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**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, 8–12 November 2010

Item 6 (a) of the provisional agenda

**Review of application and implementation of the Set**

**Model Law on Competition (2010) – Chapter I**

## Model Law on Competition (2010) – Chapter I

### *Objectives or purpose of the law*

*To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development*

## COMMENTARIES ON CHAPTER I AND ALTERNATIVE APPROACHES IN EXISTING LEGISLATION

### Introduction

1. The role of this article is to state the objectives and purposes of the law, and thus to guide the interpretation and application of its operative provisions. The substantive prohibitions and prescriptions of the law should be interpreted in a manner that furthers the achievement of its objectives and purposes.

2. The article has been drafted in accordance with section E, paragraphs 1 and 2 of the Set of Principles and Rules, which reads as follows:

*“1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implement judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations.*

*“2. States should base their legislation primarily on the principle of eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact.”*

3. Like in section A of the Set of Principles and Rules, States may wish to indicate further specific objectives of the law – such as (a) the creation, encouragement and protection of competition; (b) control of the concentration of capital and/or economic power; (c) encouragement of innovation; and (d) protection and promotion of social welfare and in particular the interests of consumers, etc. – and take into account the impact of restrictive business practices on their trade and development.

4. It should further be noted that competition law terminology has evolved since the adoption of the Set of Principles and Rules in 1980. Today, the term anti-competitive business practices/behaviour is more frequently used than the term restrictive business practices.

## **Objectives**

5. The fundamental objective of competition law is to promote and protect competition within markets. A number of more specific goals fall within that overarching objective. The main goals are outlined below:

### ***Consumer welfare***

6. In general, maximizing consumer welfare consists of lowering prices, raising output, enhancing consumer choice and the quality of goods and services, and driving technological development and innovation. Among different schools of economic theory, there is, however, a debate on the dimension of consumer welfare. Some schools of thought equate consumer welfare with total welfare (producer and consumer welfare); they do not worry about the transfer of wealth from consumers to producers, which results from higher prices, lower output, or any other variable affecting demand. Their main concern is the loss of transactions caused by a distortion of competition. Other schools believe that the consumer welfare objective prioritizes the welfare interests of consumers over those of producers.<sup>1</sup> They are concerned not only with the loss of transactions in less competitive markets, but also with the transfer of wealth from consumers to producers and the ability of more consumers to more actively participate in the market.

### ***Efficiency***

7. Efficiency includes allocative efficiency (allocating resources to their most valued use), productive efficiency (producing goods at the lowest cost) or dynamic efficiency (developing better goods and services through innovation). Competition aims to create an environment that incentivizes market participants to enhance efficiency: for example, by investing in technological development or minimizing production costs.

### ***The competitive process***

8. Maintaining the competitive process may be considered by some an objective in and of itself. Competition laws may aim to preserve competition as a process in order to curb coercive, exclusionary and exploitative conduct, to prevent the raising of barriers to entry and to preserve rivalrous behaviour in the market.

9. Protecting the competitive process is considered as a means to achieve the objectives of consumer welfare and efficiency.

### ***Other considerations***

10. Competition laws may in addition include a variety of considerations that are not strictly related to competition or economic efficiency. For example, a number of recitals in competition laws include “fair” competition as an objective. This may mean protecting opportunities for small and medium-sized enterprises or traditional community economies. Further, some competition laws may refer to national economic development sometimes including regional development, or other industrial policy goals.

11. In the United States, the jurisprudence takes a hard line against inclusion of non-competition issues as part of an antitrust analysis. For example, the United States Supreme

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<sup>1</sup> For further discussion on these schools of thought, see Orbach BY (2010). The Antitrust Consumer Welfare Paradox. Arizona Legal Studies Discussion Paper No 10-07. 16 February.

Court stated that the purpose of antitrust analysis “is to form a judgment about the competitive significance of the restraint; it is not to decide whether a policy favoring competition is in the public interest, or in the interest of the members of an industry”.

12. Many States’ competition laws will include many or all of these objectives. Often, they can be reconciled, but occasionally they will conflict. This is most likely where a State’s competition law includes public interest goals that do not strictly relate to competition or economic efficiency. There is a degree of ambiguity in the boundaries of these objectives, which must be resolved over time by decisions of courts or competition authorities.

#### Alternative approaches in existing legislation – objective/purpose

Region/country	
<b>Africa</b>	
Algeria	“The organization and the promotion of free competition and the definition of the rules for its protection for the purpose of stimulating economic efficiency and consumer welfare”. See Article 1 of the Ordonnance No. 95-06 of 23 Chaâbane 1415, 25 January 1995 regarding Competition.
South Africa	<p>The preamble of the South African Competition Act sets out the following objectives:</p> <ul style="list-style-type: none"> <li>- “Provide all South Africans equal opportunity to participate fairly in the national economy;</li> <li>- “Achieve a more effective and efficient economy in South Africa;</li> <li>- “Provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire;</li> <li>- “Create greater capability and an environment for South Africans to compete effectively in international markets;</li> <li>- “Restrain particular trade practices which undermine a competitive economy;</li> <li>- “Regulate the transfer of economic ownership in keeping with the public interest;</li> <li>- “Establish independent institutions to monitor economic competition; and</li> <li>- “Give effect to the international law obligations of the Republic.”</li> </ul>
Zambia	The objectives in Zambian legislation are set in the preamble and are to (a) encourage competition in the economy by prohibiting anti-competitive trade practices; (b) regulate monopolies and concentrations of economic power; (c) protect consumer welfare; (d) strengthen the efficiency of production and distribution of services; (e) secure the best possible conditions for the freedom of trade; (f) expand the

Region/country	
	base of entrepreneurship; and (g) provide for matters connected with or incidental to the foregoing. Under section 2 of the Act, “trade practice” means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply or price in the course of trade of any goods, whether real or personal, or of any service. (Competition and Fair Trading Act 1994.)
<b>Asia/Pacific</b>	
China	In China, according to Article 1 of the Anti-monopoly Law of the People’s Republic of China, the law is enacted for the purpose of preventing and curbing monopolistic conduct, protecting fair market competition, enhancing economic efficiency, maintaining the consumer interests and the public interests, and promoting the healthy development of the socialist market economy.
India	The Competition Act, 2002, objective is “keeping in view the economic development of the country... to prevent practices having adverse effects on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental to”. (Section 1, Competition Act 2002 as amended by The Competition (Amendment) Act, 2007.)
Mongolia	The competition law seeks to “regulate relations connected with prohibiting and restricting State control over competition of economic entities in the market, monopoly and other activities impeding fair competition”. (Article 1, Law of Mongolia in Prohibiting Unfair Competition, 1993.)
New Zealand	The purpose of the competition legislation is “to promote competition in markets for the long-term benefit of consumers within New Zealand”. (Section 1A Commerce Act, 1986. (Section 1A was inserted, as from 26 May 2001, by Section 4 of the Commerce Amendment Act 2001 (2001 No. 32).)
Taiwan Province of China	The legislative purpose of the Fair Trade Law is to maintain trading orders, to protect consumers’ interests, to ensure fair competition, and to promote economic stability and prosperity. (Article 1, Chapter 1, Fair Trade Act, 2010.)
<b>Europe (non-EU)</b>	
Armenia	The purpose of the law is to “protect and encourage free economic competition, ensure appropriate environment for fair competition, promote development of entrepreneurship

Region/country	
	and protection of consumers' rights in the Republic of Armenia". (Article 1, Law of the Republic of Armenia on Protection of Economic Competition as supplemented by the HO-N Law adopted in 2007.)
Norway	Competition legislation seeks to "further competition and thereby contribute to the efficient utilization of society's resources... special consideration shall be given to the interests of consumers". (Section 1, Competition Act, 2004 as amended.)
Russian Federation	The competition legislation seeks to achieve "a common economic area, free movement of goods, protection of competition, freedom of economic activity in the Russian Federation and to create conditions for effective functioning of the commodity markets". (Article 1, Russian Federal Law No. 135-FZ "On the Protection of Competition", 2006.)
Switzerland	The competition legislation seeks "to prevent harmful economic or social effects of cartels and other restraints of competition and, by doing so, to promote competition in the interests of a market economy based on liberal principles". (Chapter 1 Article 1, Federal Act on Cartels and other Restraints of Competition, 1996 as amended.)
Ukraine	The objective of the law is the maintenance and protection of economic competition, for the limitation of monopolism in economic activities, and shall be directed towards ensuring the efficient functioning of the economy of Ukraine on the basis of the development of competitive relations. (Law on the Protection of Economic Competition, 2001.)
<b>European Union</b>	
Denmark	Objective of the legislation is "to promote efficient resource allocation in society through workable competition for the benefit of undertakings and consumers". (The Competition Act (Consolidation Act) Consolidation Act 2007.)
Estonia	The scope of application of the legislation is the "safeguarding of competition in the interest of free enterprise upon the extraction of natural resources, manufacture of goods, provision of services and sale and purchase of products and services... and the preclusion and elimination of the prevention, limitation or restriction...of competition in other economic activities". In addition, legislation "applies if an act or omission directed at restricting competition is committed outside the territory of Estonia but restricts competition within the territory of Estonia". (Section 1, Article 1 Competition Act 2001 as amended.)

Region/country	
Hungary	The competition law aims to protect the “public interest attached to the maintenance of competition on the market ensuring economic efficiency and social progress, the interests of undertakings complying with the requirements of business fairness and the interests of consumers”. (Preamble to Competition Act, 1996 as amended.)
Spain	The objectives of the law are stressed in the “explanatory statement”: The existence of effective competition between businesses constitutes one of the defining elements of the market economy, disciplines the action of businesses and reallocates the productive resources in favour of the most efficient operators or techniques. This productive efficiency translates to the consumer in the form of lower prices or an increase in the quantity offered of the products, their variety and quality, with the subsequent increase in the welfare of society as a whole...Consequently, it is necessary to have a system that, without intervening unnecessarily in free business decision-making, allows for the adequate instruments to guarantee the good functioning of market processes. (Competition Act 2007.)
Sweden	The competition legislation aims to “eliminate and counteract obstacles to effective competition in the field of production of and trade in goods, services and other products”. (Competition Act (2008:579 of 18 June 2008, Chapter 1.)
European Union	Article 3(1)(g) of the Treaty establishing the European Community, which listed one of the EC’s objectives as the implementation of “a system ensuring that competition in the internal market is not distorted”, has been repealed by the Treaty of Lisbon. Articles 2 and 3 of the Treaty on European Union (TEU) setting out the values and aims of the European Union do not mention expressly “undistorted competition” but instead mention the establishment of an internal market as an objective and refer to “a highly competitive social market economy”. However, the new legally-binding Protocol 27 on Internal Market and Competition states that “the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted”.
<b>Latin America</b>	
Brazil	<p>This Law sets out antitrust measures in keeping with such constitutional principles as free enterprise and open competition, the social role of property, consumer protection, and restraint of abuses of economic power.</p> <p>Sole Paragraph. Society at large is entrusted with the legal rights protected herein. (Article 1, Law No. 8884 of June 11,</p>

Region/country	
	1994.)
Colombia	Article 333 of the Constitution adopted in 1991 made competition a constitutional right, stipulating that the State should pass laws that prevent “the obstruction or restriction of economic liberty and shall prevent or control any form of abuse that persons or businesses make of their dominant market position”.
Panama	The purpose of the competition legislation is to “protect and secure the process of free economic competition, eradicate monopolistic practices and other constraints on the efficient functioning of the markets for goods and services, and safeguard the greater interests of consumers”. (Article 1, Law No. 29 of 1 February 2006 on Rules for Protecting Competition and other Measures.)
Peru	The competition legislation aims to “eliminate monopolistic, controlling, and restrictive practices vis-à-vis free competition in the production and marketing of goods and the provision of services, allowing free private enterprise to develop so as to maximize the benefits for users and consumers”. (Article 2, Legislative Decree No. 701 Against Monopolistic, Control and Restrictive Practices Affecting Free Competition.)
The Bolivarian Republic of Venezuela	“The objective of the law is to promote and protect the exercise of free competition and the efficiency that benefits the producers and consumers; and to prohibit monopolistic and oligopolistic practices and other means that could impede, restrict, falsify, or limit the enjoyment of economic freedom”. (Article 1, Law to Promote and Protect the Exercise of Free Competition.)
Andean Community	Regulation seeks to “prevent or correct distortions in competition caused by practices that restrict free competition”. (Article 1, Decision 285 of the Commission of the Cartagena Agreement.)
MERCOSUR	The Decision 18/96 “Protocolo de Defensa de la Competencia en el MERCOSUR”, from 17 December 1996 pursues the objective “to protect competition within MERCOSUR”.
<b>North America</b>	
Canada	The purpose of this Act of Competition Legislation is “to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in



Region/country	
	order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices”. (Section 1.1, Competition Act of 1985 as amended.)
United States	The antitrust legislative framework was designed to be “a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions”. (The United States Supreme Court, <i>Northern Pacific Railway Co. v. United States</i> , 356 U.S. 1, 4 (1958).)

## Annex

## Competition legislation in United Nations Member States and other entities

Africa	Asia and Pacific	Countries in transition	Latin America and Caribbean	OECD countries
Algeria (1995, 2003)*	China (1993, 2008)	Armenia (2000)	Argentina (1980, 1999, rev. 2001)	Australia (1974 last rev. 2009)
Benin* (WEAMU legislation applicable)	Fiji (1992 rev 1998, 2005)	Azerbaijan**	Plurinational State of Bolivia*	Austria (1988, 2002, 2005)
Botswana (2010)	Indonesia (1999)	Belarus **	Brazil (rev. 1994, rev. 2002)	Belgium (1991, 1999,2002, 2006)
Burkina Faso (1994 last rev. 2002). (WEAMU legislation applicable)	India (1969, 2002, 2007)	Bulgaria (2008)		Canada (1889,1985 last rev. 2010)
Cameroon (1998)	Indonesia (1999)	Croatia (2003)	Chile (1973, rev. 1980, rev. 2005)	Czech Republic (1991, last rev 2009)
Central African Republic (WEAMU legislation applicable)	Jordan (2004)	Georgia (2003) **	Colombia (1992 rev 2009)	Denmark (1997, last rev. 2007)
Egypt (2005)	India (1969, 2002)	Kazakhstan**	Costa Rica (1992, 1994)	European Union (1957 last rev. 2009)
Côte d'Ivoire (1978, 1991, 1997) (WEAMU legislation applicable)	Malaysia*	Kyrgyzstan**	Dominican Republic (2008)	Finland (1992 last, rev. 2004)
Gabon (WEAMU legislation applicable)		Lithuania (1999)	El Salvador (2006 rev 2007)	France (1977, 2008)
Ghana*	Pakistan (1970, 2007, 2010)	Mongolia (1993 rev 2000))	Guatemala*	Germany (1957, rev. 1998 & 2005)
Kenya (1988)*	Malaysia*	Republic of Moldova (1992, 2000)**	Honduras (2006)	Greece (1977, rev. 1995 & 2000)
Lesotho*	Philippines*	Romania (1996 rev 2003)	Jamaica (1993)	Hungary (1990, 1996, last rev 2010)
Malawi (1998)	Singapore (2006)	Russian Federation (1991, 1995 & 2006)	Mexico (1993)	Ireland (1991, 2002 last rev) 2006)
Mali (1998)	Sri Lanka (2003)	Slovenia (1999, 2004)	Nicaragua (2007)	Italy (1990, 2005, 2006)
Mauritius (2007)	Taiwan Province of China (2010)	Tajikistan (2005)**	Panama (1996, 2008)	Japan (1947, last rev 2009)
Morocco (1999)	Thailand (1979, 1999)	Turkmenistan**	Paraguay*	Latvia (2002 last rev 2009)
Namibia (2003)	Viet Nam (2004)	Ukraine (2001)	Peru (1990)	Luxembourg (2004, last rev. 2008)
Swaziland (2008)		Uzbekistan (1996)	Trinidad and Tobago (2006)	Malta (1995 last rev 2007)
Senegal (1965, 1994) (WEAMU legislation applicable)			Bolivarian Republic of Venezuela (1992)	Netherlands (1997 last rev 2009)
South Africa (1955, amended 1979, 1998, 2000, 2009)				New Zealand (1986 rev 2008)
Togo*				Norway (2004 rev 2008)
Tunisia (1991)				Poland (2007)
United Republic of Tanzania (1994, 2003)				Portugal (2003 last rev 2008)
Zambia (1994)				Republic of Korea (1980, last rev 2007)
Zimbabwe (1996, rev 2001)				Slovakia (2001 last rev 2009)
COMESA				Spain (1989, last rev. 2007)

UEMOA (1994, 2002)				Sweden (1993 last rev. 2008)
CARICOM				Switzerland (1985, rev. 1995 & 2004**** )
MERCOSUR				Turkey (1994, last rev 2009)
				United Kingdom (1998 & 2002)
				United States (1890, rev. 1976)

\* Competition law in preparation.

\*\* Most CIS countries have established an antimonopoly committee within the Ministry of Economy or Finance.

\*\*\* Fair Trade Practices Bureau established January 1999.