



**United Nations
Conference
on Trade and
Development**

Distr.
LIMITED

TD/B/COM.2/CLP/L.1
31 July 1998

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues

**DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS
ON COMPETITION LAW AND POLICY**

Held at the Palais des Nations, Geneva
from 29 to 31 July 1998

Rapporteur: Mr. D.J. Pathirana (Sri Lanka)

Speakers:

Deputy Secretary-General of UNCTAD	Georgia
Norway	Malta
European Commission	Ukraine
Kenya	Russian Federation
Croatia	UDEAC
Italy	Germany
Tunisia	Andean Community
China	Egypt
Morocco	Gabon
Zambia	Japan

Note for Delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments to statements of individual delegations - to be submitted in English or French - should be communicated by **Friday, 7 August 1998, at the latest** to:

UNCTAD Editorial Section,
Room E.8104, Fax No. 907 0056, Tel. No. 907 5657

INTRODUCTION

1. The Intergovernmental Group of Experts on Competition Law and Policy met at the Palais des Nations, Geneva from 29 to 31 July 1998. In the course of its session, it held two plenary meetings and a number of informal meetings.

Opening statements

2. The Deputy Secretary-General of UNCTAD said that this session of the Intergovernmental Group of Experts on Competition Law and Policy should be seen as a continuation of the Intergovernmental Group of Experts on Restrictive Business Practices, which had held 14 sessions from 1981 to 1995 and the two Expert Meetings on Competition Law and Policy in November 1996 and November 1997. Since this last meeting the General Assembly, in its resolution 52/182 of December 1997, in accordance with the recommendation of the Trade and Development Board, had endorsed the change of name of the Intergovernmental Group of Experts on Restrictive Business Practices to the Intergovernmental Group of Experts on Competition Law and Policy, as had been initially recommended by the Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in November 1995. Meanwhile, the issue of competition law and policy had continued to attract much attention at both national and international levels. An indication of this interest at the national level was the substantial technical cooperation taking place in this area, and the accelerating rate of requests for UNCTAD to provide such cooperation at the national, regional and subregional levels, including by holding seminars, helping to prepare legislation and set up institutional machinery, and training personnel. Since the Expert Meeting in November 1997, many of UNCTAD's activities had focused on Africa, as requested in paragraph 91 (iii) of "A Partnership for Growth and Development", adopted at UNCTAD IX. The speaker took this opportunity to express appreciation to the Governments of the Netherlands and Norway for their financial support for UNCTAD's technical cooperation activities in the area of competition law and policy.

3. He emphasized and expressed satisfaction with the intensive cooperation taking place between UNCTAD and the WTO, and he referred in this respect to the jointly sponsored symposiums on competition issues organized with the secretariats of the WTO and the World Bank.

4. He concluded by indicating that the time had come for the Intergovernmental Group of Experts to initiate the preparatory process for the Fourth United Nations Review Conference, which was scheduled to meet in the year 2000, and that it would be appropriate to review the progress and future directions of the Intergovernmental Group of Experts in connection with the Third and Fourth Review Conferences, in the light of the mid-term review of UNCTAD's intergovernmental machinery which was currently under way, and which would contribute to the preparations for UNCTAD X.

General statements

5. The expert from Norway introduced the Guidelines for Intervention against Acquisition of Enterprises, recently adopted by the Norwegian Competition Authority. They aimed at clarifying assessment criteria, securing equal treatment and creating predictability for businesses with respect to interventions against acquisitions. By setting out all the conditions relating to interventions and the step-by-step procedures followed, they enabled the Authority to maintain high analytical standards and to avoid unnecessary discussions with enterprises.

6. The expert from the European Commission welcomed the ongoing cooperation in the area of competition law and policy between UNCTAD and other international organizations, particularly the WTO, in line with the Singapore Ministerial Declaration. The latest example of the usefulness of such cooperation was the success of the Symposium recently organized by these two organizations and the World Bank. UNCTAD had recently been granted observer status by the OECD Committee on Competition Law and Policy. He linked the subjects which would be discussed during the forthcoming consultations to the discussions being held in the WTO, suggesting that positive comity should be multilateralized, that the question of sanctions was relevant to possible multilateral obligations to ensure the effectiveness of competition laws, and that abuses of dominance were linked to predatory and discriminatory pricing, and to excessive pricing, particularly as regards access to essential facilities.

7. The representative of Kenya expressed her gratitude to UNCTAD for the technical support and the training course provided to the Kenyan Competition Agency. She said that it had acquired valuable insights and information from that course, organized in Nairobi in January 1998. The contribution of experts from other African countries was of great value to the staff of the agency. In this connection, she mentioned the assistance provided by Japan for the training of an official from the Kenyan Monopolies and Prices Commission.

8. In reviewing the experience of her country she outlined some of the inadequacies and inconsistencies during the first nine years of implementation of the competition law. She added that in line with the evolution of Kenya's economic situation, a list of amendments had been drafted for inclusion in a revised law to be renamed the Competition and Fair Trade Act. She also said that one of the major priorities for the Kenyan Monopolies and Prices Commission was the advocacy role, which it planned to perform more intensely in order to publicize its activities and convince the public at large of the merits of competition. Lastly, she informed the meeting about a regional meeting which Kenya planned to host in March 1999, and looked forward to close cooperation with UNCTAD in organizing this event.

9. The representative of Croatia informed the meeting about recent developments in the field of competition law and policy in her country. The competition law had been passed in 1995 and had become operational in 1997. It contained provisions prohibiting restrictive agreements as well as abuses of dominance or monopolization. Block exemption regulations, similar to those operating within the European Union, regulated certain types of practices, including franchising, and selective and exclusive distribution. The law also included a merger review system which had similarities with the European Union's merger control framework. Fifty cases had been examined during its first year

of activity and 50 more during the first half of 1998. The Croatian competition authority was an independent body with an autonomous budget. Its Director was appointed by Parliament and reported to it on an yearly basis. All decisions were made public through press releases.

10. The representative of Italy noted that in its current form the commentary to the draft model law presented the analysis of interchangeability of use and of cross-elasticity of demand as two different, although complementary, approaches to market definition. This seemed somewhat misleading since it might lead to confusion between the concept of relevant market and its application in practice. The price test was, above all, a device to clarify the concept of relevant market. The analysis of interchangeability of use and of cross-elasticity of demand were not really two complementary approaches to market definition but, rather, two of the many possible useful sources of information to be used for market definition. She suggested that some reference could be made in the commentary to the model law to the recently published European Commission notice on market definition, which covered the theoretical as well as the practical aspects of market definition in a very clear manner.

11. The representative of Tunisia reported on recent developments in the implementation of the Tunisian competition law. He said that the basic thrust of the law was to be coherent and consistent with the country's overall economic policy as well as to be compatible with Tunisia's international commitments, including those under the WTO and the European Union. He informed the meeting about some of the amendments to the law. He said that the experience so far with the enforcement of the law showed that competition culture was essential for the successful implementation of competition law, that the latter had to be global in nature and to have a minimum number of exceptions (if any) and that training and acquisition of new skills were essential for handling the day-to-day work of enforcement. He concluded by expressing the wish for the creation of a regional training centre that could respond to some of these needs.

12. The representative of China described the situation in his country in the area of competition law and policy, the elaboration of which had been emphasized since the introduction of economic reforms leading to the development of a market economy. The Competition Law, which had been introduced in 1993, would require further revision. In particular, it did not consider the issue of abuse of power by different government institutions, neither did it contain antimonopoly regulations. Many problems in the national economy had stemmed from the conflicting interests of industrial and competition policies and were illustrated by the situation in the Chinese telecommunications sector, which clearly demonstrated the benefits to consumers of the introduction of free competition. The experience acquired in this sector could play an important role in the elaboration of antimonopoly legislation. Finally, he expressed gratitude for UNCTAD's technical support and described some of its benefits.

13. The representative of Morocco expressed his satisfaction with the rich and lively debates at the joint UNCTAD/WTO/World Bank Symposium held on 25 July 1998 and the Cairo meeting in March 1998. Turning to the substantive issues to be discussed during the present meeting, he said that a comparative table of the sanctions and remedies contained in all existing competition legislation could help the meeting in its discussions and should be prepared. In addition, he reported on the sanctions provided for in the Moroccan legislation. Finally, he

said that effective enforcement of competition legislation required close international cooperation among member countries.

14. The representative of Zambia informed the meeting about developments since the introduction of Zambia's Competition and Fair Trading Act in 1994 and the establishment of an independent Competition Commission in 1997. He said that the main challenge for the latter was the creation of a competition culture among both enterprises and consumers. The new law was comprehensive in its coverage and was intended to open the economy to foreign direct investment to secure the maximum benefits from globalization and liberalization. The recent reforms of public utilities and state monopolies had to be supplemented by greater competition in the market-place. He said that competition law applied to all firms operating in Zambia without any discrimination between national and foreign firms. One of the aims of the law was to monitor the competitive behaviour of transnational corporations with a view to ensuring that their actions did not abuse dominant positions of market power. He noted that the liberalization of foreign direct investment and the trade regime could open the door to restrictive business practices if competition law was not effectively enforced. He concluded by thanking UNCTAD for the technical support and training facilities extended to the Zambian Competition Commission.

15. The representative of Georgia, describing the history of the elaboration of competition legislation in his country, referred in particular to the adoption in 1996 of the Law on Monopoly Activity and Competition and to the creation of the State Antimonopoly Service, which consisted of three regional services and the central office and employed 150 people. The new law was under constant review and amendments were to be introduced. Georgian competition experts were benefiting from assistance and exchange of experience provided by a number of countries and agencies, in particular the OECD, the United States Agency for International Development (USAID) and UNCTAD, the latter having held a competition seminar in Tbilisi in 1998. He expressed the hope that this assistance would continue and that the discussions in UNCTAD would permit better use of experiences acquired in the area of competition.

16. The representative of Malta informed the meeting that a new competition draft law had been introduced in his country in 1995. He said that the Government was in the process of creating an autonomous agency that would deal with both consumer protection and competition policy. The law was to be considered by Parliament in September 1998.

17. The representative of Ukraine stressed the importance for national economic development of UNCTAD's work on competition law and policy. One of the features of implementing competition policy in his country consisted of providing the Antimonopoly Committee with a full range of powers to achieve the goals of this policy. In addition to its other functions, the Committee was in charge of controlling privatization and demonopolization, excessive-price regulation, and controlling the elaboration of norms and regulations by the central and local government administration. With the implementation as from 1997 of the new law, a comprehensive system of carrying out competition policy had been created and every sector of the economy, including natural monopolies, had experienced the pressure of competition. New economic conditions and experience gained had made it possible to elaborate new draft laws on protection of economic competition and on natural monopolies. One of the most important problems in his country was the application of antimonopoly regulations to companies operating in more than one

country, which required the elaboration of an appropriate mechanism. In conclusion, he informed the meeting that his office would organize, in cooperation with UNCTAD, a national and a regional seminar on competition law and policy scheduled to take place in May 1999.

18. The representative of the Russian Federation drew attention to the work of the State Antimonopoly Committee, which employed 2,000 people throughout the country and had prepared a significant number of highly qualified specialists working in other state agencies, companies and banks. He pointed to the importance of the intergovernmental policy of supporting competition. Economic ties with the former countries of the USSR had gradually diminished, but they could be restored on market economy principles. In this situation, competition policy would play a very important role, and he therefore expressed the hope that the role of the Competition Council of the countries of the Commonwealth of Independent States would be revived. Referring to regional agreements in the Russian Federation, he stressed the importance of competition law as a means of counteracting regional authorities trying to interfere in the area of trade and prevent free competition.

19. The expert from the Union Douanière de l'Afrique Centrale (UDEAC) expressed her appreciation to UNCTAD and to participating experts from other regions for organizing or contributing to the recent seminar for UDEAC countries held in Gabon. This would be followed by national seminars in each UDEAC country, thus helping to create a competition culture in the subregion and encouraging adoption or better implementation of competition laws. The subject of positive comity was particularly relevant to the UDEAC countries.

20. The expert from Germany referred to the amendments to the German competition law which had recently been adopted and would come into force in 1999. These were mainly aimed at clarifying the provisions of the law.

21. The representative of the Andean Community recalled that the Andean Group had rules on competition when restrictive practices affected two or more member countries, and Decision 283 on free competition had been adopted in 1991. He thanked the European Union for cooperating with the Andean Community, and indicated that they were currently considering amendments to the 1991 rules, which so far did not include merger control. The issue of introducing merger controls, as well as eliminating anti-dumping and subsidies measures among member States of the Andean Group to replace them by competition rules, would shortly be discussed.

22. The representative of Egypt described the economic and legal reforms being undertaken in his country, which represented one of the largest markets in Africa. Until very recently, domestic state-owned enterprises, many of them in a dominant or monopolistic position, were the main actors in the Egyptian economy. More recently, the country had introduced laws facilitating investment by foreign operators. A competition law was also being drafted. It would prohibit monopolistic practices detrimental to the national economy, and not simply the possession of a dominant position. A competition enforcement agency would be set up through a decision of the Ministry of Trade and Supply. Egypt was very grateful to UNCTAD for the contribution it was making to the complex task of adopting competition legislation.

23. The representative of Gabon expressed his appreciation to UNCTAD for organizing the seminar on the training of trainers held in Libreville in June 1998 as well as the other two training seminars, held in Cairo and Nairobi earlier in 1998. He informed the meeting about the amendments to the competition law in Gabon, which were being discussed in parliament. He said that these reflected the country's changing economic situation and the reforms undertaken by his Government to accommodate the trade liberalization and privatization programme under way in Gabon. He appealed to UNCTAD to assist his country and other interested countries in adopting a flexible approach in their attempts to promote competitive markets. He renewed his Government's offer to host other national and regional training events.

24. In his statement the representative of Japan referred to recent reforms of the exemption systems of his country's Antimonopoly Act (AMA). He said the AMA prohibited the formation of cartels by firms and trade associations, although certain cartels were permitted under exceptional circumstances. He continued that the Japan Fair Trade Commission believed that the exemptions systems of the AMA should be limited to the absolute minimum, with a view to greater utilization of market forces, and had actively pursued that reform for a long time. He added that the exemption systems of the AMA based on industrial laws had been reformed through Cabinet decisions. Thirty-five systems under 20 laws had been abolished through the Omnibus Act which was passed by the Diet on 13 June 1997 and came into effect on 20 July of that year. Amendments had already been implemented or were scheduled for other six systems under six laws. He added that the exempted cartel systems based on the AMA and those based on the AMA Exemption Act were also targeted for reform by Cabinet decisions.

Chapter I

ORGANIZATIONAL MATTERS

A. Opening of the session

25. The session was opened on Wednesday, 29 July 1998, by Mr. G. Lipimile (Zambia), Chairperson of the 1997 Expert Meeting on Competition Law and Policy.

B. Election of officers

(Agenda item 1)

26. At its opening plenary meeting, on Wednesday, 29 July 1998, the Intergovernmental Group of Experts on Competition Law and Policy elected its officers, as follows:

Chairperson: Mr. F. Souty (France)

Vice-Chairperson-cum-Rapporteur: Mr. D.J. Pathirane (Sri Lanka)

C. Adoption of the agenda and organization of work

(Agenda item 2)

27. Also at the opening plenary meeting, the Intergovernmental Group of Experts on Competition Law and Policy adopted the provisional agenda for the session (TD/B/COM.2/CLP/1). 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 next session
5. Adoption of the report of the Intergovernmental Group of Experts