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FIFTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Antalya, Turkey, 14–18 November 2005
Agenda item 8

**DRAFT REPORT OF THE FIFTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE
PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES**

Antalya, Turkey, 14–18 November 2005

Rapporteur: Mr. Rahim Huseynov (Azerbaijan)

Speakers

President of the Turkish Competition
Authority
Secretary-General of UNCTAD
Acting Prime Minister of Turkey
President of the Fourth Review Conference
Germany
Angola
Zambia
Jordan

Zimbabwe
European Community
China
India
El Salvador
Indonesia
Namibia
Mexico

Note for delegations

This draft report is a provisional text circulated for clearance by delegations.
Requests for amendments to statements of individual delegations should be communicated by
Wednesday, 23 November 2005 at the latest to:

UNCTAD Editorial Section, Room E.8106 - Fax No.+41 22 907 0056 - Tel. No.+ 41 22 907 1437

I. OPENING STATEMENTS

Opening of the Conference

1. The **President of the Turkish Competition Authority** noted that, in economies where the allocation of economic resources was not left to the market and where resources were distributed by a central authority, distress was experienced in meeting even the basic needs of citizens, with consequent losses in social welfare. By comparison, in market economies, competition policies appeared to be the most efficient way of preventing the welfare losses that occurred in an imperfectly competitive environment. A well-functioning market economy based on free competition was also important for generating economic growth and development. The Turkish Competition Authority, which was an independent organization, had gained an excellent reputation since its establishment because of both its efficient operation and the substantive quality of the decisions taken over almost a decade. International cooperation in the area of competition law and policy was continually gaining in importance. Such cooperation enabled the exchange of information and experiences between competition agencies and assisted in the effective enforcement of competition law against international hard-core cartels. This cooperation was facilitated by common approaches to competition law and policy among cooperating countries.

2. The **Secretary-General of UNCTAD** highlighted the benefits of competition policy, which had been underlined at UNCTAD XI and which would further the Millennium Development Goals and the Monterrey Consensus. A suitable theme for the Conference would be "Building New Bridges" between competition policy, trade liberalization and development, between national and international efforts in this area, and between all relevant stakeholders. He reviewed current trends in this area, including the prevalence of anticompetitive practices at the international level, which caused considerable losses to developing countries, as well as the increasing adoption and application of competition legislation and of bilateral and regional agreements with competition policy provisions, which had all triggered stronger international cooperation. Further efforts were required to push things forward, because competition-related provisions of international agreements had often not been fully implemented and might not suffice to deal with problems of weaker players. UNCTAD was a key player in such efforts, because of its general trade and development mandate and because it was responsible for the implementation of the Set of Principles and Rules, the sole fully multilateral and universally applicable instrument in this area. Future UNCTAD work should reflect the directives provided by the São Paulo Consensus and might focus on monitoring trends in the area of competition, assisting in the development and implementation of developing countries' competition regimes, and strengthening international cooperation through bilateral and regional agreements and reinforced implementation of the Set, in line with developing countries' needs, objectives and capacity constraints.

3. The **Acting Prime Minister of Turkey** said that competition policy encouraged innovation, which in turn further stimulated R&D and thereby generated competitiveness. A well-functioning market helped to create an enabling business environment for the development of small and medium-sized enterprises. The proper application of competition law levelled the playing-field for market players and thus increased the number of enterprises that could compete in global markets. In this connection, he stressed that creating a competition culture among consumers and enterprises should be among the main aims of competition law and policy. He described the experiences of the Turkish Competition

Authority since its establishment in 1997, stressing that, as an independent organization, the Authority had fulfilled its responsibilities effectively and in a transparent manner. This had been noted and appreciated by various international organizations on different occasions. The general aim of competition policy in Turkey was, in line with international trends, to increase social welfare and to give consumers access to cheaper but better products. Ensuring that markets remained open played an important role in the preservation of democracy. Moreover, when foreign direct investment was taken into account, especially from the developing countries' perspective, it was easy to see the significance of a competition policy that did not discriminate between foreign and local enterprises and that provided a fair and level playing-field for all. Finally, international competition helped spread the benefits of the globalization process. He underlined that UNCTAD continued to play a very important role in guiding countries towards the application of competition policies aimed at promoting growth and development.

Opening plenary

4. The outgoing **President of the Fourth Review Conference** said that, since the Fourth Review Conference, UNCTAD had responded in an exemplary manner to the expectations of its member States in the competition area. It had in particular responded to developing countries' expectations by reinforcing the capacity of their competition authorities, including where necessary by promoting regional cooperation; cooperating with other bodies, in particular the OECD and the ICN; and by appropriately addressing developing countries' disadvantages, including by implementing training programmes in the languages of the countries or regions concerned.

II. REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 6)

5. The representative of **Germany** recalled the importance of the Set of Principles and Rules. The review of the achievements under the Set should be undertaken in the light of the objective of promoting international competition policy that would meet the challenges of globalized markets despite the national character of competition law. In response to the increased competitive pressures arising from globalization, firms were engaging in anticompetitive practices, and intensified international cooperation was therefore needed both at the political level and among competition authorities. Many countries had now adopted competition laws, and new issues were arising, such as determining the laws applicable to cross-border competition cases, whether laws should aim at protecting national or international markets, and how competition authorities could cooperate and on the basis of which rules. He emphasized the importance of UNCTAD's activities in this area, including the Model Law and technical assistance activities, in which his Government had participated. UNCTAD should cooperate closely with other international organizations active in the area of competition, including OECD and the International Competition Network (ICN). He emphasized that the ICN's approach was voluntary in nature and its work resulted in non-binding recommendations. He considered that not only firms but also Governments were resisting the competitive pressure arising from liberalization by various means such as subsidies, as a result of the influence of interest groups. This underlined the importance of advocacy activities and regulatory impact assessments for all proposed legislation.

6. The representative of **Angola** said that competition in liberalized economies assisted some developing countries in achieving high levels of development but made others poorer. Globalization had led to an increase in anti-competitive practices at the international level, and a new discussion was emerging as to whether it was necessary to establish multilateral competition norms within the WTO or whether the Set should be strengthened.

7. The representative of **Zambia** described the Zambian competition authority's experiences during the nine years of its operation. The authority had been very successful in supporting market-oriented economic reforms. This could not have been achieved without the continuous technical assistance received from UNCTAD, including the provision of material on competition enforcement and competition advocacy, particularly a manual on the formulation and application of competition law, as well as seminars for investigators, judges and practitioners of competition law. UNCTAD had also enabled developing countries to participate in various national, regional and international events, thus enhancing exposure to discussions on current issues, information exchange and professional contacts. Generally speaking, UNCTAD's programmes for the establishment or strengthening of competition authorities in the region had contributed to economic reform in these countries. He called upon UNCTAD to reinforce its technical assistance programmes in the the Southern and Eastern African region and, on behalf of the COMESA member States, welcomed the recent establishment of the Malawian Competition Commission.

8. The representative of **Jordan**, recalling that a competition law had been adopted by her Government in 2002, described how the competition authority was organized, its initial decisions, and the training programmes that had been implemented. Additional assistance in capacity building was needed.

9. The representative of **Zimbabwe** said that the Zimbabwean competition authority's mandate covered both private and publicly owned economic sectors. Its merger with the institution responsible for tariffs had provided synergies through the interaction between competition policy and trade policy. His country had participated actively in UNCTAD and COMESA activities and had also cooperated with neighbouring countries in the area of competition. He called for UNCTAD to further extend its technical cooperation relating to competition enforcement.

10. The representative of the **European Community** emphasized the importance of the Review Conference for exchanging views on competition and of UNCTAD's activities in this area, including the Model Law. He described the EU's recent activities in the area of competition, including accession negotiations for aspiring members, the OECD peer review of European competition law, and the progress achieved in the International Competition Network, particularly in combating international cartels. The European Commission had decided to cooperate more closely on issues of unilateral conduct.

11. The representative of **China** noted that many developing countries had drawn from the provisions of the Set in formulating their competition laws. He praised UNCTAD's efforts in this respect and the emphasis placed on the interests of developing countries, which had also received substantial technical assistance. He described existing and proposed Chinese antimonopoly legislation. He stressed the need to strengthen international cooperation in the competition area, given the process of globalization and the consequent increase in transnational mergers. With the rapid growth of international trade, the distinction between national and international economic activities had become blurred. There were major differences between countries' competition legislation, which caused additional transaction costs, while international cooperation efforts had not led to substantive change. It was therefore necessary to start long-term work on the formulation of uniform international antimonopoly rules.

12. The representative of **India** recalled that India had adopted new competition legislation in 2002 that would soon become fully operational. The Set should be developed in the form of a guide, which countries could adapt as they wished. Uniformity was not feasible in the area of competition, and the focus should be on attaining consensus on broad objectives, with adjustments to suit local needs. In recommending a model competition agreement, attention should be paid to the needs of developing countries, and any multilateral competition framework should include special provisions and carve-outs for developing countries. There might first be a model cooperation agreement for use between equally placed developing countries, and that could later be upgraded to a multilateral cooperation agreement. More active steps were needed to enable developing countries to deal with international cartels and to ensure effective cooperation by developed countries for that purpose. There should also be more focus on abuse of international dominance by transnational companies through market behaviour or intellectual property. An enabling mechanism should be provided to enforce decisions against entities headquartered in developed countries engaging in anticompetitive practices. Developed countries should recognize decisions of developing country competition authorities against international cartels based in developed countries' territories and should assist in the prosecution of cartel members. Competition laws in developing countries should recognize the special needs of the informal sector and accept the need for special preferences and incentives for that sector. He also stressed the need for advocacy and capacity building on competition issues in developing countries to be widely targeted at all stakeholders. An UNCTAD emphasis on capacity building within the South Asian region would be welcome.

13. The representative of **El Salvador** said that his country's competition law would be operational in 2006. UNCTAD had played an important role in assisting developing countries, especially through its capacity-building and research activities. He highlighted the positive results which the COMPAL Programme had achieved for beneficiary countries, and suggested it could be used as a model for other Latin American countries.

14. The representative of **Indonesia** referred to the market-oriented reforms that had taken place in his country in recent years, leading to an open and fair competition system. Adjustments to competition policy were needed in developing countries to allow enterprises to prepare for the rigours of full competition through such means as flexibility or exemptions. Since it had started operating, the Indonesian competition authority had faced difficulties resulting from insufficient budgets, differing legal interpretations from the courts, lack of understanding by other governmental bodies, reluctance of businesses to comply with the law, and lack of political support. Thus, developing countries still did not have sufficient experience to participate in a multilateral competition framework. Sharing of experiences and practice in undertaking cooperation was needed first to improve effective implementation of the competition law.

15. The representative of **Namibia** said that the reluctance of enterprises within his region to undertake cross-border investments reinforced the need to increase domestic competition. He described the initial experiences of his country's competition authority in implementing its recently adopted competition law in respect of transactions involving both domestic and foreign firms. His competition authority was ready to contribute to the implementation and development of the competition policy provisions of the Southern African Customs Union.

16. The representative of **Mexico** emphasized that economic evidence demonstrated the benefits of competition for competitiveness. A multilateral framework was needed to address international cartels and establish rules to combat abuse of dominance in large-scale network industries. It was unfortunate that the Doha Round would not cover competition norms, but UNCTAD should take up the promotion of multilateral norms, because these were needed to promote development.

III. ORGANIZATIONAL MATTERS

A. Opening of the Conference

(Agenda item 1)

17. Further to General Assembly resolution 55/182 of 20 December 2000, the Fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was opened on 14 November 2005 in Antalya, Turkey.

18. At the inaugural ceremony, the Conference was addressed by Mr. Abdüllatif Sener, Acting Prime Minister of Turkey; Mr. Supachai Panitchpakdi, Secretary-General of UNCTAD; and Mr. Mustafa Parlak, President of the Turkish Competition Authority.

19. The first plenary meeting of the Conference was opened by Mr. François Souty (France), President of the Fourth Review Conference.

B. Election of the President and other officers

(Agenda item 2)

20. At its opening plenary, on 14 November 2005, the Conference elected its President and other officers as follows:

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| President: | Mr. Mustafa Parlak (Turkey) |
| Rapporteur: | Mr. Rahim Huseynov (Azerbaijan) |
| Vice-Presidents: | Mr. Bruno Lasserre (France) |
| | Mr. Ulf Böge (Germany) |
| | Mr. Hanspeter Tschaeni (Switzerland) |
| | Mrs. Berenice Napier (United Kingdom) |
| | Ms. Melissa Kehoe (United States) |
| | Ms. Ludmila Solontsova (Russian Federation) |
| | Mr. Dan Ioan Pencu (Romania) |
| | Mr. Ismael Malis (Argentina) |
| | Mr. Byron Fernando Larios Lopez (El Salvador) |
| | Ms. Mariana Tavares De Araujo (Brazil) |
| | Ms. Komal Anand (India) |
| | Mr. Syamsul Maarif (Indonesia) |
| | Ms. Luna Abbadi (Jordan) |
| | Mr. Hassan Dabzat (Morocco) |
| | Mr. Moudjaïdou Soumanou (Benin) |
| | Mr. Peter Njoroge (Kenya) |
| | Mr. Kening Zhang (China) |

21. The Conference further decided that the regional coordinators would be associated with the work of the Bureau during the Conference.

C. Adoption of the rules of procedure

(Agenda item 3)

22. Also at its opening plenary, the Conference adopted its rules of procedure as contained in document TD/RBP/CONF.3/2/Rev.1.

D. Adoption of the agenda and organization of the work of the Conference

(Agenda item 4)

23. At the same meeting, the Conference adopted its agenda, as contained in document TD/RBP/CONF.6/1. (For the agenda, see annex I.)

E. Credentials of the representatives to the Conference

(Agenda item 5)

(a) Appointment of a Credentials Committee

24. The Conference established a Credentials Committee based on the composition of the Credentials Committee of the sixtieth session of the General Assembly, namely Cameroon, China, Panama, Portugal, Saint Lucia, Samoa, Sierra Leone, the Russian Federation, and the United States of America. The Conference agreed that, if any country member of the Credentials Committee of the General Assembly was not represented in the Review Conference, the regional group to which that country belonged would designate another country to replace it. Subsequently, Panama was replaced by El Salvador, Samoa by India, and Sierra Leone by Malawi.

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