

Pacific Economic Cooperation Council

The Pacific Economic Cooperation Council (PECC) is a unique partnership of senior individuals from business, government and research, who work in a non-official capacity, on practical policy issues to increase trade, investment and economic development in the Asia Pacific region.

PECC is the only non-governmental, official observer of APEC, and has a seat at all meetings of the APEC ministers and officials. PECC channels its policy recommendations to APEC, and supports the APEC process by providing business feedback and analytical input. PECC also actively interacts with the World Trade Organisation, the World Bank, the Asian Development Bank, the ASEAN Secretariat, the OECD, and United Nations agencies.

Founded in 1980, PECC now comprises twenty-three member committees representing the economies of Australia, Brunei, Canada, Chile, China, Colombia, Hong Kong (China), Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Pacific Island Nations, Peru, The Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States, Vietnam, and France (Pacific Territories) as associate member. Each committee sends a tripartite delegation to the PECC General Meeting held approximately every two years. The Pacific Basin Economic Council (PBEC), the regional business organisation, and the Pacific Trade and Development

Conference (PAFTAD), the region-wide organisation of academic economists, are institutional members of PECC.

PECC's policy-making body, which meets several times a year, is the Standing Committee comprising the Chairs of PECC Committees in each member economy. The day to day administrative and coordinating functions are carried out by an International Secretariat based in Singapore.

PECC anticipates emerging economic opportunities and problems for business and governments. It establishes task forces, fora and project groups to concentrate on particular policy areas. These groups meet regularly, organise seminars and workshops, conduct studies and publish their conclusions and recommendations for the benefit of the Pacific community. They cover a wide range of issue areas including Human Resource Development, Macroeconomic Forecast and Analysis, Science and Technology, Small and Medium Enterprises, Telecommunications and Information Technology, Trade and Investment Policy, Energy, Financial and Capital Markets, Fisheries, Food and Agriculture, Minerals, Tourism and Transportation.

For more information on PECC, contact the PECC International Secretariat at 4 Nassim Road, Singapore 258372, tel: +65 6737-9823, fax: +65 6737-9824, email: peccsec@pecc.net, web site: <http://www.pecc.net>

Foreword

There is a growing awareness internationally that sustainable economic and social development is built on open and flexible economies. Well designed and implemented micro-economic reforms can contribute to this goal. Public-sector reform can facilitate the more effective provision of government services and social assistance. Trade reform can help sectors compete internationally without the need to be supported by the rest of the community. Laws that facilitate appropriate labour market flexibility promote employment and the application of human capital to its highest yielding uses. Likewise, the appropriate regulation of financial markets can enhance their performance in allocating scarce capital resources. Tax reform can reduce the costs to the community of raising government revenue.

Integral to these reforms are changes to the broader regulatory environment that harness the benefits of more flexible markets and remove unwarranted barriers to entry for new businesses. The nature of reform has differed among economies. But issues faced and approaches applied have enough common elements for experiences in reform to be shared. This PECC document is a tangible contribution to that process. In particular, it provides a framework within which further progress can be made towards competition-driven policies within APEC.

An important feature of the document is the distinction that is made between core principles that promote competition and auxiliary measures that are necessary if the core principles are to be upheld. Accordingly, the framework outlined in the document is flexible enough to accommodate the unique circumstances of economies in the region while also being specific enough to provide traction to stimulate further debate.

While more open economies and flexible markets increase the rewards to the community of well-designed regulatory policies, they also increase the costs of poorly-designed interventions. In this context, PECC appropriately addresses the importance of the competition dimension to all policy making, and the goals of transparency and accountability in the administration of competition principles.

Arthur Andersen Corporate Finance is pleased to be able to play a part in ensuring access by a wide audience to this publication. We commend it to all who recognize the key role of well-functioning markets in promoting social and economic progress.

Alex Duncan
Head of Corporate Finance, New Zealand
Arthur Andersen

Preface and Acknowledgements

It is fitting that this publication is being launched at PECC's Trade Policy Forum (TPF) meeting in Auckland 3-4 June 1999 in New Zealand's Year of APEC. One of APEC's unifying themes is cooperation to strengthen the functioning of markets, including financial markets; and a specific deliverable is a framework of non-binding competition and regulatory principles for endorsement by APEC Leaders.

PECC's interest in 'competition policy' goes back to its TPF meeting in Puerto Vallarta, Mexico, in 1993 when we started to explore how this policy area fitted with APEC's broad economic and social ambitions. The Competition Principles Project flowed from our early debates in this very complex area and from our resolution in May 1997 to proceed down the principles path as the one that had the greatest potential to add value and guide an APEC-wide approach.

We present our Competition Principles as a necessary response to the demands of APEC's long-term economic and social goals as well as part of a coherent response to the Asian crisis.

The Principles are based on competition and efficiency as the preferred means for sustaining overall economic growth and development. They emphasize the process of growing the total supply of goods and services and not just trade; and the welfare of consumers as well as producers. They focus on the creation of market conditions and opportunities for business; the value of increasing choice

for customers; and of more inclusive participation in economic processes. Increasing choice, opportunities and participation bring greater fairness into markets, as does a merit-based competitive process. In this sense, fairness is a consequence of more open and well-functioning markets not a casualty of them.

This document is the culmination of an extensive process of consultation and consensus building. It has benefited from the investment made by PECC member economies over many years in building research, business and official networks which can be drawn upon in cooperative endeavours for the region's advancement. The Competition Principles Project has benefited enormously from the many contributions to the development of the Principles presented in this document. There have been numerous debates in various fora and thanks are due to all those who participated in or facilitated these debates. There has been much enthusiasm and encouragement from within both PECC and APEC as well as from individuals in other international bodies.

In addition to this general acknowledgement of widespread assistance and support, special acknowledgement is due to the following individuals for their efforts and especially for their valuable insights in various stages of drafting and/or considerable assistance in organizing/hosting special presentations and discussions on the Project: Mercedes Araoz, Tony Basilio, Fred Bergsten, Jean Luc Le-Bideau, Alan Bollard, Edward

Chen, Paul Crampton, Stephen
Crosswell, Jesus Estanislao, Crawford
Falconer, William Fung, Monty Graham,
Arthur Grimes, Paul Irwin, Merit Janow,
Gary Hawke, Peter Lloyd, Chang Fa Lo,
Danny Lo, Yvonne Lucas, Nikki
Mandow, Peter Martin, Rory McLeod,
Rugayah Mohammed, Chris Noonan,
Mari Pangestu, David Parsons, Steve
Parker, Wisarn Pupphavesa, Robert
Scollay, Hank Spier, Mark Steel,
Toshiaki Takigawa, Clara Tang, Jose
Tavares, Ing-Wen Tsai, Debra Valentine,
Peter Watson, and Rong-I Wu. Special
mention must also be made of the
excellent support from the NZPECC
Board, Executive and other members of
the NZPECC network; the PECC
Secretariat; the TPFís International
Advisory Group which formally endorsed
the Principles; and the PECC Standing
Committee for its general support and for
its formal endorsement of this Principles
document.

This cooperative effort within PECC has
itself been an enriching experience and, as
Convener of the Project, I am indebted to
all those involved including Elayne
Pownall for her major contribution in
processing and distributing successive
drafts and related communications.

Kerrin M Vautier
Convener
Competition Principles Project
1 June 1999

Abbreviations

ABAC APEC Business Advisory Council

ADB I Asia Development Bank Institute

APEC Asia-Pacific Economic
Cooperation

CAP Collective Action Plan (APEC)

CTI Committee on Trade and
Investment (APEC)

Ecotech Economic and Technical
Assistance (APEC)

IAP Individual Action Plan (APEC)

IPR Intellectual Property Rights

ISEAS Institute of South East Asian
Studies

PECC Pacific Economic Cooperation
Council

SME Small and Medium-sized
Enterprises

TPF Trade Policy Forum (PECC)

Contents	Page
Foreword	ii
Preface and Acknowledgements	iii
Abbreviations	iv
Introduction	1
Background to the PECC Competition Principles Project	1
Response to the Asian Crisis	4
Executive Summary	5
Part I 'Competition Policy' - Aims and Findings	9
I.1 Broad Aims	9
I.2 Issues and Tensions	9
I.3 Emerging Consensus	10
I.4 Advancing the Issues	11
Part II	
Developing Competition Principles for Application by PECC and APEC Economies	13
II.1 Common Themes	13
II.2 The Overall Framework	14
Diagram: APEC in the 21st Century - A Competition Framework	15
II.3 The PECC Competition Principles	18
Part III	
Principles in Practice - Some Practical Issues and Conclusion	23
Selected References	27
Appendix I	
Competition Principles for APEC Economies - Recent Quotes	30

Introduction

Background to the PECC Competition Principles Project

The PECC Trade Policy Forum [TPF] has had the ‘new’ interface between international trade/investment policy and ‘competition policy’ on its agenda since 1993.

PECC has been supportive of APEC’s overall competition policy objective which is stated as follows:

APEC economies will enhance the competitive environment in the Asia-Pacific Region by introducing and maintaining effective or adequate competition policy and/or laws and associated enforcement policies, ensuring the transparency of the above, and promoting cooperation among APEC economies, thereby maximizing, *inter alia*, the efficient operation of markets, competition among producers and traders, and consumer benefits.

This objective was developed as part of the response to the Bogor Declaration of 1994 committing all APEC member economies to the achievement of free trade and investment within the APEC Region by 2010/2020.

The APEC Committee on Trade and Investment [CTI] has noted the central role of competition policy in enhancing economic efficiency. Nonetheless, APEC’s Individual Action Plans [IAPs] reveal a lack of consensus on both the objectives and scope of competition policy.

This reflects different views on the role that competition policy can play in promoting APEC’s overall trade and investment objectives and in promoting ultimate economic welfare goals. This is problematic and suggests that the building of consensus on these aspects, and on the underlying economics, should be the main focus of improvement to the competition dimension of the IAPs. Otherwise, there is greater risk of such problems as trade frictions, negative-sum measures and inconsistent domestic policies.

PECC has therefore been supportive of the APEC Collective Action Plan [CAP] requirement of member economies to ‘consider developing non-binding principles on competition policy and/or laws in APEC’ and suggests that the present lack of consensus around the objectives of competition policy underlines the importance of making progress with respect to that CAP requirement. Reaching consensus on principles for guiding the development of competition-driven policy (including competition law) in the Asia-Pacific Region may contribute substantially to a common understanding of the place of competition law, as well as other policy instruments, within a competition-driven policy framework.

At its forum on trade and competition policy in Montreal (May 1997), the PECC Trade Policy Forum formally resolved to advance its thinking about what (non-binding) principles might guide the development of a competition policy framework for PECC and APEC economies in the short, medium and long term. It further resolved, under the leadership of a core TPF group, to present a draft set of these principles for

discussion with TPF experts in Santiago late 1997 (in association with PECC XII).

At PECC XII the TPF organized an Experts Roundtable on the topic *Asia - Pacific and Western Hemisphere Regional Initiatives: Cooperation for Increasing Competition*. This included a work-in-progress presentation on the Competition Principles Project [the Project] based on a third draft report. That presentation by the Project Convener expressed TPF's ultimate aim in terms of gaining acceptance within APEC that a competition-based policy framework is the central framework into which international discussions and negotiations fit - whether we are talking about trade or investment, goods or services, domestic regulatory policies, business conduct, markets for financial services, fisheries, agriculture, communications or transportation, etc. A competition-based framework would take us beyond the trading of concessions on border restrictions to the core of concerted unilateralism within APEC. The Project was stressing the strategic significance for APEC of the role of competition and the importance of an integrated, coherent and transparent approach to the development of a comprehensive competition framework. Following the Santiago meeting, a fourth draft report on the Project was prepared in an attempt to sharpen various points; to reflect better the broad concerns of developing economies as well as of some developed economies; and to capture (in a new Part III) a number of practical concerns that were raised.

At the PECC Standing Committee meeting in Seattle in April 1998, the Project Convener was given the opportunity to make some brief remarks

on 'government cooperation for business competition'. These remarks stressed the timeliness of focusing on competition principles - given their relevance for so many of the PECC Task Forces/Working Groups, for the priority areas identified by PECC's Chair and for responding to the financial crisis in Asia. In other words, the Convener suggested, this is the time to be thinking more not less about how the basic tenets of free and better functioning markets can be internalized within domestic policy-making in general. 'If decisions in globalizing markets are to be more influenced by competition values, by a competition culture, then competition principles will need to guide all of those policies that have important impacts in these markets.' The Convener went on to inform the PECC Standing Committee that the emphasis of the Competition Principles Project was on:

- principles not rules
- a competition-based policy framework not prescriptive policies for individual economies
- convergence of intentions not necessarily policy conformity

The remarks concluded that in short, consensus in the Region on competition principles can be seen:

- as a key element in achieving APEC's goals, as well as
- central to a constructive and coherent response to the recent failures in financial (and other) markets

Adoption by APEC economies of a set of competition principles would be seen as a

counter to the risk of increasing protectionism at this time; and an assurance that there will be no retreat from APEC's welfare-enhancing commitments.

In its 23 June 1998 Policy Statement to the APEC Trade Ministers Meeting in Malaysia, PECC outlined its recommendations for a strong and comprehensive regional response to the Asian economic crisis. It said that 'an economic foundation based on competition principles [was part of] a new coherent approach in policy development'. In building sustainable Asia-Pacific cooperation PECC stressed the importance, *inter alia*, of 'a coherent approach which accounts for the inter-linkages of the various issues and which recognizes the important role of competition principles in providing cohesion to the policy framework'.

Between March and August 1998, as a further stage in consensus building, meetings relating to the Project were held in Chinese Taipei, Washington DC, Hong Kong SAR and New Zealand. The TPF Roundtable held in Kuantan on 4 September 1998 was designed to advance further the consideration of competition principles and particular benefit was derived from the involvement of APEC officials and other experts who were in Kuantan for APEC meetings on regulatory and competition policies.

In concluding remarks at the end of the TPF Roundtable, the broad goals of APEC were highlighted as the starting point for the Project. A key link was drawn between the unifying role of competition in policy development and APEC's ultimate social purpose. The competition framework was being shaped for the long-term and inevitably there

would be issues relating to education for institutions, business and consumers, and to sequencing, implementation and capacity building. Clarity of purpose, linking competition with efficiency, was a constant theme in the Project. While governments have multiple objectives, these should be pursued via the most appropriate policy instruments in the interests of transparency and accountability.

In response to an invitation from the organizers of APEC's Competition Policy and Deregulation Workshop in Kuantan on 7-8 September, PECC's TPF made a major presentation to officials on its draft Competition Principles and then participated in discussion on those Principles. Matters of emphasis put forward at both the Roundtable and Workshop in Kuantan were accommodated in the sixth and final draft (16 December 1998) which also benefited from written contributions and from discussion at the ADBI/ISEAS/PECC Workshop on *Managing Asia's Financial Sector Recovery: The Role of Competition Policy and Corporate Governance* held in Singapore, 9-10 November 1998.

The sixth and final draft and the non-binding Competition Principles contained therein were duly endorsed by the TPF International Advisory Group in Manila in January 1999, subject to inclusion of matters of clarification and emphasis arising from various final comments and submissions from member economies.

A PECC TPF presentation titled *The Role of Competition Principles in Building a Competition Framework for Policy Development in APEC* formed part of the CTI's Dialogue on

Competition Policy on 5 February 1999.
Key points were as follows:

- our approach is seen as a necessary part of a coherent response to the present crisis; and is a necessary response to the demands of APEC's long term goals
- [while much has been done in the name of Competition Policy], of primary importance, from PECC's perspective, is that APEC economies converge around competition and market strengthening objectives, and around the competition principles [which flow from them]
- we see the role of Competition Principles as promoting or defending the whole process of competition in globalizing markets - through creating and maintaining those conditions that will allow and encourage the competitive process to work
- traditional policy compartments are breaking down; they are becoming a barrier to policy coherence around a competition focus
- promoting competition is not about increasing or maximizing international trade. It is important because of its role in stimulating markets to operate more efficiently in the interests of all consumers
- PECC's TPF Competition Principles will mean little if the first-level core principle of *comprehensiveness* is ignored... [and if] discriminatory policies significantly interfere with the core principle of *competitive neutrality*, i.e. the same principles should apply to all sources of supply
- second-level principles, for upholding the core principles in practice, ... [come] to the heart of the regulatory framework for APEC economies, as does the whole area of corporate governance
- a competition framework, built on competition principles, can help inform both the appropriate type and extent of rules and regulations that might be contemplated in pursuing regulatory and governance objectives
- of particular importance will be how APEC's Action Plans might best reflect the Competition Principles - that is, how can the Plans help shape a competition-driven policy framework for APEC?
- while a Competition Policy framework can help inform Ecotech priorities, Ecotech itself has a critical role in building the capacity to embrace a competition framework through different stages of economic development
- the outcome of the Competition Principles Project reinforces the [1998] APEC Leaders' theme of strengthening the foundations for

sustainable growth through cooperative strategies

- the Principles endorsed within PECC ... rely on cooperation in *policy direction*

At its meeting in Canberra on 15 April 1999, the PECC Standing Committee endorsed the Competition Principles, accepting their importance for guiding policy development in individual economies and for sustainable economic recovery and growth in the Region. The PECC Standing Committee accepted the compatibility of the Principles with the APEC modality of consensus building and concerted unilateralism.

PECC presented its Competition Principles to the APEC Competition Policy and Deregulation Workshop in Christchurch on 30 April 1999 and summarized the key influences that had shaped the Principles package and the key conclusions drawn from the Project.

Response to the Asian Crisis

This background to the Project shows that it was conceived well before the Asian financial and economic crisis. The authors saw the achievement of APEC's long-term vision as dependent upon the building by APEC of a sound and coherent policy framework based on agreed competition principles for application in individual member economies. Some might see this approach as somewhat abstract and long term given the adverse economic transformation that has occurred in the crisis. However, the circumstances of the crisis have focused attention on the functioning of markets as a central issue and, in doing so, have

reinforced PECC's approach. Because the PECC Competition Principles directly address the conditions for well-functioning markets, they are seen as an integral part of an effective response to the crisis and, in particular, a central part of promoting coherent policy responses to it. Adoption of the PECC Competition Principles, coupled with institutional capacity-building, provide a framework in which to address some of the critical issues that have arisen in financial and other markets. They can help guide the restoration process by laying the foundations for better functioning markets in future. Failure to contemplate application of competition principles to financial markets at this time - balanced by appropriate regulation - would risk a further weakening in these markets as well as in the goods and services markets they service.

Executive Summary

APEC's long-term goals for trade and investment liberalisation and economic and social development provided the starting point for the PECC Competition Principles Project. But also, the APEC Collective Action Plan requires member economies to 'consider developing non-binding principles on competition policy and/or laws in APEC'. This CAP requirement reflects the strategic significance of competition in the context of APEC's ultimate goals. The rationale for a competition framework for APEC economies stands in its own right and does not depend upon its potential to increase or maximize international trade and investment or to prevent nullification of trade concessions negotiated at a multilateral level.

The development of the PECC Competition Principles has been an organic process, with each draft of this document being refined to reflect feedback obtained from an increasingly large circulation. The critical insight that has been achieved through this consultative process has been that there is a competition dimension to a wide range of policy-making within APEC economies. In short, a set of competition principles can provide a coherent, unified framework within which to assess and revise existing policies as well as develop future policies. The integration of these policies and policy instruments into the proposed framework would provide a powerful mechanism for achieving the APEC strategy of more open and competitive markets, in order to attain greater economic efficiency and overall economic welfare.

The proposed set of Competition Principles would apply to developed as well as developing economies, large as well as small economies, trade as well as other policy instruments, and public as well as private actions, that impact on markets. However, it is recognized that there must be flexibility with respect to timing and implementation across APEC economies, as they are at different stages along the economic development and policy spectrums. They have different levels of institutional capacity, different access to policy instruments, and different views with respect to optimum policy sequencing. These differences cannot be ignored. The flexibility contemplated by the proposed principles and in the timing of their implementation is what distinguishes umbrella *principles* from binding external prescriptive *rules*.

Broad Aims

The broad aims of the PECC Competition Principles Project have been:

- to promote the competitive process throughout the APEC Region as a means of enhancing economic efficiency and welfare
- to guide the development of a competition-based policy framework for PECC and APEC economies in the short, medium and long term, in order to assist policy development as well as the resolution of policy conflict both within and between member economies
- to provide a discipline on domestic policy-making in the context of APEC-wide goals

- to offer broad, enduring and non-binding principles, as opposed to prescriptive rules or detailed policies
 - to promote wider recognition of the fact that governments in the Region, rather than private market participants, are responsible for most of the existing distortions of the competitive process
 - to minimize uncertainty for businesses through greater transparency and consistent application of an agreed set of Competition Principles and disciplines affecting their markets
- economic efficiency and an increased average standard of living in domestic economies and the APEC Region as a whole
 - other policy objectives of governments should generally be pursued through policy instruments other than those specifically aimed at promoting competition, efficiency and overall economic welfare
 - the desirability of minimizing the extent to which regulations and other state-imposed or sanctioned measures distort competition in the pursuit of other legitimate public interest objectives

Consensus

Through the Project's consultative process, a consensus has emerged with respect to a number of fundamental matters. These include:

- the desirability of member economies fostering greater reliance upon well-functioning markets by adopting a principled competition framework to provide a coherent and unified paradigm for the assessment and refinement of existing policies as well as the development of future policies that impact on globalizing markets
- the ultimate goal of this competition framework is to promote the process of competition, as opposed to the welfare of individual competitors, in order to achieve greater overall
- the need for a principled competition framework to address state-imposed or sanctioned distortions of the competitive process as well as private distortions in order to ensure that gains from reducing the former are not undermined by proliferation of the latter, as more sectors of the economy are deregulated
- the desirability of pursuing a step-by-step approach in developing a competition-based policy framework for APEC economies, particularly in view of the complex nature of many issues (in policy, analytical, jurisdictional, economic, legal, political and practical terms), and the above-noted differences amongst member economies - although this notion of flexibility is not intended as an opt-out clause or as

meaning undue gradualism in applying the Principles

Core Principles

In addition to the foregoing, a consensus has emerged with respect to the following first-level core' competition principles:

- *comprehensiveness*
there should be a competition dimension to all policy-making that impacts on globalizing markets and this framework should apply to all goods and services
- *transparency*
the substantive principles on which policies are based and the processes by which they are applied should be clear for all stakeholders
- *accountability*
those responsible for applying the Competition Principles should be accountable for any departures from those Principles
- *non-discrimination*
once a transition period is complete, the enduring Principles should be applied by an economy in a non-discriminatory manner so as to ensure *competitive neutrality* in respect of the different modes of domestic and international supply

Policy conflicts should be resolved in a way which minimizes distortions of the competitive process and maximizes the capacity of markets to function efficiently.

Basic Measures

PECC further recommends that APEC economies embrace the following basic measures in the short to mid-term as important steps for giving effect to the core competition principles:

- re-evaluate all relevant government legislation and regulations to ascertain the extent to which these distort competition, particularly in sectors of relative significance in the domestic economy
- progress this re-evaluation of all relevant elements by means of the Individual Action Plans of APEC economies with a view to minimizing distortions of market mechanisms, including efficiency-reducing barriers to market entry (while recognizing that not all regulatory constraints - risk minimization in the financial sector, for example - are welfare-reducing barriers)
- implement these Action Plans, including the development of appropriate criteria for future government interventions in globalizing markets
- promote the maximum degree of transparency with respect to substantive provisions, procedures and decision-making in legal, administrative and regulatory regimes
- minimize the risk of anti-competitive business conduct through appropriate competition

disciplines on business conduct - which may include a competition law¹ - and effective surveillance/enforcement of those disciplines, including appropriate deterrent measures

- explore the benefits of engaging in international cooperation among competition agencies/ authorities, given the growing tendency for competition issues to span national borders

Transition

Consistent with ensuring that there is sufficient flexibility with respect to applying the Competition Principles in practice, PECC recognizes that some economies may adopt a medium to long term perspective on implementation issues such as:

- the wide opening of their domestic economies to foreign competition
- adopting a comprehensive competition law
- elimination of various sectoral and other exemptions

- cooperating internationally with competition agencies

Such flexibility would enable nations to develop broader stakeholder support for applying the Principles.

However, transitional features should themselves incorporate:

- (a) specification of clear end goals
- (b) clarification of the time path for achieving end goals
- (c) identification of achievable intermediate goals and minimum commitments
- (d) provision for monitoring progress at these 'transitional checkpoints'

In contemplating transitional arrangements, PECC recognizes that there will be a particularly important role for advocacy - by member governments and one or more of their institutions - of a competition dimension in policymaking (and what this means for different constituencies) and that there will be:

¹If enactment of a domestic competition law is considered appropriate, options range from a comprehensive approach to a more modest law which would include provisions relating to 'hard core' horizontal cartel activity (price-fixing, bid-rigging, market allocation and group boycotts), egregious abuses of a dominant position, and mergers or takeovers of large firms. Any law should contain as few sectoral and other exemptions (export and import cartels for example) as possible; and contemplate 'stand-still' and 'roll-back' provisions in relation to any exemptions.

- education issues - for institutions and business and consumers
- special implementation and sequencing issues
- institutional capacity issues, including skill requirements

PECC sees the APEC Ecotech agenda as an integral part of the process of operationalizing the proposed Competition Principles in APEC economies.

Part I: ‘Competition Policy’ - Aims and Findings

I.1 Broad Aims

Underpinning the PECC approach to ‘competition policy’ have been the following broad aims:

- (i) to promote the competitive process throughout the Asia/Pacific Region as a means of enhancing economic efficiency (including innovative efficiency) and consumer and economic welfare
- (ii) to secure wider acceptance in the Region that enhancement of efficiency and overall economic welfare through the promotion of competition is the common goal of competition policy and trade policy; and to encourage use of competition principles in addressing market access issues
- (iii) to foster linkages between competition policy and investment policy as well as trade policy
- (iv) to foster linkages between competition principles and liberalisation of trade in services (as well as goods)
- (v) to promote wider recognition of the fact that governments in the Region are responsible for many if not most of the existing artificial barriers to market entry and competition; and, given this, to promote the key reinforcing role of domestic deregulation in opening markets and increasing

the ability of suppliers to contest them

(vi) to promote a greater degree of transparency of government approaches to competition policy

(vii) to learn of and from experiences with the effective administration of competition regimes, including effective enforcement of competition law targeted at anti-competitive business conduct

(viii) to encourage the application of competition principles to policy-making in the Region; this in turn will provide greater predictability and stability for business in respect of APEC’s policy environment

(ix) to seek, in relation to economies in the Asia/Pacific Region, greater clarity and understanding of:

- differences in stages of economic development
- differences in constraints on increasing competition
- differences in present political and policy objectives
- differences in legal and institutional arrangements

as well as of the appropriate and realistic steps for individual economies to take over time in the context of their Bogor commitments.

I.2 Issues and Tensions

At the PECC TPF in Montreal on trade and competition policy, a number of issues and tensions emerged. These were articulated in PECC's formal report on the Montreal meetings and served to highlight the overall challenge for the Project.

In particular, there was a tension between a *competition policy* approach and a *trade policy* approach to the concepts of *competition* and *market* access. There was also the underlying issue of whether or not (or, perhaps more accurately, how) competition policy objectives can help inform debate in the trade policy area.

The Montreal forum also focused on another important distinction: *viz* between developed and developing economies. This mainly emerged in discussion on the extent to which, and the speed with which, it would be feasible for developing economies to adopt a competition-efficiency-economic welfare paradigm for policy development.

An issue that generated strong interest was in what circumstances, and when (if at all), might it be appropriate for an economy to consider introducing a competition law. Interestingly, this was debated in the context of both developing economies and very open economies.

There was also tension over the nature of international cooperation between those economies that have enacted or are in the process of enacting competition laws. This goes particularly to the issue of enforcement in relation to cartels and mergers with cross-border implications.

I.3 Emerging Consensus

Despite these issues and tensions, and the complexities that underly them, areas of consensus emerged within PECC's TPF. Our findings suggested, *inter alia*, the desirability of:

- (i) a coherent and analytically sound approach to the building of a competition-driven policy framework
- (ii) building consensus on the appropriate objective of competition-driven policy, *viz* efficiency/ economic welfare (not just producer welfare) - which means *inter alia* distinguishing between measures to protect the *competitive process* (the concern of competition policy) and measures to protect *competitors/producers*
- (iii) recognition that there are many different types of government policies and policy instruments, together with different types of business and government conduct, that can have a profound influence on competition in globalizing markets
- (iv) achieving greater clarity as to the nature and causes of competition problems and their significance - in the context of building consensus on common competition-related objectives for the Region
- (v) building consensus that other policy objectives of governments should generally be pursued through policy

- instruments other than those specifically aimed at competition, efficiency and overall economic welfare
- legal, political and practical terms
- although this approach and the flexibility it implies, is not intended as an opt-out clause or as meaning undue gradualism in applying the Principles
- (vi) a much clearer understanding of the linkages between trade and competition; and between trade and competition policies
- (ix) drawing on relevant experience with domestic competition policies
- (vii) predominance being given to the efficiency objective of promoting competition - in those circumstances where there is a conflict with non-efficiency objectives/impacts of trade policy; or, if that is simply not practicable or politically feasible in particular cases of policy conflict, adherence to the notion of 'minimum distortion' to the competitive process
- (x) improving understanding of the experience of and the scope for cross-border cooperation on cross-border competition issues.
- (viii) a gradual step-by-step approach to developing a competition-driven policy framework for the Region, especially in view of:
- In respect of competition law, 'soft cooperation' between enforcement agencies might involve general exchanges of views on approaches to enforcement together with limited information-sharing. Those economies with well established competition enforcement institutions might enter more formal cooperation and coordination arrangements - involving provisions for the sharing of confidential information, positive and negative comity and technical assistance.
- the diverse characteristics of APEC economies, including:
 - differing stages of economic development, and
 - differing institutional arrangements and capacity
 - the complex nature of the many issues in policy, analytical, jurisdictional, economic,
- (xi) encouraging enforcement cooperation arrangements between economies, especially those with well established competition institutions.
- It is noted that APEC's present Collective Action Plan on Competition Policy encourages cooperation among the competition authorities of APEC

economies in respect of information exchange, notification and consultation, i.e. the ‘softer’ elements of enforcement cooperation.

(xii) attempting to make progress in the short term in those competition-related areas where broad agreement appears to have been reached, such as:

- minimizing sectoral and other exemptions from any domestic competition laws
- developing some form of bilateral cooperation between enforcement agencies in those economies with such laws, e.g. in respect of pre-merger notification procedures (which affect business acquisitions with cross-border market implications)
- deregulation within economies as the primary way of reinforcing the promotion of the competitive process that is resulting from border measures

(xiii) continuing discussions on what specific actions to promote competition might appropriately be pursued over time at a national, bilateral, plurilateral or multilateral level

In order to advance the various issues relevant to the development of a competition policy framework for APEC economies, PECC will need to promote work in such areas as:

- (a) identifying the nature and significance of competition problems and the extent to which these problems arise from government actions (e.g. regulation of markets and the raising of artificial entry barriers); or from private conduct (e.g. collusive practices which substantially lessen competition; or anti-competitive actions of dominant firms); or from government inactions (e.g. inadequate enforcement of existing laws or inadequate regulation of the use of monopoly power); or from some combination of these
- (b) identifying and understanding the differences in the IAPs as they relate to competition
- (c) identifying the implications of a competition-driven policy framework for such areas as:
 - general regulatory reform
 - foreign direct investment policy, including investment in and delivery of services
 - trade remedies
 - cross-border price discrimination

I.4 Advancing the Issues

- government procurement policy
 - standards and conformance affecting trade
 - SMEs
 - State Trading Enterprises
- (d) the role and costs/benefits of generally applicable competition disciplines in APEC economies; the appropriate scope and coverage of *per se* prohibitions (if any) of business conduct; and the role and costs/benefits of any supplementary industry-specific regulation of utilities
- (e) identifying realistic ways of addressing competition problem areas over the short, medium and long term, having regard to transitional issues relevant to the wider application of market-based and competition principles throughout the APEC Region.

Part II: Developing Competition Principles for Application by PECC and APEC Economies

II.1 Common Themes

Some common themes have emerged from PECC's deliberations to date and from APEC's work (including the IAPs). These are set out below:

(i) the primary importance - for enhancing the contestability of markets and the competitive process - of generally reducing, and where possible eliminating, government barriers to market entry (including - but certainly not confined to - barriers to cross-border trade and investment in goods and services)

(ii) the associated importance of ensuring that the erection of private anti-competitive barriers (or a hybrid of government/private barriers) does not work against other measures designed to achieve more open, contestable and competitive markets.

It is recognized that some perceived barriers to market entry or expansion may have a legitimate role in protecting property rights and are not necessarily anti-competitive.

(iii) the merits of an integrated approach to policy for the purposes of promoting competition efficiency and welfare.

APEC's CTI has recognized that benefits are expected from the interrelationship between competition policy (including prohibition of private anti-competitive conduct), deregulation, and other policies related to trade and investment. Accordingly, it has already merged the work areas of Competition Policy and Deregulation and is encouraging a competition-based approach to deregulation. It is also encouraging the notion that any regulatory distortion to the competitive process be minimized and consistent with what is necessary to achieve a particular policy objective.

(iv) the special relevance for competition in the Region of several policy areas covered by the IAPs, such as foreign direct investment, non-tariff measures, government procurement and intellectual property.

Greater recognition of this would assist APEC to develop integrated and coherent competition-based policy.

(v) the potential benefits of an APEC-wide efficiency/welfare-based competition strategy for:

- economic integration
- the resolution of conflicts between policies

- the enhancement of economic performance throughout the Region and, importantly,
 - consumers/customers (including intermediate producers)
- (vi) the importance of competitive neutrality and comprehensiveness within economies - meaning: where general competition disciplines are in place, the same disciplines apply generally to all commercial sources of supply, whether domestic or foreign, government or private, large or small.
- This would not preclude industry-specific regulation if an economy judged this to be appropriate in the circumstances to address an industry-specific competition issue
- (vii) the fundamental importance of transparency in respect of:
- any competition disciplines or regulations
 - the criteria for the application of any such disciplines or regulations
 - discretionary decisions in relation to these
- to help, *inter alia*, minimize the risk of discriminatory treatment that is incompatible with the competitive process
- (viii) the need for effective and credible enforcement of any competition disciplines/regulations - bearing in mind that there are diverse views as to what are appropriate deterrents for actions that are detrimental to the competitive process
- (ix) the important role of cooperation among APEC economies - for example, in respect of information exchange about competition issues and competition-related policies generally.
- It is noted that the IAPs and CAPs provide a very important vehicle for incorporating the themes outlined in this section and for focusing attention on how these themes relate to a range of policy areas covered by the Plans.

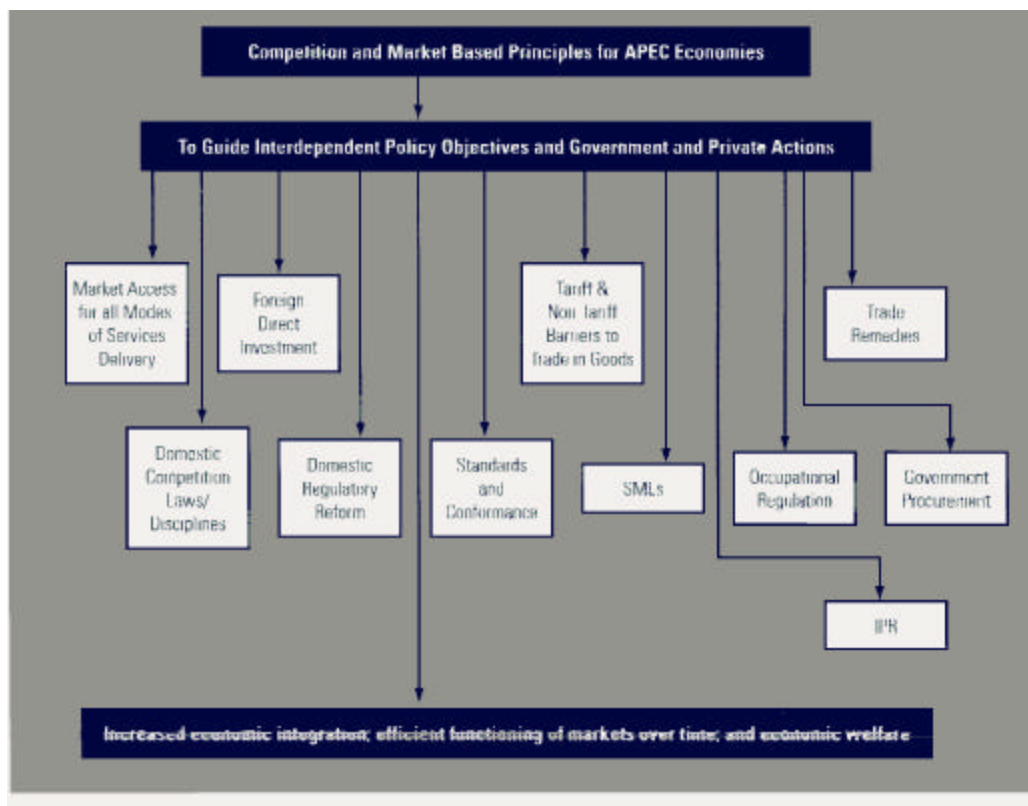
II.2 The Overall Framework

The over-arching theme that emerges is that the promotion of competition - an important element of which is the openness of markets to contest from all sources of supply - is a strategic policy focus in the Asia/Pacific Region. How then is the 'competition dimension' to find effective expression in policy formation?

The following diagram attempts to reflect this core theme as an initial part of the process of developing a competition framework and of articulating principles for guiding this development.

APEC in the 21st Century - A Competition Framework

Cooperating towards achieving open, contestable, competitive and efficient markets through an integrated, coherent and transparent approach to the promotion of effective competition as a strategic international policy issue



The heading of the diagram is intended to capture:

the policy focus on more open and contestable (from all supply sources) markets throughout the Region as the preferred and primary means of promoting competition and hence efficiently functioning markets and economic welfare

the strategic significance of the role of competition in the context of APEC's ultimate goals

the importance of an integrated, coherent and transparent policy approach for building a comprehensive competition framework for pursuing those ultimate goals

the essential ingredient of inter-government cooperation in the Region for addressing the strategic policy issue

The second section of the diagram focuses on:

developing competition and market-based principles for application throughout the Region; and, by implication, developing a sound basis for investment decisions, product and service innovation and increased economic welfare

These principles are intended for application to a range of traditional policy areas, in order to:

- focus attention on the appropriate objectives of these policies
- assess the validity (within the principled competition

framework) of deviations from those objectives, and to

- guide both government and private actions which can affect the degree of competition and efficiency in globalizing markets.

The range of policy areas could be categorized in various ways². However, policy categorization itself can be an unproductive exercise. The essential point of the proposed competition framework is to emphasize that competition principles will be relevant to a range of policies and policy instruments, irrespective of how these may have been traditionally categorized or focused.

The integration of these policies/instruments into the proposed competition framework is the route for giving impetus to, and giving coherence to, APEC's strategy of more open and competitive markets. It is also the route to economic integration, increased economic efficiency and economic welfare.³

Importantly, the inclusiveness/comprehensiveness of this framework has undoubted appeal for business.⁴ To the extent that greater

²For example into trade policy, industry policy and competition policy (traditionally defined); or into trade policy, investment policy and competition policy (more fully defined); or into trade/border policy, regulatory policy, government practices and legal frameworks - all part of a comprehensive approach to competition-based policies.

³Depicted in the diagram as ultimate outcomes

⁴Research in the CER context supports the proposition that business is concerned about impacts of all policies (however categorized by policy-makers) on the circumstances governing the conduct of business in markets. A degree

predictability for business is a consequence of a more coherent (as well as transparent) policy approach in the Region, business/investor confidence in international transactions is likely to be enhanced (through a lowering of risk perceptions). This is relevant to the facilitation of economic integration.

The focus of PECC's Competition Principles Project has been to develop an enduring set of non-binding competition principles for application to policy development by APEC/PECC economies; and to assist the resolution of policy conflict - both within and between economies.⁵

of consistency in the broad approach to policy within economies and, increasingly, a degree of convergence between economies, is therefore a relevant policy consideration.

⁵As the competition framework develops, attention will need to be given to relevant competition standards (reflecting the principles) and may also to 'best practice' guidelines within each of the identified policy areas.

II.3 The PECC Competition Principles

Based on the suggested Competition Framework for APEC, this section sets out PECC's proposed set of Competition Principles (including Key Requirements for upholding them in practice) for building a competition-driven policy framework. This framework is intended to inform and guide the process of integrating policy development and policy implementation within APEC, relevant to all markets, and making it more coherent.

The over-riding purpose of agreeing to the proposed Principles is:

- to elevate the competition dimension of policy throughout APEC
- to lay the foundations from which competition-driven policies will gradually develop in the Region
- to provide a motive and direction and unifying theme for decentralized policy actions affecting competition and efficiency in markets, and hence
- to provide a general competition-based discipline on national/domestic policy-making, consistent with and reinforcing of APEC's collective commitment to free trade and investment and to the enhancement of total welfare

The question has been raised as to whether or not there are too many principles and whether or not their scope dilutes their focus and impact. Our response has been to separate out a set of core principles from an auxiliary set of

Key Requirements, i.e. those principles and measures that will need to be adhered to in practice if the core principles are to be upheld. This second tier, covering a number of substantive matters as well as procedural elements, is intended to be explicit about what the core principles really entail; that is, the layers are peeled down to show the implications of applying the core principles in practice.

The core first-level principles are:

comprehensiveness

there should be a competition dimension to all policy-making that impacts on globalizing markets and this framework should apply to all goods and services

transparency

the substantive principles on which policies are based and the processes by which they are applied should be clear for all stakeholders

accountability

those responsible for applying the Competition Principles should be accountable for any departures from those Principles

non-discrimination

once a transition period is complete, the enduring Principles should be applied by an economy in a non-discriminatory manner so as to ensure *competitive neutrality* in respect of the different modes of domestic and international supply

These core principles, and the objectives to which they are directed, permeate the

full set of fifteen proposed Principles and Key Requirements.

APEC economies are urged:

- (1) *to foster greater reliance upon well-functioning markets and to that end upon the role of competition*
 - *in allocating resources, including scarce resources, within and between markets*
 - *in yielding benefits for consumers and customers*
 - *in generating benefits for the economy as a whole*
- (2) *to adopt, maintain and apply a competition-driven approach to a broad range of policy areas, including trade policies and remedies, that impact on markets*

This principle recognizes that a range of government instruments in traditionally and separately defined policy areas have a profound impact upon competition and efficiency in markets; it assumes that business generally is not interested in artificial policy boundaries; and it promotes competition as an integral and integrating feature of policy development.

An associated key requirement is that:

where policies or their applications are not consistent

with competition principles, reasons for divergence should be compelling and transparent

- (3) *to minimize exceptions from reliance upon well-functioning market mechanisms and the role of competition; and to apply any government intervention in markets that is deemed necessary with the conditions that:*
 - (a) *there is minimum distortion to the competitive process, and*
 - (b) *net welfare gains are clearly and explicitly identifiable*

- (4) *to ensure competitive neutrality and hence a competitive environment through uniform (non-discriminatory) application of the same competition principles to the different modes of domestic and international supply (that is: goods, services and direct investment provided from foreign or domestic sources from the private or public sectors)*

- (5) *generally to foster an efficiency-based approach to competition -*

recognizing that competition on the basis of economic merit (lower costs, competitive prices, improved product/service quality, innovation) is the relevant

competition standard for promoting an efficient and welfare enhancing competitive process

(6) *to minimize uncertainty for business and foster confidence in system fairness and predictability by adhering to the following procedures:*

(a) *transparency of policy foundations and their applications*

(b) *consistent application of agreed competition principles and disciplines; and*

(c) *avoidance of unforeseen or unclear rules and legal/administrative/regulatory procedures*

(7) *to facilitate the competitive process by progressively eliminating - within a reasonable time frame - government regulations that create or maintain those barriers to market entry that are efficiency-reducing*

(8) *to progressively eliminate - within a reasonable timeframe - government regulations, practices and costs that have the effect of impeding the ability of market players, including SMEs, to compete through innovation and efficiency*

(9) *to minimize the risk that government efforts to make markets more open and*

competitive - through deregulation and the lowering or eliminating of other barriers to competition - are

replaced or impeded by anti-competitive business conduct; and to minimize this risk through appropriate competition disciplines on business conduct - which may include a general competition law - and effective enforcement thereof (including appropriate deterrents)

(10) *to design these (selective or comprehensive) competition disciplines on business conduct so that they are, inter alia:*

(a) *solely and clearly focused on the objective - of promoting competition and efficiency, consistent with the protection of clearly defined property rights*

(b) *reliant upon relevant analytical tools for assessing the efficiency and welfare implications of the business conduct in question*

(c) *transparent in respect of substantive provisions, procedures and decision-making illegal, administrative or regulatory regimes*

and, where a comprehensive competition law is considered

appropriate, it has the following characteristics:

- (d) *minimal exemptions or exceptions by sector or operation (whether government or private, domestic or foreign-owned, or natural or other monopolies) -*

while recognizing that it may well be appropriate for developing economies to progress through transitional stages before adopting such comprehensive competition disciplines

- (e) *non-prescriptive in relation to types of - business practices*

This principle recognizes that it is not the role of the law to specify how firms should organize their business activities.

- (f) *enabling of a diversity of business transactions*

- (g) *generally based on a rule of reason approach to the impact of business conduct on competition*

This principle acknowledges that because of the diversity of factual circumstances in a market, the impact of business

practices on competition cannot usually be pre-judged.

- (h) *prohibitive of **specific** business conduct (i.e. per se prohibitions) only where this conduct is generally judged to be unambiguously harmful to economic efficiency and economic welfare*

- (11) *to ensure that institutional, administrative or regulatory arrangements for enforcement implementation, inter alia:*

- (a) *provide for clear accountabilities*
- (b) *serve public not private interests*
- (c) *serve total economic welfare, i.e. not just the welfare of competitors*
- (d) *are alert to potential mis-use (by businesses) of enforcement procedures*
- (e) *serve to encourage self-enforcement*
- (f) *are independent of inappropriate government or political influence*
- (g) *adhere to the principle of non-discrimination as between domestic and foreign supplies*

- (h) *enable both foreign and domestic complainants to refer complaints to the relevant authorities (or to initiate Court proceedings as appropriate); and provide for recourse by these complainants to formal appeal procedures*
- (i) *enable both domestic and foreign suppliers/investors to pursue such market-based and efficient remedies and deterrents as are available*
- (j) *define the appropriate terms and conditions for reaching business conduct that originates extra-territorially but has domestic effect(s)*
- (k) *are adequately resourced*
- (l) *provide appropriate administrative and/or investigatory powers*
- (m) *provide for robust protection of confidential business information*
- (12) *to have regard to any benefits that might be expected to flow from convergence of approaches to competition-based policy, for example in respect of:*
- (a) *developing ‘best practice’ policy criteria/guidelines - including in relation to regulatory interventions*
- To illustrate: in most developed competition law jurisdictions there are administrative guidelines to assist compliance with statutory rules relating, for example, to mergers and cartels. A common set of guidelines, especially tailored for developing economies, could well assist those economies in their consideration of competition law.
- (b) *determining the most appropriate competition thresholds/standards for contraventions of competition disciplines*
- (c) *pre-merger notification procedures*
- (d) *the quality and appropriateness of analytical tools for efficiency and economic welfare assessment*
- (e) *the role(s) of specialist competition agencies*
- (13) *to be alert to the potential for and benefits of cooperation among national competition agencies/authorities, including*

the benefit of avoiding/managing jurisdictional conflict; and to encourage such cooperation as a step towards dealing with cross-border competition issues, with:

goals and minimum commitments

(d) *provision for monitoring progress at these 'transitional checkpoints'*

- (a) *due regard to jurisdictional boundaries under the principle of comity*
- (b) *special regard for the principle of positive comity, and*
- (c) *allowance for the level of enforcement experience of the agencies in question*

Clearly, effective application of the proposed Competition Principles including the Key Requirements that flow from them will require a focus in each APEC economy for guiding:

- the overall process of competition-driven policy formation, and
- the establishment of appropriate institutional and enforcement arrangements.

(14) *to deliver in practical terms technical and capacity building assistance as key elements in operationalizing the proposed Competition Principles in developing economies*

(15) *to provide for appropriate transitional features in relation to policies designed to promote the role of competition in efficiently allocating resources, including:*

- (a) *specification of clear end goals*
- (b) *clarification of the time path for achieving end goals*
- (c) *identification of achievable intermediate*

Part III: Principles in Practice - Some Practical Issues and Conclusion

Some Practical Issues

Application of the PECC Competition Principles would be *enabling* of marketplace *opportunities* in the interests of more efficient and dynamic markets. The emphasis is on creating opportunities for competitive business and for consumers, not on trying to define - or manage the economy towards - specific end results (which are necessarily uncertain) in terms of particular market structures or competitors. Indeed, it is the dynamism of the competitive process in globalizing markets that supports:

- the adoption of robust and coherent competition *principles*
- the adoption of principles that are not diluted or distorted by a process of negotiating competition *rules*, and
- the desirability of having flexibility in policy responses over time

This section is intended as a broad response to the 'how' or policy-design and implementation questions that are inevitably raised in relation to the proposed Competition Principles. PECC's Project, while being very alert to implementation issues and the important work to be done on linking implementation issues with different stages of economic development, was not designed to address these. Ultimately, the question of how to operationalize the Principles has to be addressed at the individual economy level.

The diversity of APEC economies is not of itself a barrier to subscribing to the Competition Principles. But giving effect to them will clearly give rise to challenging practical questions for individual economies, both developed and developing, but especially for those at a less advanced stage of economic and policy development. APEC economies are at different positions on development and policy spectrums. They have different levels of institutional capacity and different access to policy instruments. There are different views on optimum policy sequencing as well as on what is appropriately included in the policy spectrum itself. There is uncertainty as to the

relationship between competition and sustainable economic development strategies and as to what changes might be necessary in the name of 'competition' by 2010 and 2020. And there is considerable nervousness about notions of 'best practice'. Inevitably:

- different economies will accord different emphasis to particular principles
- different policy solutions will be contemplated
- the extent and speed with which principles are applied in practice will therefore vary

Those economies that have to date been less driven by policy reforms oriented to market competition and efficiency are likely to be apprehensive about the ability

of their businesses to compete in more open markets in the short-medium term.

Of itself this is likely to hasten efficiency-driven reforms as markets generally become more accessible. That is, international standards of efficiency will become relatively more important as an influence on national decisions.

While the promotion of competition is viewed as a harmonising device for policy development, application of the Competition Principles need not require identical policy solutions in APEC economies. Indeed, principles should be permissive of different policy responses (flexibility) depending on an economy's overall circumstances. This characteristic of flexibility in respect of national/domestic policy-making is what distinguishes umbrella *principles* from binding external prescriptive *rules*.

APEC's commitments span many years. So too will the policy adjustments required in giving effect to the PECC Competition Principles. What has become increasingly clear is that technical assistance and cooperation in building institutional capacity, together with appropriate delivery mechanisms, will need to be an integral part of applying the Principles in practice.

The APEC Business Advisory Council (ABAC), in its 1997 Report to the APEC Economic Leaders, supports continuing consensus-building within APEC in respect of 'competition policy' - having special regard to the objectives of competition, deregulation and trade policies, as well as to the linkages between these policies. However, governments cannot expect to have total or unequivocal support from business for

the adoption of PECC's Competition Principles since these are unlikely to be perceived as advantageous for those businesses that presently enjoy protection. Artificial forms of support for business competitiveness will inevitably be vulnerable to policies that are increasingly geared to the promotion of competition on the basis of merit, i.e. through lower prices, better quality goods and services and innovation.

While business perspectives are clearly important, a central theme of the PECC Project is that the proposed competition framework would be more inclusive of a range of interests by having regard to the interests of consumers as well as producers. Both have an enormous stake in the efficient functioning of globalizing and interdependent markets. Ensuring that customers and consumers are increasingly amongst the beneficiaries of policy developments in the Region would be compatible with APEC's overall social purpose.

APEC's general emphasis on transparency and peer pressure is conducive to ongoing review of conformity with competition principles, especially via the IAP process. The term enforcement does not however apply in relation to non-binding principles; and transitional arrangements will be appropriate. Nonetheless it is important, as PECC proposes, that there are also principles to guide the length of any transition periods and the activities within them.

At the same time, economies in transition may need an 'engine' for moving forward and this might be in the form of a government institution with the single purpose of promoting competition.

Because of the breadth of its competition-promoting mandate, it would not depend on the enactment of competition law although it would co-exist with a competition law enforcement agency if one were created. The role envisaged for the institutional advocate reinforces the thrust of the Principles since these intend that a competition dimension be constantly reflected in overall national economic policy irrespective of the stage of economic development in a particular economy.

However, it may not be enough to assume that the proposed principles for governing transitional arrangements will allow an economy to move gradually towards giving primacy to competition in national economic policy formation. The absence of certain 'necessary conditions' (such as social safeguards and legal frameworks) would complicate the process of following a transitional path incorporating the recommended features specified in the Principles. A special challenge here is to ensure that there is a mechanism whereby the promotion of competition is given weight in the mix of considerations relevant to the changing circumstances. Competition advocacy will clearly be essential for modifying traditional policy stances where these are incompatible with well-functioning markets.

Conclusion

The work undertaken for the PECC Competition Principles Project suggests that APEC's economic and social ambitions will be greatly facilitated by an economic policy framework that is governed by the agreed Competition Principles - provided these are comprehensive in scope and not limited to guiding the design and application of anti-trust rules for business conduct. The Principles will therefore need to apply to:

- developed as well as developing economies
- large as well as small economies
- trade as well as other policy instruments
- financial as well as other markets
- public as well as private actions that impact on markets
- small as well as large enterprises

The rationale for a competition framework for APEC economies stands in its own right and does not depend upon its potential to increase or maximize international trade and investment or to prevent nullification of negotiated trade concessions. Put another way, the promotion of competition is important because of its role in making markets function more efficiently - not because it is 'trade-related'. Nonetheless, the potential of the Competition Principles to reinforce APEC's goals for free trade and investment is undoubtedly a powerful argument in their favour.

The intention of the PECC Principles is:

- to lay the foundations from which competition-driven policies will gradually evolve
- to provide a motive and direction and unifying theme for decentralized policy actions, and
- to provide a discipline on domestic policy-making in the context of APEC-wide goals

A competition framework would help chart the path ahead as part of the APEC vision. Immunity from competitive challenge, whether through the exercise of government coercion or private actions, runs counter to that vision. Inter-government cooperation will be essential. So too will a continuing education process on the requirements for and benefits of promoting competition in globalizing markets.

Given the nature and breadth of the proposed competition framework for policy development in the Region, the responsibility for taking a lead in promoting the Principles lies first and foremost with all APEC Economic Leaders and relevant Ministers. Active and visible 'competition advocacy' at this level of leadership is a prerequisite for bringing a competition dimension to bear on all policy-making that impacts on the efficient functioning of globalizing markets. It would reinforce the view that competition will remain the central force for organizing economic activity

throughout the Region, consistent with national and regional interests. It would also serve as an important signal that incumbents benefiting from the protections of the old system cannot be assured of the *status quo*. The more transparent is the policy debate and decision-making process, the more exposed will be special pleadings for preservation of preferred positions.

While PECC accepts that there is an important role for what is popularly termed 'competition advocacy' within governments, the responsibility for this role need not be limited to any one agency, either in an individual economy or internationally. That is not to discount the possible contribution of a single-purpose competition-promoting agency, especially as an 'engine' for progressing transitional arrangements.

APEC's Individual Action Plans provide the primary and most transparent vehicle for all APEC economies to incorporate the proposed Competition Principles into a range of interrelated policy areas and thereby shape the overall economic policy direction for APEC into a coherent and consistent competition framework. This region-wide endeavour, in consolidating and adding impetus to APEC's promotion of competitive markets, fits with and reinforces the Leaders' theme of strengthening the Region's foundations for sustainable growth through cooperative strategy. While the proposed Principles are non-binding, their comprehensive application to policy plans in practice - both within and across economies - is widely judged as a key contribution to the level of (and sharing of) economic development to which APEC aspires.

There are of course no 'end points' in this long-term process of sustaining improvements in economic and social development. Markets and societies are dynamic and so too should be the policy responses to them. The PECC Competition Principles would help drive this dynamism while also lending greater stability and coherence to a competition-driven policy framework for APEC economies.

Selected References

Araoz, Mercedes (1998), 'Competition Policy in the FTAA: Progress in the Working Group and Peru's Approach as Chair'. Paper presented for PECC TPF Competition Principles Roundtable, Kuantan, Malaysia, September 4 in *Apuntes*, Universidad del Pacifico, Lima, Peru (forthcoming)

Baker, D. (1997), *International Cooperation on Competition Law Policy*. Paper presented to The World Bank-Global Forum Conference on International Co-operation on Competition Law-Policy, pp. 8-9. New Delhi, India: March 17-18

Baumol, W. and J. Ordover (1992), 'Antitrust: Source of Dynamic and Static Inefficiencies?' *Antitrust, Innovation, and Competitiveness*, (eds) Thomas M. Jorde and David J. Teece, Oxford University Press

Brittan, Sir Leon and Karel van Miert (1996), 'Communication to the Council - Towards an International Framework of Competition Rules': June

Crampton, P. (1994), 'Alternative Approaches to Competition Law: Consumer Surplus, Total Surplus, Total Welfare and Non-Efficiency Goals', 17 *World Competition* 55

Crampton, P. and M. Barutciski (1999), 'Trade Distorting Private Restraints: A Practical Agenda for Future Action', Spring (forthcoming)

Crampton, P. and B. Facey (1998), 'Revisiting Regulation and

Deregulation through the Lens of Competition Policy: Getting the Balance Right', APEC Regulatory Reform Symposium, Kuantan, Malaysia: 5-6 September

European Commission: Directorate, General IV (1995), 'Competition Policy in the New Trade Order, Strengthening International Cooperation and Rules', *Competition Report of the Group of Experts*, Paris: November 8

Evans, L., A. Grimes, B. Wilkinson and D. Teece (1996), 'Economic Reform in New Zealand 1984-95: The Pursuit of Efficiency',

Journal of Economic Literature, Vol. XXXIV, December

Fox, E. (1995), 'Competition Law and the Agenda for the WTO: Forging the Links of Competition and Trade', *Pacific Rim Law and Policy Journal* 4

Fox, E. (1996), 'Market Access, Antitrust and the World Trading System: En route to TRAMS-Trade Related Antitrust Measures', Draft Paper: September

Fox, E. (1997), 'Toward World Antitrust and Market Access', 91 *American Journal International Law*, 1 at 18 (reprint)

Green, Carl J. and Douglas E. Rosenthal (eds) (1996), *Competition Regulation in the Pacific Rim*, Washington DC: Oceana Publications Inc.

Hilmer Committee (1993), *National Competition Policy*, Canberra: Australian Government Publishing Service

INDECOPI (1998), 'Peru's Experience in Market Regulatory Reform 1993-1998: Lessons from the first five years of INDECOPI', Lima, Peru: May

International Antitrust Code Working Group (1993), 'Draft International Antitrust Code', 64 Antitrust & Trade Regulation Report (No.1628): August 19

International Chamber of Commerce (1996), Policy Statement on Trade and Competition Policy: October 22

International Chamber of Commerce (1996), Statement on International Cooperation between Antitrust Authorities, ICC Doc. No. 225/450/Rev.3: March 28

Klein, Joel I. (1997), 'Criminal Enforcement in a Global Economy' presented at the Phoenix Hilton, Phoenix, Arizona: February 20

Lloyd, P.J. and Kerrin M. Vautier (1999), *Promoting Competition in Global Markets: A Multi-National Approach*, UK: Edward Elgar Publishing Ltd

OECD (1992), *Regulatory Reform, Privatization and Competition Policy*, Paris

OECD (1994), *Interim Report on Convergence of Competition Policies*, Paris

OECD (1995), *New Dimensions of Market Access in a Globalizing World Economy*, Paris

OECD (1995), *Revised Recommendation of the Council Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade*, adopted by the OECD Council on 27-28 July 1995, OECD Doc. No., C(95)130/Final

OECD (1996), *Strengthening the Coherence Between Trade and Competition Policies*, Joint Report by the Trade Committee and the Committee on Competition Law and Policy, Paris

OECD (1996), *Trade and Competition: Frictions After the Uruguay Round*, Economics Department Working Papers, No. 165: International Trade and Investment Division

OECD (1996), *Market Access After the Uruguay Round - Investment, Competition and Technology Perspectives*, Paris

OECD (1996) *Antitrust and Market Access - The Scope and Coverage of Competition Laws and Implications for Trade*, Paris

Organization of the American States, Trade Unit (1997), 'Inventory of Competition Policy Agreements, Treaties and Other Arrangements Existing in the Western Hemisphere' as requested by the FTAA Working Group on Competition Policy (<http://www.alca-ftaa.org>)

Organization of the American States, Trade Unit (1997), 'Inventory of Domestic Laws and Regulations Relating

to Competition Policy in the Western Hemisphere' as requested by the FTAA Working Group on Competition Policy (<http://www.alca-ftaa.org>)

Organization of the American States, Trade Unit (1997), 'Report on Developments and Enforcement of Competition Policy and Laws in the Western Hemisphere' as requested by the FTAA Working Group on Competition Policy (<http://www.alca-ftaa.org>)

Panel of Independent Experts (1998), August, (unpublished)

PECC (1996), The Seoul Statement, TPF IX, Seoul: September 11-14

Takigawa, Toshiaki (1998), 'Impact of the WTO Telecommunications Agreement on US and Japanese Telecommunications Regulations', *Journal of World Trade*, Vol.32, No.6, December

Tineo, Luis (1998), 'Políticas de Competencia en la Construcción del Área de Libre Comercio de las Américas' Unidad de Comercio de la Organización de Estados Americanos in *Boletín Latinoamericano de Competencia*, (<http://europa.eu.int/en/comm/dg04/interna/other.htm>): March

Trebilcock, M. (1996), 'Competition Policy and Trade Policy-Mediating the Interface', *Journal of World Trade*, 71, 86

UNCTAD (1995), 'Continued Work on the Elaboration of a Model Law or Laws on Restrictive Business Practices', Draft, 21 August: UNCTAD Secretariat

Vautier, Kerrin M. (1990), 'Trans-Tasman Trade and Competition Law', (eds) K.M. Vautier, J. Farmer QC and R. Baxt, *CER and Business Competition - Australia and New Zealand in a Global Economy*, CCH: November

Vautier, Kerrin M. (1993), 'New Trade Related Issues: Competition - Trade Policy and Competition Policy', (ed.) G. Yen, *New Directions in Regional Trade Liberalization and Investment Cooperation - A Tripartite Approach*, PECC Trade Policy Forum VII, Puerto Vallarta, Mexico: 23-25 June

Vautier, Kerrin M. and P.J. Lloyd (1997), *International Trade and Competition Policy: CER, APEC and the WTO*, New Zealand, Institute of Policy Studies

Wise, Michael (1999), 'Review of United States Competition Law and Policy', *OECD Journal of Competition Law and Policy*, Vol.1, No.1

Wise, Michael (1999), 'Review of Competition Law and Policy in Japan', *OECD Journal of Competition Law and Policy*, Vol.1, No.3 (forthcoming)

Wood, D.P. (1995), 'The Internationalization of Antitrust Law: Options for the Future', Address to the De Paul Law Review Symposium on Cultural Conceptions of Competition: Antitrust in the 1990s, (Internet version), February 3, at 4

Wood, D. 'International Standards for Competition Law: An Idea Whose Time has not Come', Program for the Study of International Organization(s), Occasional Paper, WTO Series Number 2

World Bank (1998), 'Competition Policy and Economic Reform: an Interpretative Summary', World Bank, Washington D.C.: May

Wu, Rong-I and Yung-Peng Chu (eds) (1998), *Business Markets and Government in the Asia Pacific*, PAFTAD, London, Routledge

Appendix I: Competition Principles for APEC Economies

- Recent Quotes

PECC Statement

‘Proposals [for APEC Leaders to restore the basis of prosperity] are unlikely to be effective unless they are developed and implemented in a coherent framework and unless they embody agreed upon competition principles to ensure the working of fair and efficient markets. The proper sequencing between capacity building and reforms is also crucial. ... In the medium term, the implementation of comprehensive competition principles will give a much stronger basis for coherence. This will need to go hand in hand with measures to strengthen institutional capacity and human resource development.’

Source: PECC Statement to APEC Ministers Meeting, 14-15 November 1998, Kuala Lumpur, Malaysia
‘APEC Leaders must act now to restore the basis of prosperity’

Joint Ministerial Statement

‘Officials should examine how competition and regulatory reforms can contribute towards facilitating trade and investment. Ministers commended the ongoing contribution by APEC to support work undertaken by the WTO in areas such as the interaction between trade and competition policy, transparency in government procurement and investment. In this respect, APEC work in such areas as competition policy, deregulation, government procurement and investment was of particular relevance. Ministers encouraged such work be continued.’

Source: Joint Ministerial Statement, 15 November 1998, Kuala Lumpur

Leaders’ Declaration

‘APEC Economic Leaders welcomed further efforts to strengthen trade and investment flows in the region. These include work on competition policy and regulatory reforms as well as rapid implementation of measures to further enhance an environment conducive for trade and investment flows.’

Source: APEC Economic Leaders’ Declaration, 18 November 1998, Kuala Lumpur

APEC Update

‘Future discussions [on Competition Policy within APEC’s Committee on Trade and Investment] will be on the approaches to regulatory reforms; strategies for capacity building and institutional development for developing economies attempting to undertake regulatory reforms; advantages and disadvantages of competition law in developing member economies; possible collaboration to enhance transparency in the area of exemptions and exceptions to competition law; relationship between trade and services and competition policy and regulatory reform issues; further consideration of PECC’s Competition Principles project’

Source: Update of Activities within APEC Special Edition for the 6th APEC Economic Leaders' Meeting, Kuala Lumpur, Malaysia, 17-18 November 1998 APEC Secretariat

CTI Annual Report

Highlights of Collective Action Plan Implementation and Enhancement

'The possibility of APEC principles for competition policy and regulatory reform is under examination.'

Cooperation with Pacific Economic Cooperation Council

'PECC continues to participate actively in CTI working groups. In particular, PECC has submitted various inputs, and had experts in attendance, at the Group on Services and at the Competition Policy and Deregulation Workshop. PECC has, in fact, distributed its draft set of competition principles to CTI for feedback.'

Source: 1998 Annual Report to Ministers, Committee on Trade and Investment, November 1998, APEC Secretariat

New Zealand's APEC Year

'Building on [the four broad strategic goals the Government has identified for 1999] the [New Zealand] Government proposes unifying themes for APEC initiatives in 1999:

- expanding opportunities for doing business throughout the APEC region;

- working with other economies to strengthen the functioning of markets;
- broadening support for an understanding of APEC in the community ...'

Strengthening the Functioning of Markets

'The economic crisis has shown up the need for work on strengthening markets to build confidence and resilience, and speed the recovery of growth in the region. In Kuala Lumpur, Leaders asked for work to be undertaken as a matter of urgency on strengthening financial markets in particular. As well as progressing trade and investment liberalization and facilitation across borders, achieving APEC's goal of prosperity requires improving the functioning of all markets through a focus on internal competition and regulatory frameworks. Ministers in Kuala Lumpur agreed that next year APEC should 'examine how competition and regulatory reforms can contribute towards facilitating trade and investment'.

New Zealand has been convening APEC work in competition and regulatory issues for some time, and we are keen to push forward in this area. As a specific deliverable for 1999, we are interested in developing a framework of **non-binding competition and regulatory principles** for endorsement by APEC Leaders.

Following up on Leaders' instructions from Kuala Lumpur, work in this area will also address institutional weaknesses and capacity shortages, particularly **skills shortages**, strengthening social safety

nets, and needs in the area of **economic governance**. There will be a close focus on **strengthening financial markets and investment flows** and on prudential supervision issues, including transparency over hedge funds.’

Source: Background Paper: APEC 1999 New Zealand Objectives, APEC Task Force, Ministry of Foreign Affairs and Trade, November 1998

Encouraging Economies to ...

‘There is more to APEC than seeking open market access and the elimination of tariffs. ... We need to do more than just remove [official trade barriers - quotas and tariffs]. We need to strengthen markets. Our work in that area - strengthening markets - is about ensuring that genuine competition can be a reality in each market. It is about ensuring that consumers can get the best possible deal. ...

Essentially, the commitment by APEC economies to free and open trade can be unintentionally thwarted by poor domestic policy [e.g. restrictive product standards]. ...

New Zealand is also taking the lead on APEC’s work on competition policy and regulatory reform. Since 1984, we have built up a great deal of experience of what to do and, from time to time, of what not to do. Our first goal is to achieve APEC endorsement of a set of competition principles. The principles would aim to encourage economies to provide an easier, cheaper and more certain environment for business.

Just as with trade liberalization, where goals are set but the means to achieve them left to individual economies, specific market-strengthening reforms would be up to each APEC economy. They would need to take into account their own domestic policy settings and values. But APEC could assist with advice. It could encourage economies to consider reforms such as putting in place modern accounting standards or some initial form of competition laws. There could be work on proper information disclosure standards. Economies could consider sensible reforms in vital areas such as telecommunications, electricity or transport, to improve competition. ...

Should economies decide to embark down a particular track, APEC can also assist through our ECOTECH programme ... It is an important aspect of APEC’s work - ensuring that every APEC economy can benefit from APEC’s agenda.’

Source: An Address by New Zealand’s Trade Minister, Dr the Hon Lockwood Smith, ‘APEC ‘98: Setting the Scene for New Zealand ‘99’, 27 November 1998