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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

held at the Palais des Nations, Geneva,  
from 3 to 5 July 2002



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## Chapter I

### AGREED CONCLUSIONS ADOPTED BY THE INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY AT ITS FOURTH SESSION<sup>1</sup>

*The Intergovernmental Group of Experts on Competition Law and Policy,*

*Recalling* the United Nations Set of Principles and Rules on Competition, the decisions on competition issues adopted by UNCTAD X in paragraphs 140-143 of the Bangkok Plan of Action (TD/386), and the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

*Taking note* of United Nations General Assembly resolution 55/182 of 20 December 2000, which “reaffirms the role of competition law and policy for sound economic development, takes note of the important and useful work of the United Nations Conference on Trade and Development in this field, and, in this regard, decides to convene in 2005 a 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, under the auspices of the United Nations Conference on Trade and Development”,

*Taking note* with appreciation of the continued cooperation with the World Trade Organization, the Organisation for Economic Co-operation and Development and other organizations active in the field of competition law and policy, and in particular of the request made by WTO Ministers in paragraph 24 of the Doha Declaration to the effect that: “We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development, so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs”,

*Noting also* with appreciation the establishment of the International Competition Network, in which UNCTAD participates,

1. *Recommends* the continuation and strengthening of the important and useful work programme within UNCTAD’s secretariat and the intergovernmental machinery that addresses competition law and policy issues and proceeds with the active support and participation of competition law and policy authorities of member countries;

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<sup>1</sup> As adopted at the closing plenary meeting on 5 July 2002.

2. *Takes note* with appreciation of the consolidated report of the four regional seminars on the post-Doha mandate held between 21 March and 26 April 2002 and *invites* the secretariat to continue its efforts related to the implementation of the Doha Declaration, within available resources;

3. *Takes note* with appreciation of the documentation prepared by the UNCTAD secretariat for the fourth session of the Intergovernmental Group of Experts and *requests* the secretariat to revise/update documents TD/B/COM.2/CLP/21/Rev.1, 22/Rev.1, 26, 29 and 30 in the light of comments made by member States at the fourth session or to be sent in writing by 31 January 2003 for submission to the next session of the Intergovernmental Group of Experts, and to make them available through UNCTAD's website;

4. *Requests* the UNCTAD secretariat to prepare for the fifth session of the Intergovernmental Group of Experts studies on the implications of closer multilateral cooperation in competition policy for developing and least developed countries' development objectives, in particular:

- (a) A report on ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling them to introduce and enforce competition law and policy; and
- (b) A study of the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy;

5. *Recommends* that the Intergovernmental Group of Experts consider in its consultations at its session in 2003 the following issues for better implementation of the Set:

- (a) The interface between competition policy and industrial policy; and
- (b) The optimal design and implementation of competition law in developing countries, including the desirability of a phased approach;

6. *Takes note* with appreciation of the voluntary financial and other contributions received from member States; *invites* all member States 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, expand its capacity-building and technical cooperation activities (including training) in all regions, within the available resources, taking into account the deliberations and the consultations that took place at the fourth session, and to update information about its forthcoming events on its website;

7. *Requests* the UNCTAD secretariat to prepare for consideration by the next session of the Intergovernmental Group of Experts:

- (a) An updated review of capacity building and technical assistance, taking into account the information to be submitted by member States and international organizations no later than 31 January 2003;
- (b) A fully revised and updated version of the Model Law on Competition on the basis of submissions to be received from member States no later than 31 January 2003; and
- (c) An information note on recent important cases, with special reference to competition cases involving more than one country, taking into account information to be received from member States no later than 31 January 2003.

8. *Requests* the secretariat to continue to publish the following documents on a regular basis and to make them available on the Internet:

- (a) Further issues of the Handbook on Competition Legislation, including regional and international instruments;
- (b) An updated version of the Directory of Competition Authorities.

## Chapter II

### GENERAL STATEMENTS

1. The **Deputy Secretary-General of UNCTAD** described in full the terms of the paragraphs of the Doha Declaration dealing with competition because they had important implications for UNCTAD's work in this area, including, of course, the work of the current session of the Intergovernmental Group of Experts. As part of its capacity-building programme on competition law and policy, and in line with the request made in paragraph 24 of the Doha Declaration, UNCTAD had organized a series of four regional meetings in cooperation with the World Trade Organization (WTO) and other relevant international organizations – in Panama City for Latin America and the Caribbean, in Tunis for African and Arab countries, in Hong Kong (China) for Asia and the Pacific, and in Odessa for Central and Eastern Europe and member countries of the Commonwealth of Independent States (CIS).

2. In line with the Doha Declaration, the objectives of these regional meetings were to assist developing, least developed and transition countries to better evaluate the implications of closer multilateral cooperation in this field for their development, and to safeguard their interests in possible negotiations concerning a multilateral competition framework. The consolidated report of these four meetings, containing the main findings and issues discussed, would be presented to the current session of the Intergovernmental Group of Experts. Following this first cycle of regional meetings, UNCTAD, in cooperation with the WTO, intended to participate in a second cycle of meetings during the second half of this year, and to hold a third cycle in the first half of 2003. In this area as in others, UNCTAD's participation in the post-Doha process should in no way be interpreted as prejudging the outcome of the decisions that WTO Ministers would take at the Fifth Ministerial Meeting in 2003.

3. The UNCTAD secretariat also continued to participate in meetings of the Organisation for Economic Co-operation and Development (OECD), and the Secretary-General of UNCTAD himself had attended and made a presentation at the first session of the Global Forum last October, thus demonstrating the high priority that UNCTAD attached to cooperation with the OECD in its work in this area. He also noted that UNCTAD wished to participate in meetings of the International Competition Network and to cooperate with the Korean Fair Trade Commission (KFTC). In this connection, he welcomed the Chairman of the KFTC, the Honourable Minister Nam-Kee Lee, who had been invited to make a keynote speech on the Republic of Korea's development experience before and after the introduction of vigorous competition rules in his country.

4. In his keynote speech, **Mr. Nam-Kee Lee, Chairman of the Korea Fair Trade Commission**, noted that although the unbalanced growth strategies adopted by the Republic of Korea in the 1960s had produced rapid economic growth, they had also brought about unintended structural inefficiencies. Put differently, government policies impeded the functioning of the market by concentrating too much on the emergence of large, family-owned "chaebol" conglomerates. As globalization accelerated, domestic firms were forced by external economic circumstances to face the fierce competition of the world economy and although the Government had tried to resolve these structural problems by liberalizing and

opening the market, while at the same time improving the competitiveness of domestic firms, true reform was still a long way off when the Republic of Korea's financial crisis erupted in 1997.

5. Since then, however, the Republic of Korea had undertaken a structural economic overhaul, which had involved both legal and institutional improvements based on the principles of competition that accommodate market systems. The Korea Fair Trade Commission (KFTC) had been in the vanguard of those reform efforts, and as far as "chaebol" were concerned, it had boldly eradicated cross-debt guarantees and undue intra-transactions among affiliates, and brought circular affiliate investment under control. The KFTC was also spearheading the privatization of State-owned enterprises so that public monopolies would not simply become private monopolies.

6. With rapidly shifting economic paradigms, the old strategy of selecting and fostering particular industries could prove disastrous in terms of wasted resources, should government forecasts for strategic industries be erroneous. Mindful of this, developing countries should proactively seek out ways of responding to the strong integrating tendency of the global market. There was little doubt that government intervention was necessary at certain stages of economic development, with success or failure depending on how the Government approached its interventionist role. In other words, optimal regulation would minimize market distortion and ought to be phased out proportionately at appropriate stages of economic growth and market maturity.

7. He noted that while developing countries in the early stages of economic growth found it necessary to foster "national champions" that were able to compete with large foreign rivals, becoming more competitive required the accumulation of capital and economies of greater scale and scope. When such policies were used to justify domestic monopolies, however, the result was often more harm than good. As pointed out by Professor Michael Porter of the Harvard Business School, it was difficult for a business to become more competitive in the global market when domestic competition was weak.

8. In this connection, he described the Republic of Korea's technical assistance efforts and said that as from this year, his country was planning to significantly increase the amount of technical assistance it provided to developing countries. In this respect, he indicated that the Republic of Korea, in cooperation with UNCTAD and the OECD, was holding the Seoul forum and training workshop from 26 to 28 November 2002.

9. The representative of the **Russian Federation** drew attention to the tasks and directions of the implementation of competition policy in her country as well as to the main functions of the Ministry for Anti-Monopoly Policy and Support of Entrepreneurship and its local offices. When developing integration activities in the area of competition, CIS countries benefited from the UNCTAD Model Law on Competition, which had also largely contributed to the elaboration of national competition laws. Her country's international cooperation had increased significantly at both bilateral and multilateral levels. In view of the issue of accession to the WTO, the discussion of competition aspects of trade policy had special importance for her country and other CIS countries. The Odessa meeting on competition, organized with the support of UNCTAD and with WTO participation, had been very instructive and useful for those countries as it updated them on the developments in this area.

She called for further cooperation with UNCTAD in this and other areas, including within the framework of the Intergovernmental Group of Experts.

10. The representative of **France** stated that major changes had been made to the competition law of his country. A new law called “Loi sur les Nouvelles Régulations Economiques” had amended the French Competition Law now included in the Code of Commerce. It had five main objectives: (a) more systematic control of mergers; (b) clearer separation of investigative and adjudicative powers; (c) granting of more extensive powers for the competition authority to better tackle anti-competitive practices; (d) introduction of new procedures to strengthen the competition authority’s means of investigation by raising the upper limits of fines to 10 per cent of pre-tax turnover worldwide; and (e) enhancement of the potential for international cooperation in the field of competition law and policy by empowering the Competition Council to negotiate international cooperation agreements with foreign authorities for that purpose.

11. The representative of **Ukraine** expressed gratitude to UNCTAD for organizing and participating in the high-level competition meeting in Odessa and informed delegates about recent developments with respect to the application of competition legislation in his country. The new law on the protection of economic competition, which had come into effect in March 2002, envisaged new approaches and the elaboration of new mechanisms. A presidential decree, prepared in cooperation with the Anti-Monopoly Committee, provided for a wide-ranging competition programme. Reflecting these changes, the Committee concentrated its efforts on undertaking effective measures in relation to major anti-competitive cases in the main internal markets. The Committee also took part in the elaboration of the State competition policy and had initiated the adoption of appropriate legislation. There was a need to prevent restrictions of competition in various cases related to the Government’s involvement in or regulation of business activities as well as its assistance to enterprises. One of the Committee’s priorities was to strengthen its contacts with entrepreneurs and the general public.

12. The representative of **India** said that issues for clarification in connection with the Doha mandate included core principles, hardcore cartels, voluntary cooperation, non-discrimination, special and differential treatment, and capacity building. The United Nations Set of Principles and Rules on Competition could be a source of inspiration in this connection. As this was the first session of the Intergovernmental Group of Experts held after the Doha Ministerial Conference, it should focus on capacity building in this area for the many developing and least developed countries which did not have competition laws. This should be based on detailed analysis of their macroeconomic environment and the stage reached in their competition policies, in the context of their economic and institutional development, so as to help individual countries understand whether a competition law was now necessary for them, or whether sectoral policies would suffice. Where it was considered appropriate to prepare a competition law, its objectives and scope should first be determined. His country expected that developing countries would benefit from the technical assistance programmes in this area being implemented by the UNCTAD secretariat, and itself hoped to benefit from these programmes.

13. The representative of the **Islamic Republic of Iran** described the process being implemented by his Government to strengthen competition in his country’s economy. The

Third Socio-Economic and Cultural Development Five-Year Plan 2000-2004, building on previous Plans, had set out a wide-ranging strategy and guidelines for this purpose. All concessions granted to State enterprises would be reviewed and rectified as appropriate; all Government departments were to propose legislation to deal with legislation and practices which had an anti-competitive effect; a draft competition law was under consideration; extensive privatization was being planned; State enterprises were being reorganized and their activities rationalized; statutory monopolies and concessions in various sectors were being phased out; and discrimination between public and private enterprises would be proscribed. Such reforms would enable his country to form a vibrant private sector and market economy, integrated into the new multilateral trading system. While emphasizing the usefulness of UNCTAD's model law for the relationship between competition authorities and regulatory bodies, he said that the model law could contribute to the preparation or completion of regulations in developing countries. He requested UNCTAD to prepare a specific model law for the oil-exporting countries.

14. The representative of **Kenya** updated the meeting on the recent developments in the area of competition law implementation in his country. The Kenyan Competition Authority had designed a website and posted the Kenyan competition law, pre-merger and takeover notification forms and the evaluation criteria for mergers and takeovers. There had been increased interest in Kenya's law in general, and in merger control in particular, from law firms and enterprises in the United States, Spain, the United Kingdom and France among others. Hence the website had served as a cost reduction measure for the transmission of information and responses to inquiries. He requested delegates to look at the Kenyan law and provide comments on the review of the legislation that was under way. The website address was [www.treasury.go.co.ke/monopolies.htm](http://www.treasury.go.co.ke/monopolies.htm). He thanked UNCTAD for the technical assistance extended to the Kenyan Competition Authority and requested that such assistance continue to be provided.

15. The representative of **Cuba** noted that in today's world developing countries were faced with strong competition and that the gap between them and the developed countries had increased. Cuba had suffered as a result of this in two ways: first, as a developing country, and second, through the loss of its main markets due to the disintegration of the socialist economies and trading system with price stabilization. This had forced his country to seek to integrate into the world market with a particular disadvantage.

16. He referred to world markets dominated by mega enterprises, and mega mergers that hindered the measures adopted by developing countries to preserve their national enterprises. Quoting Kofi Annan in the *World Investment Report 2001*, he said that accepting a more open market in the interests of growth and development did not mean relaxing the requirements of public vigilance. On the contrary, a freer market — and particularly the emerging global market for enterprises — called for greater vigilance as well as stronger and better governance.

17. In Cuba itself there had been a change from a system of centralized planning based on the method of material balances to a system of financial planning which was similar to the managerial system currently used by private enterprises at the international level. It was necessary to decentralize the external trade system in order to give national producers access to new technology so that they could export directly, while eliminating intermediaries.

18. He underscored the need to establish regulations in this area, given the worldwide competition. A process of developing a culture of competition had therefore been initiated. A national sub-group on competition had been established in February 2000 under the direction of the Ministry of Economy and Planning and the Ministry of Foreign Trade, in which other public institutions, such as the Ministries of Finances and Prices, Justice, and Foreign Investment and Economic Cooperation, as well as universities and study centres, participated.

19. The main objective was to prepare an inventory of existing legislation as a basis for designing regulations aimed at improving market functioning. Similarly, the UNCTAD Model Law on Competition was being studied by the Ministry of Justice, Havana University and the Ministry of Economy and Planning.

20. Finally, he mentioned the importance of UNCTAD in the process of strengthening capacity building and technical assistance, in accordance with paragraph 24 of the Doha Declaration.

21. The representative of **South Africa** said that his country's competition law had undergone a major review in 1998 and the revised law had become effective in 1999. The South African competition law was a part of a major policy reform which was being undertaken by the Government. The general policy reform was geared towards economic growth, competitiveness of South African businesses and the promotion of small businesses, and competition law and policy was an integral part of this policy. South Africa's competition law applied to all sectors, including the private and public sectors, and also addressed mergers and acquisitions, and restrictive business practices, including cartels.

22. The Competition Commission had been involved in the privatization of State-owned enterprises, ensuring that competition concerns were dealt with. Another important contribution to the development of competition in the South African market was to ensure that barriers to entry which prevented small businesses from entering the market were eliminated. He was of the opinion that competition could play an important role in the development of competitive markets in developing countries. In this connection, he said that the Republic of Korea's experience described by Chairman Nam-Kee Lee was a useful one, and he looked forward to hearing about experiences in other countries.

23. The representative of **Zimbabwe** said that the review of his country's Competition Act had been completed and that the amended Act had come into force as of June 2002. It embodied two major modifications to facilitate the implementation and enforcement of competition policy, namely the stipulation regarding mandatory notification of all mergers and the fusing of the Tariff and Competition Commissions into a single entity. He expressed gratitude for UNCTAD's assistance to his country's Competition Commission and was hopeful that further assistance could be extended with respect to the implementation of the amended Act.

24. The representative of **Zambia** noted with gratitude the advice and technical assistance, including training in the form of short-term attachments of staff, received from the Australian Competition Authority. He expressed appreciation for UNCTAD's financial support for the development of the Zambia Competition Commission's website, which had rendered the work of the Commission more transparent, as well as for the valuable contributions by the OECD in the form of competition literature for the Commission's library. He observed that many competition problems faced by developing countries could be

tackled effectively at the regional level and, in this context, he commended the Common Market for Eastern and Southern Africa and the European Union for their support to Zambia and the region, and applauded the recent creation of the Southern and Eastern African Competition Forum, which would serve to enhance regional cooperation in the area of competition.

25. The work of the Zambia Competition Commission had been frustrated and complicated by the economic imbalances prevailing in Southern Africa, such as parallel exchange rates leading to the flooding of the domestic market with cheap imports that had a devastating effect on local firms, and the significant presence of multinational firms which occupied a dominant position in the domestic market. In the light of these circumstances and the fact that it was constrained in terms of human and financial resources, the Competition Commission was in need of further technical assistance.

26. The representative of **Qatar** stated that his country, which was already recognized as having a high degree of economic freedom, was implementing reforms in line with the changes in the international economic situation, as well as its commitments under bilateral, regional and multilateral treaties. In coordination with the Gulf Cooperation Council, it was drafting laws relating to unfair trade and trade secrets, as well as competition and transparency; new laws were being promulgated on commerce and investment, strengthening laws against anti-competitive behaviour; some public enterprises were being reformed or merged; and privatization procedures were being worked out, partial privatization having already been undertaken in some sectors. The private sector in his country was keen to take advantage of this conducive environment.

27. The representative of **Sri Lanka** described the background to the adoption of competition legislation in his country, as well as its provisions and experiences with its implementation. New legislation was now being elaborated, but there remained some grey areas such as the interface between the competition authority and sectoral regulators. However, the application of competition law by countries such as Sri Lanka would not suffice to protect the consumer from international cartels. This might perhaps be tackled by the establishment of a global competition authority under the auspices of an organization such as UNCTAD.

28. The representative of **Venezuela** referred to the first decade of application of his country's Law to Promote and Protect the Exercise of Free Competition (1991) and said that this law had been enacted together with other economic laws with the clear intention of breaking with the protectionist policies of the past and starting a new process of deregulation and economic liberalization.

29. The representative of **Romania** stressed that a wider consumer choice, technological innovation and price competition could be achieved in the case of competition among companies without abuse of market power. Globalization and liberalization were providing new dynamics for competition and changes in its nature. Competition enforcement was not a static exercise. Therefore, the Romanian Competition Authority was committed to giving priority to increased international cooperation and coordination in the field of competition on a long-term basis. In view of the diversity of national legislation and experiences, it was important to attempt to identify "best practices" and to improve the capacity of local

competition authorities to reap the benefits of international cooperation. He emphasized his Government's needs and readiness to cooperate in this area.

30. The representative of **China** stated that the enforcement of its law on unfair competition, which covered both unfair competition and anti-competitive practices, was now being increasingly focused upon the latter, particularly on cases relating to administrative monopolies. A new competition law was being elaborated, and substantial technical assistance had been received in this connection from UNCTAD and the OECD. Formal and informal bilateral agreements and cooperation were being implemented.

31. The representative of **Côte d'Ivoire** said that his country's competition law, which had already been amended in 1997, was going to be amended once more to enable it to play its key role in the market economy of Côte d'Ivoire. These amendments concerned the legal status of the competition authority, unfair competition, the informal sector and the threshold for the control of mergers.

32. The representative of **Malaysia**, referring to the continuing educational process taking place in the WTO Working Group on the Interaction between Trade and Competition Policy, requested further technical assistance in line with the Doha Declaration mandate. Assistance was also sought for Malaysia to develop strategies and modalities for the application of competition policy in line with its development objectives and social and economic needs.

33. The representative of **Morocco**, referring to his country's framework for merger control, said that, in assessing a merger, the competition authority followed a methodology that took into account a threshold in the relevant market. His country's competition policy had three objectives: (a) fostering the efficiency of companies and firms; (b) improving the well-being of the whole of society; and (c) enhancing the country's economic growth and development.

34. The representative of **Argentina** described the difficulties in implementing coherent competition policies in times of economic crisis. He emphasized the importance of other economic tools, particularly deregulation, privatization and liberalization, in enhancing the objectives of competition policy. If wrongly applied, these tools could have adverse effects on efficiency and consumer welfare. Incomplete deregulation, liberalization without a long-term strategy or privatization without a good regulatory framework could all work against competition. Inconsistency between short-term and long-term macroeconomic objectives could also have negative effects on competition policy. He stressed that the problem was not with the use of these instruments, but with their incorrect application.

35. The representative of the **Dominican Republic** said that her country had elaborated a draft competition law which would establish a competition authority. This draft had been designed by her Government with technical assistance received from international organizations, particularly UNCTAD. Once the law had been approved, the Dominican Republic would require more technical assistance to train competition officials and to carry out an extensive competition advocacy programme.

36. The representative of **Burkina Faso** expressed appreciation for UNCTAD's work in the field of competition law and policy and in particular for the assistance recently provided to his country. He said that his country's competition law had recently been amended to give more powers to the competition authority.

37. The representative of **Lebanon** informed the meeting that his country was in the process of drafting a competition law which would create a competition authority. Lebanon had negotiated a Euromed agreement with the European Union and was eager to share experiences with other countries in this field. It looked forward to technical assistance provided by UNCTAD.

38. The representative of **Bangladesh** said that while his country was considering the merits of a competition policy, competition objectives were already being fostered by its liberal market-oriented economic policies. He appreciated UNCTAD's efforts to respond to the Doha Declaration's call for increased technical assistance for developing countries and least developed countries, and suggested that it focus on the clarification of the concepts identified at the Doha Ministerial Conference, so as to enable countries to evaluate the full implications of the issues involved. His country had a low level of industrialization and weak entrepreneurship, and, in order to develop national industrial capacity, needed to shield national firms from competition until they were ready to compete. His Government did not oppose the adoption of a multilateral framework policy, and believed that strengthening multilateral cooperation could foster global competition. International cartels and mergers could not be handled in a domestic framework. But before a work programme could be embarked upon, it was necessary to have a clear understanding of the core issues.

39. The representative of **Costa Rica** referred to the recent experiences of her country's competition authority, the Commission to Promote Competition (COPROCOM). She reported that there had been some progress in the creation of a competition culture, as measured by the number of complaints received. Since 1995, COPROCOM had dealt with 250 cases originating from complaints by economic agents. She mentioned the need to train the judicial sectors in general, and called for international cooperation in this area.

40. In recent years, COPROCOM's priority had been to check market concentration and vertical restraints, which were common in small economies. Furthermore, COPROCOM was now moving towards becoming a more sanction-oriented type of institution. Its new challenges were mainly: (a) the harmonization of sectoral laws; (b) the need for technical cooperation to strengthen the capacity to control cross-border anti-competitive practices; and (c) increasing its institutional capacity.

41. The representative of the **European Commission** expressed its satisfaction with the activities of the Intergovernmental Group of Experts and looked forward to a frank and informative exchange of views in the forthcoming debates on merger control and interface between competition authorities and sectoral regulators.

42. The representative of the **West African Economic and Monetary Union** said that a common competition law had recently been adopted by his organization to strengthen the integration process among its member countries. This law comprised a set of regulations dealing with anti-competitive practices of firms within the common market, anti-competitive agreement between firms, abuse of dominant position, and State aid and subsidies. The set also embodied two directives, one on transparency in relations between public and private enterprises, and the other on cooperation between the regional competition authority and national competition authorities. UNCTAD's assistance was needed in order to train regional and national officials involved in the implementation and the enforcement of this law.

43. The representative of the **Republic of Korea** referred to the financial and economic crisis experienced by his country in 1997. There had been divergences of opinion at that time as to whether the enforcement of the competition law should be reinforced or temporarily suspended. The competition authority had chosen to strengthen enforcement and the economy was now stronger than ever before.

44. The representative of **Benin** stressed the role of UNCTAD in providing his country with technical assistance in the field of competition law and policy. He said that UNCTAD's assistance would continue to be needed in order to strengthen Benin's capacity at the human and institutional level to adopt and effectively implement its competition law and policy.

45. The representative of the **World Trade Organization (WTO)** said that WTO appreciated the excellent cooperation it had received from UNCTAD over the past year with regard to technical assistance activities in the field of competition law and policy. He had participated in the first round of post-Doha consultation meetings organized by UNCTAD earlier in the year, and had found them most useful. Similarly, UNCTAD would participate in a second round of regional workshops to be organized by WTO over the coming months. In addition, he noted that the UNCTAD secretariat continued to provide useful inputs at each meeting of the WTO Working Group on the Interaction between Trade and Competition Policy.

46. Paragraph 25 of the Doha Ministerial Declaration identified a number of elements to be studied by the WTO Working Group on the Interaction between Trade and Competition Policy in the period leading up to the Fifth Ministerial Conference, which would be held in Cancún, Mexico, in September 2003. These were: (a) core principles, including transparency, non-discrimination and procedural fairness; (b) provisions on hardcore cartels; (c) modalities for voluntary cooperation; and (d) support for progressive reinforcement of competition institutions in developing countries through capacity building. Paragraph 25 also stipulated that full account must be taken of the needs of developing and least developed country participants and appropriate flexibility provided to address them. Three of the foregoing elements, namely provisions on hardcore cartels, modalities for voluntary cooperation and support for progressive reinforcement of competition institutions in developing countries, had already been the subject of discussion in the Working Group, at meetings held in April and July 2002. A third meeting of the Working Group, in September 2002, would provide for an initial discussion of core principles. He noted that several elements of UNCTAD's current work programme were relevant to the four elements in paragraph 25, and he looked forward to continued fruitful exchanges between the two organizations.

### **Chapter III**

## **CONSULTATIONS ON COMPETITION LAW AND POLICY, INCLUDING THE MODEL LAW AND STUDIES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES;**

### **WORK PROGRAMME, INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY**

(Agenda item 3)

47. For its consideration of the substantive agenda item (agenda item 3), the Intergovernmental Group of Experts had before it the following documentation:

“Experiences gained so far on international cooperation on competition policy issues and the mechanisms used” (TD/B/COM.2/CLP/21/Rev.1);

“Competition policy and the exercise of intellectual property rights” (TD/B/COM.2/CLP.22/Rev.1);

“Model law: The relationships between a competition authority and regulatory bodies, including sectoral regulators” (TD/B/COM.2/CLP/23);

“Recent important competition cases in developing countries” (TD/B/COM.2/CLP/26);

“Review of technical assistance, advisory and training programmes on competition law and policy” (TD/B/COM.2/CLP/29);

“The relationship between competition, competitiveness and development” (TD/B/COM.2/CLP/30).

48. At its closing plenary meeting, on 5 July 2002, the Intergovernmental Group of Experts adopted its agreed conclusions on agenda item 3 (for the text of the conclusions, see chapter I).

#### **Chairperson’s summary of the informal discussions**

49. The discussions focused on two subjects: (a) merger control: the balance between control of concentration and the ability of domestic firms to compete on world markets; and (b) the interface between competition authorities and regulatory bodies. Information was provided for the discussions in the accounts of relevant legislation and experiences contained in the papers submitted by a large number of developing countries.

50. With regard to merger control, a presentation was made by an expert and a number of delegations then took the floor. The points covered included:

- (a) Whether large firms have more productivity or a better export performance because of such factors as economies of scale or scope in production or product development, deeper pockets or easier access to raw materials or credit;

- (b) Whether they are as quick to exit the market as small firms;
- (c) The definition of size in this connection, the export performance of medium-sized firms in developed countries and whether there are any differences in these respects in developing countries;
- (d) The national champion argument, and whether there is any conflict between the competitiveness of firms and competition in the domestic market or whether, instead, domestic competition contributes to export performance;
- (e) The difficulties in specifying a clear legal standard and determining the effects of a merger on competition or efficiency, including what market share or turnover thresholds should be set for notification of mergers or intervention by the competition authority;
- (f) Whether and how certain factors might be taken into account in the merger review process, such as whether sales are in domestic or export markets, market structure, the likelihood of abuses of dominance, the industry history of economies of scale, competition in downstream markets, effects on employment, gains in innovation or transfer of technology, or the indirect effects of productivity gains in infrastructure industries for exports;
- (g) The size of potential efficiency gains that might be expected from a merger;
- (h) The experiences, current enforcement policies and institutional structures of the Republic of Korea in this area, which had involved an evolution from national champion policies to strict enforcement of competition policy.

51. On the subject of the interface between competition authorities and regulatory bodies, a panel composed of experts from Argentina, Zambia and the European Commission was formed. The questions covered by these experts and by the subsequent interventions from the floor included:

- (a) The need to ensure that privatization does not merely transform public into private monopolies;
- (b) Difficulties relating to vertical integration of incumbents, geographical market segmentation, and large fixed or sunk costs;
- (c) Difficulties faced by oil-export-dependent developing countries in respect of the expansion of market power of exporting entities;
- (d) Difficulties faced by developing countries with low purchasing power, where demand may be triggered by the market entry of a new supplier;
- (e) The advocacy role of the competition authority in regulatory reform;
- (f) The incorporation of competition policy principles into the design of utility regulation, including in respect of criteria for access to networks (such as transparency or non-discrimination), tariff-setting or remedies such as vertical or horizontal unbundling, and the effects of imposing access conditions aimed at discouraging “hit and run” entry;
- (g) Possible conflicts between regulatory and competition principles;

- (h) The respective merits and disadvantages of *ex-ante* industry-specific regulation of utilities and other sectors (such as financial services) as against the *ex-post* application of general competition law to such sectors to prevent abuses of dominant position;
- (i) Factors which might be taken into account in this connection, such as the need to ensure both predictability of regulation and consistency and fairness in the application of competition laws across the economy; the need to encourage investment and to provide for universal service; convergence among different industries; the advantages of one-stop shopping for suppliers and customers; and the respective strengths and weaknesses of integrated as against separate administration of industry-specific technical and economic regulation and of competition controls, in the light of any specialized knowledge required, quality or coordination of decision-making, risks of regulatory capture, cost implications or likely adequacy of funding;
- (j) The respective roles and mandates of, and the relationship between, competition authorities and regulatory bodies, including the potential for inconsistency, overlapping or concurrent jurisdiction, and the need to minimize uncertainty and ensure complementarity and coordination;
- (k) Methods that might be used for this purpose, such as legal requirements for industry regulators to take competition concerns into account, maintenance of the competition authority's power to intervene, but with limitation of interventions to issues that are clearly competition-related; representation of the competition authority on the regulatory authority's board; memoranda of understanding between the two bodies; liaison meetings; or information exchange.

## **IV. ORGANIZATIONAL MATTERS**

### **A. Opening of the session**

52. The fourth session of the Intergovernmental Group of Experts on Competition Law and Policy was opened on Wednesday, 3 July 2002, by Mr. Philippe Brusick, Chief, Competition and Consumer Policies Branch, Division on International Trade in Goods and Services, and Commodities. In the course of the session, the Intergovernmental Group of Experts held two plenary meetings and four informal meetings.

### **B. Election of officers**

(Agenda item 1)

53. At its opening plenary meeting, on Wednesday, 3 July 2002, the Intergovernmental Group of Experts elected its officers, as follows:

Chairperson: Mr. Saleem Asghar Mian (Pakistan)  
Vice-Chairperson-cum-Rapporteur: Mr. Andreas Mundt (Germany)

### **C. Adoption of the agenda and organization of work**

(Agenda item 2)

54. Also at its opening plenary meeting, the Intergovernmental Group of Experts adopted the provisional agenda for the session (TD/B/COM.2/CLP/28). The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3.
  - (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules;
  - (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy
4. Provisional agenda for the fifth session of the Intergovernmental Group of Experts
5. Adoption of the report of the Intergovernmental Group of Experts

**D. Provisional agenda for the fifth session of the  
Intergovernmental Group of Experts**

(Agenda item 4)

55. At its closing plenary meeting, on 5 July 2002, the Intergovernmental Group of Experts approved the provisional agenda for its fifth session (for the text of the provisional agenda, see annex I).

**E. Adoption of the report of the Intergovernmental Group of Experts**

(Agenda item 5)

56. Also at its closing plenary meeting, the Intergovernmental Group of Experts authorized the Rapporteur to complete the formalities and to finalize the report, subject to any amendments that delegations might wish to make.

**Annex I**

**PROVISIONAL AGENDA FOR THE FIFTH SESSION**

1. Election of officers
2. Adoption of the agenda and organization of work
3.
  - (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules;
  - (ii) Work programme, including capacity-building and technical assistance on competition law and policy
4. Provisional agenda for the sixth session of the Intergovernmental Group of Experts
5. Adoption of the report of the Intergovernmental Group of Experts

## Annex II

### ATTENDANCE \*

1. Experts from the following States members of UNCTAD attended the session:

Angola	Hungary
Argentina	India
Austria	Indonesia
Bangladesh	Iran (Islamic Republic of)
Belarus	Italy
Belgium	Jamaica
Belize	Japan
Benin	Kazakhstan
Bhutan	Kenya
Bolivia	Lebanon
Brazil	Lithuania
Bulgaria	Malaysia
Burkina Faso	Malawi
Burundi	Mauritania
Canada	Mexico
Chad	Morocco
Chile	Nepal
China	Niger
Colombia	Nigeria
Costa Rica	Pakistan
Côte d'Ivoire	Panama
Cuba	Paraguay
Czech Republic	Peru
Democratic Republic of the Congo	Qatar
Dominican republic	Republic of Korea
Ecuador	Romania
Egypt	Russian Federation
Equatorial Guinea	South Africa
Ethiopia	Spain
France	Sri Lanka
Gabon	Sudan
Georgia	Swaziland
Germany	Sweden
Ghana	Switzerland
Guatemala	Syrian Arab Republic
Guinea	Thailand
Honduras	Tunisia
	Turkey

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\* For the list of participants, see TD/B/COM.2/CLP/INF.4.

Ukraine	Venezuela
United Kingdom of Great Britain and Northern Ireland	Yemen
United Republic of Tanzania	Yugoslavia
United States of America	Zambia
Uruguay	Zimbabwe

The European Community was also represented.

2. The following intergovernmental organizations were represented at the session:

African, Caribbean and Pacific Group of States  
Common Market for Eastern and Southern Africa  
Organisation for Economic Co-operation and Development  
South Centre

*Specially invited*

Association of South-East Asian Nations  
West African Economic and Monetary Union

3. The following related organization was represented at the session:

World Trade Organization

4. The United Nations Development Programme and the International Trade Centre UNCTAD/WTO were represented at the session.

5. The following non-governmental organizations were represented at the session:

*General Category*

Consumers International  
International Chamber of Commerce  
International Confederation of Free Trade Unions

*Special Category*

Consumer Unity and Trust Society

6. The following panellists attended the session:

Ms. Vani Chetty, Edward Nathan & Friedland, Corporate Law Advisors and  
Consultants, South Africa

Mr. Paul Cook, Centre Director, Centre on Regulation and Competition, Institute for  
Development Policy and Management, University of Manchester, United Kingdom