



United Nations Conference on Trade and Development

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Trade and Development Board Trade and Development Commission

Intergovernmental Group of Experts on Competition Law and Policy

Tenth session

Geneva, 7–9 July 2009

Agenda item 3

- (a) **Consultations and discussions regarding peer reviews on competition law and policy; review of the Model Law; and studies related to the provisions of the Set of Principles and Rules**
- (b) **Work programme, including capacity-building and technical assistance on competition law and policy**

Agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy

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 XII in the Accra Accord, including the provisions in paragraphs 54, 74, 75, 103, 104 and 211 of the Accra Accord,

Further recalling the resolution adopted by 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, November 2005),

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 UNCTAD XII has focused on addressing the opportunities and challenges of globalization for development,

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

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

Recognizing further the need to strengthen UNCTAD's work on competition law and policy so as to enhance its development role and impact,

Noting with satisfaction the important written and oral contributions from the competition authorities of members participating in its tenth session,

Noting with appreciation the documentation and the round-table meetings prepared by the UNCTAD secretariat for its tenth session,

1. *Expresses appreciation* to the Government of Indonesia for volunteering for a peer review during the tenth session of the Intergovernmental Group of Experts, and to all Governments and regional groupings participating in the review; recognizes the successes and progress achieved so far in the enforcement of Indonesia's competition law; and invites all member States to assist UNCTAD, on a voluntary basis, by providing experts and/or other resources for future activities in connection with voluntary peer reviews;

2. *Decides* that UNCTAD should, in light of the experiences with the voluntary peer reviews undertaken so far and according to the resources available, undertake further voluntary peer reviews on the competition law and policy of member States or of regional groupings of States, during the Sixth United Nations Conference to Review All Aspects of the Set in 2010;

3. *Underlines* the importance of using economic analysis in competition cases in effective enforcement of competition law, the importance of the relationship between competition and industrial policies in promoting economic development, and the need to strengthen international cooperation in these areas, particularly for the benefit of developing countries; 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 discussions of the Round Table on Public Monopolies, Concessions and Competition Law and Policy; takes note of the written contributions of member States to this issue; and requests the UNCTAD secretariat to disseminate the conclusions of the discussions of the Intergovernmental Group of Experts on this topic to all interested States, including through its technical cooperation activities;

5. *Requests* the UNCTAD secretariat to prepare studies, for the Sixth United Nations Conference to Review All Aspects of the Set in 2010, on closer international cooperation on competition policy, for the development objectives of developing countries and of the least developed countries (LDCs). The consultations should be organized around the following three clusters of issues:

Session I: Implementation of competition law and policy

- (a) Judicial review of competition cases;
- (b) Appropriate sanctions and remedies;
- (c) The use of leniency programmes as a tool for the enforcement of competition law against hardcore cartels in developing countries.

Session II: Review of the experience gained in the implementation of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), including voluntary peer reviews

- (d) Modalities for facilitating voluntary consultations among member States and regional groupings, in line with section F of the UN Set;

(e) Evaluation of the experience gained so far in the implementation of the UN Set, including UNCTAD voluntary peer reviews;

(f) The role of networking in the exchange of non-confidential information in facilitating cooperation among competition agencies;

(g) The effectiveness of the capacity-building and technical assistance extended to newly established competition authorities.

Session III: The role of competition policy in promoting economic development

(h) Evaluating the effectiveness of competition law in the promotion of economic development;

(i) The appropriate design and enforcement of competition law and policy in countries at different stages of market development;

(j) The challenges of encouraging competition in specific sectors; and

(k) The role of competition advocacy, merger control, and the effective enforcement of law in times of economic trouble.

6. *Requests* the UNCTAD secretariat to prepare a peer review of interested countries, for the consideration of the Sixth Review Conference;

7. *Further requests* the UNCTAD secretariat, with a view to facilitating the round table discussions, to prepare reports on the items under items 5 (a), (b), (c), (e), (h) and (i) above. With a view to facilitating the consultations at the peer review, the secretariat should prepare an executive summary of the peer review report in all working languages, as well as a full report of the peer review in its original language, to be submitted to the Sixth Review Conference;

8. *Requests* the UNCTAD secretariat to prepare, for the consideration of the Sixth Review Conference and to include in its website, an updated review of capacity-building and technical assistance, taking into account information to be received from member States no later than 30 May 2010;

(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 2010; the secretariat should redesign the format of the presentation and its updates; and

(b) Further issues of the *Handbook on Competition Legislation*, containing commentaries on national competition legislation in the form of a CD-ROM.

9. *Further notes with appreciation* the voluntary financial and other contributions received from Norway, Switzerland and Sweden; 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 continue to pursue its capacity-building and technical cooperation activities (including training), and where possible, to focus them on maximizing their impact in all regions, within the financial and human resources available.