Joint production of multiple items may also result in scope economies.

4.2. EFFECTIVENESS OF EXISTING REGULATIONS AND JURISDICTIONAL CHALLENGES

Assessing the effectiveness of existing regulations in jurisdictional challenges to anti-competitive practices in the economy is often an ongoing and complex process involving different actors, such as competition law experts, academics and competition authorities. Moreover, the effectiveness of regulation may vary depending on the country and its specific legal and economic context.

Effective regulation must allow for early detection of anticompetitive practices and establish preventive measures to prevent them from occurring in the first place, and it must be clear and understandable so that authorities can enforce it effectively and companies can understand the prohibited conduct. If there are jurisdictional challenges, the regulation must address and resolve coordination problems between different jurisdictions and competition authorities. Sanctions imposed on companies for anticompetitive practices should be severe

[8] Small group of economic entities that control a large part of the economic activity.
[9] Synonyms: Money/funds/assets.

enough to deter other companies from engaging in similar conduct. Regulations should also ensure that parties involved in jurisdictional challenges are treated fairly and have the opportunity to present their arguments and evidence in an adequate manner and be transparent and predictable in their application so that companies can anticipate the consequences of their actions and avoid anticompetitive conduct. To be effective, competition authorities must have the resources and capacity to investigate and enforce the rules, knowing that it must also be constantly reviewed and updated to address new forms of anticompetitive practices that may arise due to changes in the economy and in the behavior of firms.

The scope and effectiveness of competition is limited by inconsistent government policies and regulations. State-owned enterprises control a significant share of industry, and these enterprises often hold a monopolitarian position. Many regulations act as entry barriers to markets, and import-substitution strategies have not been completely abandoned. There must also be rigorous care, since "the repercussions of a wrong decision by competition policy enforcers are likely to be significant, especially in relatively small countries" (Shyam Khemani, 1996, p.7).

Paasman (1999) declares that some authors therefore see a special role for competition policy enforcers in Latin America, because in it enforcers of competition policy can give advice on new regulations and make recommendations on easy entry and free trade. They can stimulate the abolition of price controls and the privatization of State-owned enterprises. Government rules and regulations sometimes favor existing firms over firms that want to enter the market. Such rules reduce the threat of new entry and the level of competition. They enable existing firms to behave anti competitively, especially in concentrated markets. Lawmakers do not always fully understand the implications of laws and regulations for market contestability. Sometimes the rules do not serve any social or political goal, but they are passed under pressure from companies that want to protect their position. (p. 48)

4.3. ARBITRATION

Cross-border arbitration refers to the resolution of disputes between parties from different countries through arbitration, which is a form of alternative dispute resolution. In arbitration, parties agree to submit their dispute to a neutral third party (arbitrator or arbitral tribunal) rather than going to court. The arbitrator or tribunal then renders a decision, known as an arbitral award, which is binding on the parties.

Advantages of Cross-border Arbitration:

- Neutrality: The arbitrator(s) can be chosen to be neutral and impartial, avoiding potential bias from a local court system.
- Enforcement: The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards facilitates the enforcement of arbitral awards in over 160 countries, making enforcement across borders more accessible.
- Confidentiality: Arbitration proceedings can be conducted confidentially, which may be advantageous for sensitive commercial disputes.

This kind of dispute resolution can be beneficial to the International Community as, in many cases, the domestic jurisdiction of a country may meet difficulties with their international obligations or the jurisdiction of another delegation. An example of a good resolution of a conflict using arbitration could be the United States vs Brazil case concerning border tax adjustments in 2017. This dispute was brought before the World Trade Organization (WTO) which addressed the legality of of certain Brazilian tax measures affecting imports in the US and finally imposing some financial sanctions by using the *second look doctrine*[10].

In some cases, disputes involving allegations of anti-competitive practices can be resolved through cross-border arbitration. Parties may include arbitration clauses in their

[10] It is a mechanism where courts review the arbitral award during the enforcement stage to ensure proper examination of competition law aspects. This doctrine prevents private parties from circumventing mandatory competition law through arbitration.

contracts, agreeing to resolve any disputes arising from their business relationship through arbitration. However, there are limitations to this approach when it comes to competition law, such as:

1. Public Policy Considerations: Some jurisdictions may refuse to enforce arbitration agreements or arbitral awards if they involve anti-competitive practices. This is because anti-competitive behavior is often considered against public policy and harmful to the market.

2. Competition Authorities' Role: Competition authorities in different countries have the authority to investigate and take action against anti-competitive practices. Arbitration, being a private process, may not fully address public policy concerns related to competition law.

3. Separability Doctrine: In some legal systems, arbitration clauses can be considered separate from the main contract. Thus, while the dispute resolution mechanism may be arbitral, allegations of anti-competitive practices may still be subject to the jurisdiction of competition authorities.

4.4. SUGGESTIONS FROM THE CHAIR:

In order to increase the quality of discussion and experience for you delegates, we recommend in this second topic to make sure you have a clear understanding of the different anti-competitive practices, such as price fixing, market sharing, abuse of dominant position, anti-competitive mergers and acquisitions, among others. The more you know about these practices, the better you will be able to identify them and analyze their implications. Also, examine the economic impact of anticompetitive practices in different sectors and on consumer welfare. It is also of utmost importance to use examples of real cases of anti-competitive practices to illustrate your arguments. You can research emblematic cases in your delegation or internationally to show how they have been addressed. In addition, analyzing the role of competition authorities and regulators in detecting, investigating and sanctioning anticompetitive practices can give you a lot of

strength in your debate. Examine whether these institutions have sufficient capacity and resources to deal with this problem. Discuss the responsibility of companies to avoid anti-competitive practices and promote fair competition. Business ethics and compliance with antitrust laws are relevant issues in this context. And last but not least, it considers the effectiveness of existing laws and regulations in combating anti-competitive practices.

The topic of anti-competitive practices can be a bit complex as it involves various economic aspects, such as the law of supply and demand and its importance on the economy, the controversy with free markets and inflation, as well as legal, social and ethical issues. But it is worth noting that with good preparation, by approaching the subject from multiple perspectives, you will be able to enrich the debate and have a more complete view of the problem and possible solutions.

4.5. USEFUL LINKS:

For context:

https://repositorio.cepal.org/bitstream/handle/11362/4369/1/S9890697_en.pdf
https://intracen.org/file/combatinganti-competitivepracticesenglishpdf

UNCTAD set of principles on competition: https://unctad.org/topic/competition-and-consumer-protection/the-united-nations-set-of-principles-on-competition

- Latin America:
  https://www.oecd.org/countries/peru/37976647.pdf
  https://one.oecd.org/document/DAF/COMP/AR(2022)6/en/pdf
- North America:
  https://www.nortonrosefulbright.com/en-us/knowledge/publications/bc429788/nafta-the-usmca-and-competition-law-in-north-america
- Europe:
  https://european-union.europa.eu/priorities-and-actions/actions-topic/competition_en
  https://commission.europa.eu/business-economy-euro/doing-business-eu/competition-rules_en
- Asia:
  https://www.oecd.org/daf/competition/asia-pacific-competition-update-newsletter-dec2022.pdf

https://www.winston.com/en/what-we-do/services/antitrust-competition/index.html#!/en/what-we-do/services/antitrust-competition/asia-competition-regulatory-advice.html?aj=ov&parent=3344&idx=1

- Africa: https://resourcehub.bakermckenzie.com/en/resources/africa-competition-guide/africa/south-africa/topics/prohibited-practices
  https://www.usaid.gov/news-information/press-releases/oct-3-2022-usaid-and-the-ftc-launch-trust-and-competition-in-digital-economies-initiative

4.6. QARMAS:

- Has your delegation faced cases of anti-competitive practices? What kind?
- Has your delegation been affected by anti-competitive practices carried out on its own? And by other delegations?
- What is your delegation's perspective on competition? Is it in favor or against?
- Has your delegation established any antitrust laws/ anti-competitive policies? How do they work?
- Does your delegation consider arbitration as a viable solution to cross border disputes?
- Has your delegation needed any arbitration proceeding in the competitive field?

5. LIST OF DELEGATIONS:

Bolivarian Republic of Venezuela

Democratic People's Republic of Korea

Federal Democratic Republic of Ethiopia

Federal Republic of Germany

Federal Republic of Nigeria

Federative Republic of Brazil

French Republic

Kingdom of Spain

People's Republic of Bangladesh

People's Republic of China

Republic of Colombia

Republic of India

Republic of Korea

Russian Federation

State of Israel

State of Japan

The Kingdom of Saudi Arabia

United Kingdom of Great Britain and Northern Ireland

United Mexican States

United States of America

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