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**Report of the Intergovernmental Group of Experts on
Competition Law and Policy on its fourteenth session**

Held at the Palais des Nations, Geneva, from 8 to 10 July 2014

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I. Agreed conclusions adopted by the Intergovernmental Group of Experts adopted at its fourteenth session

The Intergovernmental Group of Experts on Competition Law and Policy,

Recalling the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Recalling the provisions relating to competition issues adopted by UNCTAD XIII in Doha, including the provisions in paragraphs 50 and 56 (m) of the Doha Mandate,

Further recalling the resolution adopted by the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (Geneva, November 2010),

Reaffirming the fundamental role of competition law and policy for sound economic development and the need to further promote the implementation of the Set of Principles and Rules,

Noting that the Millennium Development Goals and UNCTAD XIII focus on addressing the opportunities and challenges of globalization for development and poverty reduction,

Underlining that competition law and policy is a key instrument for addressing globalization, including by enhancing trade and investment, resource mobilization, harnessing of knowledge and reducing poverty reduction,

Recognizing that an effective enabling environment for competition and development may include both national competition policies and international cooperation to deal with cross-border anticompetitive practices,

Recognizing further the need to strengthen the work of UNCTAD on competition law and policy so as to enhance its development role and benefits for consumers and business,

Noting with satisfaction the important written and oral contributions from competition authorities and other participations which contributed to a rich debate during the fourteenth session of the Intergovernmental Group of Experts,

Taking note with appreciation of the documentation and peer reviews of Namibia, Philippines and Seychelles prepared by the UNCTAD secretariat for its fourteenth session,

1. *Expresses appreciation* to the Governments of Namibia, Philippines and Seychelles for volunteering for peer reviews and for sharing their experiences, best practices and challenges with young competition agencies during the fourteenth session of the Intergovernmental Group of Experts and to all Governments and regional groupings participating in the reviews; recognizes the progress achieved so far in the elaboration and enforcement of the peer-reviewed countries' competition law; and invites all member competition agencies and government to assist UNCTAD on a voluntary basis by providing experts or other resources for future and follow-up activities in connection with voluntary peer reviews and their recommendations;

2. *Decides* that UNCTAD should, in light of the experiences with the voluntary peer reviews undertaken so far by UNCTAD and others and in accordance with available resources, undertake further voluntary peer reviews on the competition law and policy of member States or regional groupings of States during the Seventh United Nations Conference to Review All Aspects of the Set in 2015;

3. *Underlines* the importance of using communication strategies of competition agencies as a tool for effective enforcement of competition law, the importance of disseminating evidence on the benefits of competition and appropriate regulations for consumers and businesses, and the need to strengthen international cooperation, including informal collaboration among agencies, and calls upon UNCTAD to promote and support cooperation between competition authorities and Governments, as directed by the Accra Accord in paragraphs 103 and 211;
4. *Emphasizes* the importance of regional cooperation in the enforcement of competition law and policy, and invites competition agencies to strengthen their bilateral and regional cooperation;
5. *Calls upon* UNCTAD to promote and support cooperation between competition authorities and Governments in accordance with the Accra Accord (paras. 102 to 104) and the Doha Mandate in paragraphs 50 and 56(m) and the agreed conclusions of the Sixth United Nations Conference to Review All Aspects of the Set in paragraph 11 (a) to (d);
6. *Underlines* the importance of priority setting and resources allocation as a tool for the effectiveness of capacity-building activities extended to young agencies, and requests the UNCTAD secretariat to disseminate the summary of the discussions of the Intergovernmental Group of Experts on this topic to all interested States, including through its technical cooperation activities and peer reviews;
7. *Requests* the UNCTAD secretariat to prepare studies for the Seventh United Nations Conference to Review All Aspects of the Set in 2015 to facilitate consultations on the following topics:
 - (a) Ways and means to strengthen competition agencies in order to better deliver competition policy enforcement and advocacy;
 - (b) Feedback from recently peer-reviewed countries with competition agencies on enforcement and changes since the peer reviews;
 - (c) The role of competition policy in promoting sustainable and inclusive growth;
 - (d) International cooperation in merger cases as a tool for effective enforcement of competition law;
 - (e) The benefits and the role of competition for consumers in the pharmaceutical sector;
8. *Requests* the UNCTAD secretariat, to prepare, for the consideration of the Seventh United Nations Conference to Review All Aspects of the Set in 2015, a report on the implementation of the work programme and decisions taken at the Sixth United Nations Conference to Review All Aspects of the Set in 2010, including the two ad hoc expert meetings on the interface between competition and consumer policies held in 2012 and 2013;
9. *Also requests* the UNCTAD secretariat to prepare, for the consideration of the Seventh United Nations Conference to Reviews All Aspects of the Set an updated review of capacity-building and technical assistance taking into account information to be received from member States no later than 30 May 2015:
 - (a) A further revised and updated version of the Model Law on Competition on the basis of submissions to be received from member States no later than 30 May 2015;
 - (b) Further issues of the Handbook on Competition Legislation containing commentaries on national competition legislation in the form of a CD-ROM;

10. *Notes with appreciation* the voluntary financial and other contributions received from member States; invites member States to continue to assist UNCTAD on a voluntary basis in its capacity-building and technical cooperation activities by providing experts, training facilities or financial resources; and requests the UNCTAD secretariat to pursue and, where possible, focus its capacity-building and technical cooperation activities, including training, on maximizing their impact in all interested countries.

II. Proceedings

A. Introduction

1. The fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy was held at the Palais des Nations in Geneva, Switzerland, from 8 to 10 July 2014. Representatives from 86 countries and 8 intergovernmental organizations, including the heads of competition authorities, attended the high-level discussions.

2. Mr. Hebert Tassano Velaochaga, Chair of the thirteenth session of the Group of Experts, opened the meeting and thanked Mr. Hassan Qaqaya, Head of the Competition and Consumer Policies Branch of UNCTAD, for his valuable contribution to the Organization's work.

B. Statement of the Secretary-General

3. In a video address,¹ the Secretary-General of UNCTAD, Mr. Mukhisa Kituyi, said that the number of countries with competition laws had grown from 15 to 130 since the adoption in 1980 of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Stressing that international cooperation was essential for competition law and policy to be effective, he said that the Intergovernmental Group of Experts was a vehicle of international cooperation in that area and a useful platform for sharing experiences and best practices.

C. General statements

4. The President of the Spanish National Authority for Markets and Competition said that the agency had been set up in 2013 to promote effective competition, the enforcement of competition law and better regulation so as to ensure well-functioning markets.

5. The Director General of the Federal Competition Authority of Austria introduced a new form of cooperation among competition agencies – cooperation between case handlers. Young authorities in particular could benefit from the experiences, jurisprudence and enforcement practices of other agencies. Such cooperation included a common approach, target, and commitment, and convergence between legislation and enforcement procedures and practices. The competition authority of his country had been recently engaged in such cooperation with the Russian Federal Antimonopoly Service regarding the oil sector.

6. The Chairman of the Commission on Protection of Competition of Bulgaria made a presentation on the Sofia Competition Forum, a regional network of competition experts

¹ Available at <http://unctad.org/en/Pages/DITC/CompetitionLaw/Competition-Law-and-Policy.aspx> (accessed 30 July 2014).

established in 2012 in cooperation with UNCTAD. It was an effective means of sharing knowledge and experience among young competition agencies in Eastern Europe.

D. Round-table discussions

1. Benefits of competition policy for consumers

7. The keynote speaker introduced the interface between competition and consumer policies and highlighted the complementary and mutually reinforcing nature of competition and consumer policies in ensuring well-functioning markets. Consumer welfare, a common outcome of both policies, ultimately aimed to enhance economic growth. Markets differed in terms of the level of competition and consumer protection. There was a need for intervention in markets characterized by low competition and/or low consumer protection. Effective coordination in implementing competition and consumer policies, regardless of the type of institutional setting, was especially important.

8. A representative of the Netherlands Authority for Consumers and Markets made a presentation on this newly established agency (2013), which combined sector regulation, competition and consumer protection. Its experience as a regulator in the energy sector showed how competition, regulation and consumer protection could work together for the benefit of consumers. Consumer protection and competition could pose a dilemma, as overly strict consumer protection measures could cause new market players to withdraw from markets. This would be counterproductive, working against the long-term goal of achieving competitive markets with better outcomes for consumers. Empowered and engaged consumers were essential to drive competition in markets.

9. The Chairman of the Competition Commission of Pakistan presented case examples illustrating the benefits of competition law enforcement for consumers. For example, in a case concerning abuse of market dominance, law enforcement had played a crucial role in preventing the tying of laptop sales to educational services by a university in Pakistan, thus favouring the interests of students. The competition authority had also taken measures against deceptive market practices in the telecommunications sector in his country and had worked closely with the telecommunications regulator in a transnational merger case, which had had a direct impact on consumers.

10. In another presentation, the Commissioner of the Mexican Federal Economic Competition Commission described how measures to combat bid rigging in public procurement had benefitted consumers in Mexico. Because public procurement markets were prone to such practices, the design of procurement procedures could either facilitate or prevent collusion. The Federal Economic Competition Commission had identified collusion in public procurement by the Mexican Social Security Institute concerning human insulin and electrolytic solutions between 2003 and 2006. The Commission had made recommendations to the Institute to eliminate the features facilitating collusion in the bidding processes, such as the publication of reference prices. The implementation of the recommendations had resulted in increased competition and lower prices of human insulin and electrolytic solutions, and in turn substantial savings for the Institute and better use of taxpayers' money. The example had had spillover effects, and other government institutions had taken similar measures.

11. Following the panel presentations, the UNCTAD secretariat summarized the main points of document TD/B/C.I/CLP/27 entitled "The benefits of competition policy for consumers".

12. In the ensuing discussion, many speakers described their institutional setting with respect to competition and consumer protection mandates. Two experts outlined the consumer-related provisions of their national competition laws and competition reforms

carried out in their jurisdictions. One delegate said that the Office of Fair Trade and Competition Commission of the United Kingdom of Great Britain and Northern Ireland had merged to improve enforcement and streamline processes. Many delegates gave examples of competition cases that had benefitted consumers in markets such as poultry, health care and transport services in Peru; railways in Ukraine; airlines and telecommunications in Tunisia; and gasoline and cement, essential for housing construction in Brazil, where the Government provided housing to low-income families.

13. One delegate gave examples of successful advocacy by the competition authority whereby the airlines monopoly was removed and the digital subscriber line service opened to competition in Turkey. Another delegate stressed the importance of the interface between competition and consumer policies, particularly in countries where a strong competition culture did not exist. Focusing on consumer protection, however, could draw attention away from the main objective of competition authorities, that is, defending the integrity of the competition process and maximizing market efficiency.

14. Yet another delegate emphasized the importance of incentives for innovation and the need to strike the right balance between consumer protection regulation and preserving incentives for firms to innovate and develop new products. One delegate said that competition advocacy with government bodies, sector regulators and other stakeholders in his country would be easier if consumer provisions were applied.

15. The representative of a non-governmental organization said that developing and least developed countries were behind in implementing competition policy reforms that would lead to enabling government policies, well-designed regulatory frameworks for sectors, well-equipped regulatory agencies and an effective competition regime.

16. Based on the discussion, it could be concluded that competition advocacy and dialogue with policymakers and decision-makers, particularly in key economic sectors, were crucial in ensuring that policies did not bring about anticompetitive outcomes.

2. Communication strategies of competition authorities as a tool for agency effectiveness

17. The UNCTAD secretariat introduced document TD/B/C.I/CLP/28 outlining the role and methods of competition advocacy, with a particular focus on media advocacy and the different types of media used by competition authorities.

18. In his presentation, the National Economic Prosecutor of Chile spoke on the communication strategies used by his Government. The institutional website was the best tool for devising an effective communication strategy, and it was important to be able to control interactions with the media. “Over-mediatization”, however, was a danger to be avoided. Chile’s outreach efforts focused on the print business media, less so on television or radio. He stressed the importance of dealing with specialized journalists who had an understanding of competition issues. It was essential to deal with agency journalists familiar with the relevant documentation, avoid being quoted in the headlines and privilege off-the-record conversations to explain its work. Media interactions were carried out on a technical basis, and interviews involved information on amendments to the law. No information was transmitted to the media until investigations were closed and documents made public.

19. The Chilean competition agency boasted a monthly average of more than 150 mentions in the print media. Its transparency efforts included posting the director’s agenda online and allowing citizens to file a claim using the institutional website. The speaker warned against the risks of compromising the mission and efficiency of a competition agency if more information than necessary was provided to the media and of revealing case strategy to the parties involved.

20. One panellist described the communication programmes of the Egyptian Competition Agency: media (including digital media) outreach; awareness programmes targeting businesses, the judiciary and academia; and public awareness programmes. The agency disseminated the concept of corporate responsibilities towards competition law through workshops for trade and industrial chambers and a compliance toolkit. Government and judicial officials were also targeted through intensive workshops with judges, regulators and decision-makers. Egypt hosted the annual Competition Authority Simulation and periodical law and economics seminars and introduced competition law in academic curricula. The agency had launched an interactive website and had 1,400 followers on Facebook. A general public awareness programme in the form of a question-and-answer booklet had also been launched.

21. The President of the Basque Competition Authority identified the internal decentralization of competition law within a country as a means of bringing the administration closer to society. She spoke of the difficulties faced by the new competition authority, in particular that of introducing a competition culture into a heavily industrialized economic area and said that its relationship with the government and judiciary was fundamental to achieving this goal. There was a need to recognize bottom-up approaches to communication strategies as well as top-down approaches. An example of the former was the case of taxi drivers in Bilbao, Spain, where regulatory action had been taken in response to articles in the media. The agency also practiced direct advocacy with stakeholders, leading to an increase in activity of 400 per cent.

22. A representative of the Canadian Competition Bureau said it was important for competition agencies to strike the right balance between transparency and the need to protect confidential information, maintain discretion and safeguard other enforcement interests. Transparency and communications were key to a stakeholder's understanding of the work of competition authorities, competition advocacy and international cooperation. The agency had an ongoing action plan on transparency and published a bulletin on communication during inquiries. It had in total published 14 position statements and 86 news and information notices. As communication strategies were a means of increasing a competition agency's effectiveness, it was important to keep up with social media. Finally, international cooperation was a critical aspect of competition enforcement and promotion, and the coordination of communication initiatives expanded outreach to broader audiences.

23. In the debate that followed, participants presented communication strategies used in their countries: television and radio programmes, messages to the general public, press releases, stakeholder training sessions, and outreach and advocacy activities. As pointed out by some delegates, it was useful to have professional journalists on the staff who could grasp the requirements and complexities of communication strategies.

24. A number of delegates spoke of the difficulties of advocating on competition issues; indeed, the complexity of cases was an obstacle to understanding by the general public. One delegation said it was necessary to find an effective way to present competition cases to the public; citing the cost to the economy of anticompetitive issues was one such example. Another delegation proposed that lessons could be drawn from the successful advocacy efforts of consumer protection authorities.

25. Most participants agreed on the need to build the capacities of the media to understand competition law, while a number of delegates shared experiences of issues being ignored or misreported due to a lack of journalistic comprehension and interest. Some delegates spoke of training courses and workshops they had held for journalists and reported increased media exposure as a result.

26. Referring to document TD/B/C.I/CLP/28, the secretariat recalled that communication strategies could be used to monitor the media in order to provide a source of information for the work of the competition authority and in some cases, instigate investigations.

27. Three experts cautioned against over-reliance on the media for communication strategies, as it could in some cases be biased or hostile.

3. Informal cooperation among competition agencies in specific cases

28. The UNCTAD secretariat described the emerging trend towards informal cooperation, networks and frameworks discussed in document TD/B/C.I/CLP/29. All countries were engaged in some form of cooperation, whether general or case specific.

29. The Director General of the Competition Authority of Kenya presented the current state of informal cooperation in the world. Compared with informal cooperation, formal cooperation was based on negative and positive comity, hard law agreements (trade and competition agreements) and institutions. Informal cooperation did not require treaties; it was based on personal networks and national strategic interests.

30. Examples of networks of informal cooperation were the International Competition Network and the African Competition Forum. Areas of informal cooperation included case handling through information sharing, cross-border mergers and acquisitions, the alignment of best practices in law formulation, research, advocacy and capacity-building.

31. Challenges posed to informal cooperation were to be found in sharing and handling confidential information, different levels of development of agencies, differing prioritization among agencies, divergences in national interests and the lack of continuity in time.

32. The President of the Peruvian competition authority reviewed the state of formal and informal cooperation in his country. Its formal cooperation resided in agreements with Chile, Colombia and Brazil, the COMPAL² Programme, and the Inter-American Competition Alliance. There were several limiting factors of formal cooperation, in particular asymmetric regulations and budget constraints. It was thus essential to seek less rigid collaboration mechanisms.

33. Peru had been actively promoting informal cooperation. The Lima Declaration (2013) between Chile, Colombia and Peru had enabled informal meetings and common investigations strategies, as well as exchanges of information through waivers granted by the parties concerned. Informal cooperation allowed for the swift exchange of information and generated confidence and trust among agencies.

34. In addition, a Peruvian initiative had been launched to convene a global cooperation agreement between competition agencies focusing on informal mechanisms as a basis for the adoption of a formal agreement.

35. The Director General of the Competition Authority of Belgium shared his country's experience in informal cooperation. The agency engaged in informal cooperation several times a month, usually with neighbouring agencies. Even within the European Competition Network, there were clusters of like-minded and geographically close authorities that cooperated informally. When faced with legal barriers that did not allow for the exchange of information, the agency would try to channel it through another member State of the European Union that had a bilateral agreement with the interested agency.

² Competition and Consumer Protection for Latin America.

36. Informal cooperation could occur at every stage of a case, which was especially relevant at the first indications of a breach of competition law. Belgium carried out an annual neighbours meeting, which devoted a whole session to exchanging preliminary information on case investigations. In fact, what might have initially been perceived as a case with national effects might show parallels in other countries, therefore taking a European dimension.

37. In Belgium, informal cooperation was the most important source for cartel investigations after the competition authority's leniency programme. The European Competition Network maintained informal consultations on sanctions, specific industries and the preparation of legislation projects. Informal cooperation usually took the form of telephone calls, but even coffee breaks during conferences could serve as useful informal cooperation.

38. Informal cooperation could occur at all levels of the organization: even young members of the team could build networks through training programmes.

39. A panellist from the Russian Federal Antimonopoly Service said that his country's main cooperation activities relating to competition were the exchange of non-confidential and confidential information, international agreements and memorandums of understanding, consultations, conferences and bilateral meetings, and international working groups. Market analysis and investigations of transboundary conduct in the air transportation and telecommunications markets by the Interstate Council on Antimonopoly Policy of the Commonwealth of Independent States had led to substantial improvements.

40. The Eurasian Economic Union had drawn up an agreement on the protection of confidential information, hosted meetings for heads of agencies and created an advisory board on competition.

41. In 2012, the Russian Federation co-established an international working group on investigating issues on pricing in the oil products markets and methods of their functioning and one on studying competition issues in the pharmaceutical sector. Regarding informal cooperation, the Russian Federation hosted the annual Russian Competition Day and organized training workshops and study visits for foreign agencies. The Russian Federation also engaged in consultations with the Vietnamese competition agency on the market supply of pangasius, and the Norwegian agency, on the fish market.

42. Another panellist explained that true cooperation was a relatively new phenomenon, because even longer-established agencies were reluctant to share their tools.

43. Several experts stressed the importance of informal cooperation in dealing with international cartel cases, particularly to coordinate simultaneous dawn raids and harmonize leniency rules to secure access to evidence in an efficient manner. This also applied to merger analysis in a multi-jurisdictional case to avoid contradicting remedies that might create distortions in connected markets.

44. One expert said it was important to establish a network of contacts to ensure the needs of each other's legal and institutional environments to better frame requests and replies. In this regard, adequate resources should be allocated to foster trust and good working relations between agencies, which could prove a costly exercise where data collection and research were needed.

45. Therefore, information exchange should be limited to key cases, bearing in mind that formal and informal cooperation were complementary, informal cooperation being a step towards formal cooperation. The International Competition Network, the Organization for Economic Cooperation and Development and UNCTAD had laid the foundations for bilateral and regional cooperation.

46. Another expert said that the Working Group on Trade and Competition was an important forum for discussion for competition and trade officials, providing the basis for informal cooperation settings in the Latin American and Caribbean region. UNCTAD and the Latin American and Caribbean Economic System had been lending support to the Working Group for the past five years.

E. Review of capacity-building activities

47. An expert from the United States of America assessed UNCTAD work on capacity-building with regard to competition law and policy worldwide. UNCTAD had carefully designed technical assistance programmes, bringing similar countries together, and collected information that had helped countries build capacity at a faster pace. Starting in 2005, peer reviews had brought continuous long-term engagement and suggestions for future work programmes in peer-reviewed countries. It had also been an excellent source of knowledge and information management.

48. However, UNCTAD faced a number of challenges when delivering technical assistance, such as targeted agencies presenting diverse tasks for multiple-mandate agencies, where it was difficult to identify common experience. Further, the dichotomy between college and single-head administration agencies should be taken into account when providing policy advice recommendations.

49. One of the issues being explored by the Advisory Group of Experts of the COMPAL Programme was finding ways to accumulate knowledge through discussions among former and current agency heads. The overall impact of the Programme was very positive and should be extended to work into new areas.

F. UNCTAD online data bank on competition cases

50. Upon the request of the Chair, the UNCTAD secretariat made a presentation on the case management database outlining its function, history and operational mode. UNCTAD was preparing a comprehensive database for interested competition agencies in the six official United Nations languages, and additional information sessions would be organized by region in to reach out to the value added contribution of this database for member States. The database would be functioning under the umbrella of the newly launched programme called "COMPAL Global".

G. Voluntary peer reviews of competition law and policy

1. Namibia

51. The first part of the session was devoted to the presentation of the main findings of the peer review report, followed by a statement by the Deputy Minister of Trade and Industry, who outlined the important work of UNCTAD in building capacities for African countries, Namibia in particular. He reiterated his Government's commitments to the implementation of the peer review recommendations in collaboration with UNCTAD.

52. The former Director of the Competition and Tariff Commission of Zimbabwe, serving in his capacity as UNCTAD consultant, presented the peer review report. Namibia's competition legal framework was based on the Competition Act 2 (2003), which aimed to enhance the promotion and safeguarding of competition in that country. The Act mandated the Namibia Competition Commission, inter alia, to investigate and remedy anticompetitive practices, cooperate and exchange information with other competition

authorities and advise the Government on matters related to public interest and sector regulation with regard to competition matters.

53. The report provided several recommendations for institutional and legal reform: to review the definitions of terms such as “relevant market”, “dominant position” and “essential facility”; exempt some activities of statutory bodies from the application of the Act and exercise of the relevant minister’s exemption powers; and to make a clear distinction between horizontal and vertical agreements and their competitive effects.

54. With regard to merger control, there was a need to raise the notification thresholds, provide maximum investigations periods and re-evaluate the role of the relevant minister in the review of the Commission’s decisions on mergers. Further, the Commission should develop the necessary case-handling skills and in particular, heighten its enforcement capabilities in the area of restrictive business practices.

55. Other institutional issues requiring action were the need to stagger the appointment of members of the Board of Commissioners, separate the Commission’s investigative and adjudicative functions, provide funding for the introduction of competition policy and law courses at institutions of higher learning and develop the Commission’s library and documentation centre.

56. In response to one panellist’s query on the powers of the relevant minister to amend or overturn decisions, a representative of the Namibian delegation said that the ministry had a key role to play in the implementation of competition policy, since competition was part of government policy. In the evolution of competition law, there was a common understanding that competition policy had a link to other economic policies. That cases handled related to major sectors such as water service and giant supermarkets, without any interference from the minister, was a sign that competition enforcement was generally appreciated.

57. In reply to a question concerning the exclusion of non-processed agricultural products from the application of competition law, the Namibian delegation said that this was done with regard to staple foods of the Namibian population, which normally did not give rise to any competition concerns and was in conformity with the laws governing the agricultural sector.

58. Another panellist wished to know how the Namibian Competition Commission assessed costs and benefits in analysing exemptions. The Namibian delegation said that section 28 of the Competition Act 2 provided guidelines on how to assess pro-competitive gains to decide on the exemption of specific restrictive practices. For example, section 28 had been applied to an energy sector case and it had been decided that the pro-competitive benefits outweighed any anticompetitive factors.

59. In response to a query on the need for international cooperation in building capacities of the Commission, the Namibian delegation said its approach was to start at the regional level, proceed to the continental level and continue on to the global level. For example, informal cooperation was being carried out at the regional level with Zambia, Botswana and South Africa. At the continental level, the Commission was working with regional economic communities such as the Southern African Development Community and the Southern African Customs Union. At the international level, the Commission had received experts from developed competition agencies, for example a three- to six-month mission of experts in cartel enforcement from Germany, one from the United States Federal Trade Commission and World Bank technical cooperation assistance.

60. With regard to advocacy and outreach activities, the Commission had embarked on a campaign based on the slogan “to educate, inform and make aware”. The tools used in the campaign were the Internet, publications, communication strategy and branding. Other

publicity efforts included trade fairs and a competition and consumer week scheduled to take place in September 2014 focusing on small and medium-sized enterprises (SMEs).

61. In a question to other competition agencies, the Namibian delegation wished to know Zambia's approach to memorandums of understanding. According to the Zambian authority, the starting point was the promotion of a healthy relationship with sector regulators. It was important for stakeholders to grasp the importance of such agreements and that they have a buy-in within the arrangement. For parties to benefit, each party must respect each other's mandate and avoid overstepping boundaries.

62. One expert said that to create a culture of voluntary compliance relating to competition, it was necessary to raise awareness among businesses through publicity at the grassroots level, newspaper advertisements and short brochures on provisions of the law. It was also important to develop guidelines for mergers and exemptions before infringement. The process continued to the proceedings of hearings. When aggrieved parties decided not to appeal, it was considered to be voluntary compliance.

63. Another expert, responding to a question on the separation of powers between the Board of Commissioners, the head of the competition agency and the Secretariat, said that the United Kingdom of Great Britain and Northern Ireland had a new competition regime in the Competition and Markets Authority as a result of the merger of the Office of Fair Trading and the Competition Commission. Though complex, the new regime was well defined, with a clear understanding of how decisions were made. The Board had no decision-making powers in antitrust cases, but could launch market studies and was involved in overall management. The general staff was led by the head of the competition agency and was responsible for the day-to-day running of the competition authority. Antitrust decisions were handed down by directors, constituting collective decisions at the staff level. Panel members were comprised of highly qualified individuals appointed by the relevant minister. The panel members, who made the final decisions on cases, were short-term staffers and were paid only for the time they spent on a case. They served no more than one year.

64. In response to a question on how the United States dealt with time management of investigations, one expert said that the time frame was closely monitored by case teams managers in charge of the day-to-day process. Case managers updated the highest levels of management on progress in investigations at certain milestones of the investigation, both at the Federal Trade Commission and the Department of Justice. After an initial phase of 30 to 60 days, if sufficient evidence was available, the agency would issue an investigation warrant or a subpoena.

65. With regard to the role of the German Federal Minister for Economic Affairs and Energy in reviewing mergers, the German expert said that in the history of competition enforcement in his country, 40,000 applications for mergers had been received since 1973, and 200 had been prohibited without any external instructions. The Minister had the power to give general instructions but seldom used it. In reality, the Minister could give instructions on a specific case at any time. The Minister could authorize cartels on request if restraint to competition was outweighed by its benefits, but this had never occurred in Germany.

66. In reply to a query on dawn raids, one expert said that they were most effective at the beginning of the process because of the element of surprise. For example, in Italy the competition authority had legal powers to copy every record, but could not launch inspections if proceedings had not started. It was necessary to establish sufficient grounds before making a decision on an investigation. Further dawn raids could sometimes occur after an investigation had been launched if the investigation period was extended.

2. Seychelles

67. In the presentation of the main findings of the peer review report, an UNCTAD consultant outlined the country's legal framework for competition, which was comprised of the Fair Competition Act of 2009, the 1997 Consumer Protection Act (reviewed in 2010) and the Fair Trading Commission Act 2009.

68. The Fair Competition Act had some shortcomings such as the definition of some competition terms, the lack of decision-making independence of the Competition Commission and the lack of thresholds to determine dominance under section 2 of the Act. Other concerns were the lack of clarity between horizontal and vertical agreements and their effects on competition, and the authorization of per se prohibited anticompetitive agreements and practices under the Act on application.

69. The Fair Competition Act provided the institutional arrangements required for the enforcement of the competition and consumer protection laws, but the Fair Trading Commission could decide not to investigate a complaint if the complainant obtained reasonable redress, regardless of whether the complaint had the wider effects of a competition or consumer protection nature (section 32 (2)). In addition, the only parties allowed to express themselves at the Board's hearings were the complainants, and fines levied for breach of the Act were not sufficient to encourage compliance.³

70. The report provided several recommendations on the enforcement of the Fair Competition Act, such as developing a comprehensive competition policy, mergers and acquisitions control and corresponding coverage, definition of "dominance" and listed types of "abusive conduct", differentiation between vertical and horizontal conduct provisions, and clarification and identification of the types of conduct that could be authorized under the Act.

71. Concerning the enforcement of the Consumer Protection Act, there was a need to develop a comprehensive consumer protection policy, provide access to information to enhance voluntary compliance and increase sanctions and remedies.

72. With regard to the institutional framework, it was necessary to spell out the respective roles and responsibilities of the Fair Trading Commission Secretariat and Board of Commissioners; the size, composition and remuneration levels of the Board and the Secretariat; and the role and responsibilities of the head of the competition agency. There was also a need to streamline important definitions across the three Acts administered by the Fair Trading Commission.

73. The Minister of Finance, Trade and Investment of Seychelles praised the work UNCTAD had carried out for his country and underscored his Government's commitment to continue working with the Organization to implement the peer review recommendations.

74. Panellists inquired about the degree to which the State engaged in trade or business for the production or supply of goods and services within a market of Seychelles open to participation by other enterprises. Under the Fair Competition Act, markets dominated by statutory monopolies were excluded. For Seychelles, where some State-owned enterprises were in monopoly, such exclusion exempted a large number of enterprises from the application of competition law.

75. When queried about the contribution of competition to the economy of small island developing States, a representative of the Seychelles delegation said that competition principles were universally applicable, regardless of the size of the economy. For example,

³ The maximum fine was about \$30,800.

in an abuse of dominance case regarding the port sector, the remedy had led to competitive prices and increased competition.

76. As a newly created market economy, Seychelles had a competition act, but no competition policy. However, the introduction of competition was part of the national liberalization process. There was a need to convince stakeholders, including policymakers, of the benefits of competition and liberalization.

77. In response to a question based on section 28 of the Fair Competition Act, 2009 allowing certain practices to be authorized by the Commission, a representative of the Seychelles delegation said that the section had always drawn considerable criticism and was therefore never fully applied; it would soon be replaced by block exemption regulation.

78. Concerning the level of exemption of the services sector from legislation on minimum resale prices, there was no mention of services in the Fair Competition Act with regard to resale price maintenance. The Commission was of the view that the provision related to goods rather than services, but was not aware if services had been deliberately excluded from the legislation.

79. In reply to a query about advocacy plans and strategies, a representative of the Seychelles delegation said that outreach efforts were a priority for Seychelles. For example, stakeholder workshops on procurement and investment were planned regularly. Other activities included radio talk shows and a biannual newsletter. Advocacy was a work in progress because competition law was still new. Stakeholders were lodging more complaints and training was being requested. The Government was being more proactive, calling for papers and other submissions.

80. A representative of the Seychelles delegation queried the issue of small market size. In response, one expert said that the size of the economy was a determinant of policy. Two countries could differ in size but have similar experiences regarding SMEs. The application of the law had to be balanced for State-owned enterprises. There was no “one size fits all” when applying competition law. To effectively enforce competition law, competition agencies should work closely with other sector agencies and implement competition policy.

81. Responding to a question on the right of appeal, one expert cited an example from the Netherlands, where the involvement of the legal department was key. The Netherlands Authority for Consumers and Markets Appeal Board was chaired by a staff member who had not participated in the case. There was a separation of investigative and legal teams to ensure a fair hearing. It was important that parties be heard prior to the imposition of a fine, at least in writing.

82. One expert said that the assessment of market dominance followed the approach established in the relevant case law (for example, United Brands and Akzo Nobel cases). The general standard was “substantial and durable market power” determined by the following factors: market share,⁴ market characteristics, time factors and market development; barriers to entry and expansion; and buyer power.

83. Concerning suppliers found in breach of the Consumer Protection Act (2010), one expert said that Colombian law 1340 of 2009 only addressed the final consumer and therefore contained no examples of dealing with suppliers and wholesalers.

84. In response to a query about consumer protection law and policy, one expert replied that Zambia had a consumer and competition policy since 2009. After drafting the policy,

⁴ If less than 40 per cent, it was considered that there was no dominance; 40–50 per cent was a strong indication of dominance; more than 50 per cent meant that there was a general assumption of dominance.

the Zambian Government had reviewed the previous law in relation to consumer and competition policy and passed a comprehensive duo law containing provisions relating to both competition and consumer protection.

85. Several experts said there should be a balance between public and corporate interests. Consultations with stakeholders, including non-governmental organizations, academics and journalists who provided information used for the policy, were crucial in policy design. It was also beneficial to consult other jurisdictions.

86. The UNCTAD secretariat presented a proposal for a technical assistance project for Namibia and Seychelles based on the findings and recommendations of the peer review reports. The overall goal was to create a better business environment and a well-functioning market economy in both countries. In particular, the project aimed to enhance cooperation between the two countries and examine the legal and institutional frameworks for their competition agencies, as well as the capacity to enforce competition law and carry out advocacy activities.

3. Philippines

87. During the presentation of the findings of the peer review report, the UNCTAD consultants said that weak competition was a major factor behind low productivity and unemployment in the Philippines. The existing laws in the country did not provide a comprehensive competition framework; therefore, it was necessary to draft and enact a comprehensive competition law applying to all parts of the economy. Any new law should be designed as an “economy-wide” law with very limited scope for exemptions unless it clearly met the public benefit criteria provided by the law.

88. The consultants suggested that a future competition regime should be independent from political interference and use the full range of enforcement options, including criminal, civil and administrative sanctions along with educational and advocacy efforts to effectively encourage compliance with the competition law.

89. Further, it was necessary to establish clear enforcement guidelines, communicate decision-making processes and raise awareness of rights of appeal on penalties to build public confidence.

90. Other recommendations included maintaining a relationship with the judiciary to ensure the court was well versed in any new law respecting the independence of the court officers, building capacity in all facets of the administration of an effective competition law and remaining engaged with the Association of Southeast Asian Nations and the wider international community to assist in the development of skills and capacities.

91. Following the peer review report, the head of the Philippines delegation acknowledged the work and support of UNCTAD. Peer reviews provided competition agencies with helpful guidance in setting up future work plans. Competition law enforcement was a very complicated problem, but the solution should be simple and strategic, grounded in respect for human beings.

92. One peer reviewer wished to know about the relationship between the Office for Competition and sector regulators. In reply, a representative of the Philippine delegation said that the Office for Competition did not curtail the authority of other agencies, but worked in cooperation with them. The Office for Competition within the Department of Justice had set up five working groups co-chaired by members of the Sector Regulators Council to avoid duplication or overlap in enforcement. However, primary jurisdiction over competition matters lay with the Department of Justice and the competition authority. Some overlaps were inevitable.

93. In reply to a question about cartels, a representative of the Philippine delegation said that under the current law, the Office for Competition had the authority to carry out dawn raids and forensic analysis to investigate cartels. Furthermore the new competition law would introduce a leniency programme to enable more effective detection. Since the lack of a competition culture was one of the main reasons for the existence of cartels, especially in the provinces and local government units, competition advocacy would take on an important role. The Office for Competition was currently focusing on cartels in the energy, telecommunications and transport industries.

94. Concerning the independence of the Office for Competition, a representative of the Philippine delegation said that independent resolution was more important than structural or operational independence. The Office for Competition coordinated with other agencies in policymaking. Transparent decision-making and due process were essential to enhance its independence.

95. A representative of the Philippine delegation said that there was political support for the new competition law, including from the business community. The Office for Competition was strategically handling some cases related to the benefit of consumers to gain broader support. Although obtaining the agreement of all stakeholders could be a lengthy process, it was not wise to allow exemptions simply to enable quick enactment of the competition law. Until the law passed through Congress, the Office for Competition would continue to enforce the current law more effectively and review any unimplemented competition provisions in related laws.

96. In response to a query on institutional structure by a representative of the Philippine delegation, one expert suggested the establishment of an autonomous constitutional body, especially with respect to its resolutions and operation. He stressed the importance of distinct case investigation and resolution stages.

97. In response to a question by the Philippine delegation on the evaluation of agency effectiveness, another expert introduced a case of cartel prosecution in Germany. She said that the economic benefit for the consumer by the prosecution could be assessed on the basis of scientific findings on the price effects of an illegal cartel agreement, which ranged between €500 million and €750 million per year in that country.

98. With regard to revolving-door employment, one expert said that the intervention of former staff should be strictly limited, for example by excluding them from the case or banning employment to avoid conflict of interest and secure transparency.

99. In conclusion, the UNCTAD secretariat presented a proposal for a technical assistance project for the Philippines based on the peer review findings and recommendations.

H. Closing plenary

100. Given that no delegation wished to take the floor during the closing plenary, the Chair thanked the UNCTAD secretariat and the participants for their contributions to the meeting.

III. Organizational matters

A. Election of officers

(Agenda item 1)

101. At its first plenary meeting on Tuesday, 8 July 2014, the Group of Experts elected its officers, as follows:

Chair:	Ms. Skaidrīte Ābrama (Latvia)
Vice-Chair-cum-Rapporteur:	Mr. Mihe Gaomab (Namibia).

B. Adoption of the agenda and organization of work

(Agenda item 2)

102. The Group of Experts adopted the provisional agenda contained in documents TD/B/C.I/CLP/26. The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. (a) Consultations and discussions regarding peer reviews on competition law and policy, review of the Model Law on Competition and studies related to the provision of the Set of Principles and Rules
(b) Work programme, including capacity-building and technical assistance on competition law and policy
4. Provisional agenda for the Seventh Review Conference
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy.

C. Provisional agenda for the Seventh Review Conference

103. At its closing plenary meeting, on 10 July 2014, the Group of Experts approved the provisional agenda for the Seventh Review Conference contained in annex I.

D. Adoption of the report on the Intergovernmental Group of Experts on Competition Law and Policy

104. At its closing plenary meeting, on 10 July 2014, the Group of Experts authorized the Rapporteur to finalize the report of the session.

Annex I

Provisional agenda for the Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

1. Opening of the Conference
2. Election of the president and other officers
3. Adoption of the rules of procedure
4. Adoption of the agenda and organization of the work of the Conference
5. Credentials of the representatives to the Conference:
 - (a) Appointment of a credentials committee
 - (b) Report of the credentials committee
6. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:
 - (a) Review of the application and implementation of the Set
 - (b) Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices
7. Other business
8. Adoption of the report of the Conference

Annex II

Attendance*

1. Representatives of the following States members of UNCTAD attended the meeting:

Algeria	Mexico
Australia	Morocco
Austria	Mozambique
Azerbaijan	Namibia
Belgium	Netherlands
Benin	Nicaragua
Bhutan	Niger
Bosnia and Herzegovina	Nigeria
Brazil	Oman
Bulgaria	Pakistan
Burkina Faso	Panama
Burundi	Papua New Guinea
Cameroon	Paraguay
Canada	Peru
Central African Republic	Philippines
Chile	Portugal
China	Qatar
Colombia	Republic of Korea
Côte d'Ivoire	Republic of Moldova
Democratic Republic of the Congo	Romania
Dominican Republic	Russian Federation
Ecuador	Saudi Arabia
Egypt	Senegal
Ethiopia	Serbia
France	Seychelles
Gambia	South Africa
Germany	Spain
Greece	Sudan
Guatemala	Suriname
Hungary	Swaziland
India	Switzerland
Indonesia	Tunisia
Iraq	Turkey
Italy	Uganda
Japan	Ukraine
Jordan	United Arab Emirates
Kenya	United Kingdom of Great Britain and Northern Ireland
Latvia	United Republic of Tanzania
Lebanon	United States of America
Libya	Viet Nam
Madagascar	Zambia
Malawi	Zimbabwe
Malaysia	
Mauritius	

2. The following intergovernmental organizations were represented at the meeting:
 - Caribbean Community
 - Common Market for Eastern and Southern Africa
 - Central African Economic and Monetary Community
 - Eurasian Economic Commission
 - European Union
 - Organization for Economic Cooperation and Development
 - Organization of Islamic Cooperation
 - West African Economic and Monetary Union
 3. The following United Nations organ, body or programme was represented at the meeting:
 - International Trade Centre
 4. The following specialized agencies or related organizations were represented at the meeting:
 - World Intellectual Property Organization
 - World Trade Organization
 5. The following non-governmental organizations were represented at the meeting:
 - General category:*
 - Consumers International
 - Consumer Unity and Trust Society International
 - Ingénieurs du monde
 - International Network for Standardization of Higher Education Degrees
 - World Association of Former United Nations Interns and Fellows
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