



**United Nations Conference  
on Trade and Development**

Distr.: General  
28 July 2009

Original: English

**Trade and Development Board**

**Trade and Development Commission**

Intergovernmental Group of Experts on Competition Law and Policy

Tenth session

Geneva, 7–9 July 2009

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

**Held at the Palais des Nations, Geneva from 7 to 9 July 2009**

**Contents**

	<i>Page</i>
I. Agreed conclusions adopted by the Intergovernmental Group of Experts at its tenth session .....	2
II. Proceedings .....	4
III. Organizational matters .....	18
<b>Annexes</b>	
I. Provisional agenda for the 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 .....	19
II. Attendance .....	20

## **I. Agreed conclusions adopted by the Intergovernmental Group of Experts at its tenth session**

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

*Recalling* the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

*Recalling* the provisions relating to competition issues adopted by UNCTAD XII in the Accra Accord, including the provisions in paragraphs 54, 74, 75, 103, 104 and 211 of the Accra Accord,

*Further recalling* the resolution adopted by the Fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (Antalya, Turkey, November 2005),

*Reaffirming* the fundamental role of competition law and policy for sound economic development, and the need to further promote the implementation of the Set of Principles and Rules,

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

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

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

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

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

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

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

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

3. *Underlines* the importance of using economic analysis in competition cases in effective enforcement of competition law, the importance of the relationship between competition and industrial policies in promoting economic development, and the need to strengthen international cooperation in these areas, particularly for the benefit of developing countries; and calls upon UNCTAD to promote and support cooperation

between competition authorities and Governments, as directed by the Accra Accord in paragraphs 103 and 211;

4. *Emphasizes* the importance of discussions of the Round Table on Public Monopolies, Concessions and Competition Law and Policy; takes note of the written contributions of member States to this issue; and requests the UNCTAD secretariat to disseminate the conclusions of the discussions of the Intergovernmental Group of Experts to all interested States, including through its technical cooperation activities;

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

**Session I: Implementation of competition law and policy**

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

**Session II: Review of the experience gained in the implementation of the United Nations Set, including voluntary peer reviews**

- (d) Modalities for facilitating voluntary consultations among member States and regional groupings, in line with section F of the UN Set;
- (e) Evaluation of the experience gained so far in the implementation of the UN Set, including UNCTAD voluntary peer reviews;
- (f) The role of networking in the exchange of non-confidential information in facilitating cooperation among competition agencies;
- (g) The effectiveness of the capacity-building and technical assistance extended to newly established competition authorities.

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

- (h) Evaluating the effectiveness of competition law in the promotion of economic development;
- (i) The appropriate design and enforcement of competition law and policy in countries at different stages of market development;
- (j) The challenges of encouraging competition in specific sectors; and
- (k) The role of competition advocacy, merger control, and the effective enforcement of law in times of economic trouble.

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

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

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

(a) A further revised and updated version of the Model Law on Competition, on the basis of submissions to be received from member States no later than 30 May 2010; the secretariat should redesign the format of the presentation and its updates; and

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

9. *Further notes with appreciation* the voluntary financial and other contributions received from Norway, Switzerland and Sweden; invites member States to continue to assist UNCTAD on a voluntary basis in its capacity-building and technical cooperation activities, by providing experts, training facilities or financial resources; and requests the UNCTAD secretariat to continue to pursue its capacity-building and technical cooperation activities (including training), and where possible, to focus them on maximizing their impact in all regions, within the financial and human resources available.

## **II. Proceedings**

### **A. Secretary-General's statement**

1. The full text of the opening statement, which was made on behalf of the Secretary-General by Mrs. Lakshmi Puri, Director of the Division on International Trade in Goods and Services, and Commodities, is available on the Internet at <http://www.unctad.org/competition>.

### **B. General statements**

2. Many delegations from developing countries informed the meeting of the progress achieved in the adoption, implementation and modernization of their competition regimes. Delegates cited several examples showing that their respective institutions were carrying out much work in the area of competition law and policy in their respective countries. Some delegations reported an increase in the number of competition cases handled in the areas of anti-competitive practices, and mergers and acquisitions. Some delegations highlighted the main features of their competition regimes. Many delegations from developing countries, including the least developed countries (LDCs), recognized the continued role of advocacy in promoting competition culture among stakeholders. The issuing of competition advisory notes addressing a specific anti-competitive concern was cited by one delegate as one of the means for effective competition advocacy to government and sector regulators.

3. Delegations expressed appreciation to UNCTAD for organizing the meeting, as its interactive discussions afforded them an opportunity to exchange ideas and experiences with their peers.

4. Several delegations referred to the global economic and financial crisis. Delegates identified the effects of the crisis, which included protectionist policies and a shift from reliance on competition to the use of industrial policies in addressing economic concerns. Delegates, however, expressed their opposition to protectionism. One delegate called upon competition authorities, with the help of UNCTAD, to further analyse the different dimensions of the global crisis as they impacted on competition, and called for empirical studies to be undertaken to establish a link between competition policy and economic

growth/industrial policy. In addition, a study on the impact of stimulus packages on competition law enforcement was proposed by some delegations.

5. Delegates pointed out that bilateral and international cooperation in case handling has been of assistance to young competition authorities.

6. Some delegations expressed the importance of cooperation with sector regulators and consumer organizations in the enforcement of competition law. It was further pointed out that consumer protection issues should be accorded more attention within the work of UNCTAD.

7. Many delegations expressed their concerns about the effects of the economic downturn on their economies and about the inability of competition authorities to effectively enforce competition law in the face of the economic crisis.

8. Several delegates appreciated UNCTAD's efforts in providing technical assistance to developing countries to improve their institutional enforcement capacities and to make the enforcement of competition policy contribute to the attainment of the Millennium Development Goals. In that regard, numerous participants called upon UNCTAD to provide technical assistance and advisory work to their respective countries. One delegate specifically praised the peer review that had been carried out by UNCTAD in his country. The report on that peer review was being used to implement technical assistance and capacity-building programmes for the competition authority.

9. It was pointed out that the number of competition cases involving the informal sector was on the rise. A request was put forward for advice on how to deal with competition cases arising from the informal sector in the enforcement of competition law and policy.

10. Delegations from the African region expressed their appreciation for the launch of the Competition Programme for Africa (AFRICOMP) programme, which brought under one umbrella UNCTAD's technical assistance activities on competition law and policy in the region. They further expressed their expectations that the programme would support them in handling some of the challenges that they face in the area of competition and consumer law enforcement. Other African countries requested UNCTAD and development partners to facilitate their participation in AFRICOMP.

11. It was pointed out that economies in the same region were interrelated, and therefore anti-competitive conduct in one country in a region affected other countries. Delegations recognized the role of regional integration groupings in addressing cross-border anti-competitive practices. In that respect, it was stated that there was a need to build regional capacities through UNCTAD technical cooperation activities, including the training of trainers. Having recognized the need for the training of competition authority investigative staff, some delegates stressed the importance of training programmes for commissioners and the judiciary, both of which established the adjudicative arm of competition authorities.

### **C. Closing plenary**

12. The representative of India thanked the secretariat for its excellent work in conducting the tenth session of the Intergovernmental Group of Experts, and sought assurance from the secretariat that the issue of economic crisis and the national response measures to this crisis and their effect on competition policy would be addressed under one or more of the proposed set of studies in paragraph 5 of the agreed conclusions. The representative of Cuba also drew attention to the economic and financial crisis stimulus packages being offered in different countries and their impact on the development of developing countries, and proposed that a separate study on that theme be prepared for

consideration during the Sixth United Nations Review Conference. The Chair replied that the secretariat would take the comments into account when preparing documentation for the Conference.

13. The representative of the Consumer Unity and Trust Society (CUTS) proposed that the Sixth United Nations Review Conference, which would mark the 30th anniversary of the adoption of the United Nations Set, could be used to launch a World Competition Day. He was seconded by the representative of Egypt. The representative of the Caribbean Competition Commission requested UNCTAD to prepare a tool kit based on the experience of developing and developed countries, outlining legislation, doctrine, jurisprudence and relevant competition cases for use by young competition authorities. The representative of Costa Rica reported on the progress made in the implementation made of the UNCTAD voluntary peer review of his country's competition policy. He said all recommendations were adopted by his Government. However, the amendment of the law was pending a review in Parliament.

14. The representative of Romania offered human and financial support to UNCTAD in the preparation of the peer review of Armenia.

15. The Chair of the Intergovernmental Group of Experts, Mr. Eduardo Jara, speaking in his capacity as the representative of Chile, informed the Group that his Government had offered to host the Sixth United Nations Review Conference in 2010 and that discussions with the UNCTAD secretariat on the formal agreement were quite advanced. He said he hoped that a final accord would be reached soon.

#### **D. Round table on the relationship between industrial and competition policies in promoting economic development**

16. The key speaker for the round table was Mr. François Souty, senior international affairs counsel for the competition, consumer affairs and anti-fraud directorate-general of the French Ministry of the Economy, Industry and Employment. The panellists for the session were (a) Mr. Fernando Furlan, board member of the Administrative Council for Economic Defence of Brazil; (b) Mr. Benny Pasaribu, chair of the Indonesian Competition Authority; (c) Ms. Deunden Nikomborirak, researcher at the Thailand Development Research Institute; and (d) Mr. Russell W. Damtoft, associate director of the Federal Trade Commission of the United States. A survey was carried out by the UNCTAD secretariat and written contributions were provided by the Governments of Ecuador, Germany, Indonesia, the Netherlands, Pakistan, South Africa and Ukraine.

17. The key speaker provided a definition of industrial and competition policies, and highlighted the main elements of the competition regulatory framework of the European Commission. He stressed that, under certain conditions, competition and industrial policies could complement each other. He emphasized the importance of designing and implementing those two policies in a complementary way, with common objectives of promoting economic efficiency, productivity and innovation. He suggested that, in the context of regional and/or global economic integration efforts, governments should avoid the temptation of economic patriotism and rather adopt policies aimed at enhancing global competitiveness.

18. One panellist described the evolution of both industrial and competition policies in Brazil. The main features of the current productive development policy – i.e. the national industrial policy – were highlighted. It was further stressed that the industrial policy and the competition policy shared a common goal of enhancing dynamic competitive advantages. In the same context, it was mentioned that the Brazilian industrial policy was horizontal – meaning that it was aimed at promoting incentives for increasing competitiveness in all

sectors, as opposed to selecting specific sectors. It was further stated that the industrial policy incorporated competition principles. Examples were given of merger cases in the oil and banking sectors, where merger reviews were based on economic analysis rather than on industrial policy, even though those two sectors were a focus for industrial policy.

19. Another panellist referred to the success of industrial policies that had targeted specific sectors, in economies such as China, Taiwan Province of China, Germany, France, Japan, the Republic of Korea and the United States. He then mentioned that the industrial policies that had been followed in Indonesia had resulted in highly concentrated industries, and pointed out the need for support to competition policy by the Government and the Parliament.

20. One panellist elaborated on the questions raised in the secretariat's background note, such as (a) the question of conflict between industrial and competition policies; (b) the way in which competition authorities should respond to industrial policies that harmed competition; and (c) whether there was a need for cooperation between the authorities involved with industrial policymaking and competition policymaking. She suggested the following solutions:

(a) Industrial policies should avoid targeting specific firms or sectors and should concentrate on activity-specific policies focusing on promoting activities with positive spillovers, such as research and development, training and network expansion. She further pointed out the need to specify the characteristics of industries to be promoted, rather than specifying industries;

(b) Secondly, it was suggested that – whether industrial policies were firm-, industry- or activity-specific – competition authorities could mitigate the harm such policies may cause by emphasizing non-discrimination in policy implementation and by establishing checks and balances, such as sunset clauses, benchmarks for success, and monitoring schemes, in order to ensure that competitiveness was being enhanced;

(c) She further stressed that competition authorities should exercise their advocacy role by pointing out the distortions that may be caused by certain industrial policy actions at the national level. In addition, concerning industrial policies that distorted cross-border competition, mechanisms should be put in place to negotiate reciprocal commitments between concerned states to address such policies;

(d) Fourthly, regarding the issues to be considered by competition authorities in the wake of the economic crisis, it was stated that policy actions that were to be adopted or were likely to be adopted by many economies included increased tariff levels, the nationalization of enterprises, state subsidies and discriminatory procurement rules. Such policies may lead to increased market concentration, distortion of competition and decreased contestability in the domestic procurement markets;

(e) Finally, it was pointed out that the advocacy role of competition authorities would become more prominent during the post-crisis period of rising protectionism, and that the ability of competition authorities to recommend second- and third-best solutions to mitigate potential harm to competition would be crucial.

21. One panellist referred to the economic crises that had occurred in the United States in 1907, 1929 and 2008. In the former two instances, protectionist industrial measures resulted in higher concentration in markets, cartelization, inefficiencies, and higher prices, which were detrimental to consumer welfare. He stated that economic crisis often led to calls for a relaxation of competition rules in favour of industrial policy. It was further pointed out that, more often than not, protectionist industrial policies prevented the economy from undergoing self-correcting processes and postponed recovery from

economic crises. It was suggested that there was a need to balance justifiable regulation with sound competition principles.

22. One commentator introduced the concept of “competitive neutrality”, which entailed the non-discriminatory application of competition law and policy to government businesses. Naturally, government businesses may have had a competitive advantage over private competitors, due to their ownership and control mechanisms. Competition neutrality policy aimed at eliminating these advantages and creating a level playing field for all market players.

23. One delegate emphasized that a well-structured industrial policy that was complementary to competition policy could yield good results, such as increases in productivity and efficiency, economic transformation, technological development and innovation.

24. Another delegate stated that support for industrial policy grew during times of economic crisis and that conjuncture could be an opportunity to articulate industrial policy that was compatible with competition policy. He recommended that governments set and announce objective criteria for incentives, and also that such incentives be awarded to the most competitive firms. It was further suggested that competition authorities should not be seen as anti-big business and should set prosecutorial strategies that supported the government’s policy objectives. He said by way of example that if poverty alleviation was the objective pursued by government, then the competition authority should focus on possible anti-competitive practices that could hamper that objective.

25. Many delegates expressed the need to harmonize the enforcement of industrial and competition policies, both at the regional and the national level, and reiterated the need for competition authorities to uphold their advocacy efforts. Delegations felt that, although the focus on the effects of the economic downturn was concentrated in developed countries, developing countries were faced with difficulties in overcoming economic challenges before, during and even after the downturn. Some delegates pointed out that any form of protection was potentially anti-competitive in the long run.

26. One delegate pointed out that the concern should not be the existence of national champions, but rather the protection offered to them, which could be anti-competitive.

## **E. Round table on public monopolies, concessions, and competition law and policy**

27. The round table on public monopolies, concessions, and competition law and policies was moderated by the Chair of the Tenth Intergovernmental Group of Experts. Mrs. Mariana Tavares de Araujo, Secretary of Economic Law, SDE/MJ, Brazil, delivered the keynote speech. The panellists for the session were (a) Mr. Mauricio Herrera, Superintendencia de Competencia, El Salvador; (b) Mrs. Müge Paşaoğlu, Turkish Competition Authority; and (c) Mr. Léopold Bounsong, Commission nationale de la concurrence, Cameroon.

28. The Chair opened the round table by stating that concessions have been promoted as a means for changing inefficient market structures, improving efficiency and relieving the public budget. He pointed out that they were expected to contribute to economic development and consumer welfare. However, developing countries and economies in transition had mixed experiences with concessions.

29. After a general introduction on concessions and on the role that competition law and policy could play in that respect, the keynote speaker shared Brazil’s experience in promoting competition in public procurement and fighting bid-rigging in public tenders. In



2007, the Brazilian Ministry of Justice identified the promotion of competition in public procurement as one of its priorities, and issued an ordinance creating a specialized unit to that end. The keynote speaker also reported on a successful intervention by the Brazilian competition authority (CADE) in the awarding of a concession for a hydroelectric plant. That intervention had ensured a competitive auction for the concession in question, which finally resulted in lower energy prices for consumers.

30. The first panellist reported on a concession in the port sector. In his presentation, he distinguished between factors that ensured competition during the awarding of a concession, such as the transparency of the award process, and factors that needed to be taken into account after the concession was awarded. The latter category would comprise (a) ensuring that the concessionaire respected the principles of transparency, inclusiveness and competition when subcontracting economic activities; (b) ensuring the sound management of a concessionaire by hiring an external audit; and (c) ensuring that the concessionaire respected competition law.

31. The next panellist shared with the audience the experiences of Cameroon in the privatization of the electricity sector, which had formerly been characterized by vertically integrated public monopolies in charge of the production, transportation and distribution of energy. Privatization of the incumbent SONEL had been the key to the reform of the entire electricity sector in Cameroon. That privatization had been carried out through a concession, which had obliged the concessionaire to undertake a number of important investments and to respect a universal service obligation. The panellist went on to describe the developments, from the first exclusive concession in the electricity sector to an opening of the market. He concluded with a description of the Cameroonian electricity sector since liberalization.

32. The third panellist concentrated on the question of how a competition authority could intervene to ensure that a concession produced the expected outcomes. She pointed out that, under Turkish competition law, an intervention by the competition authority would be possible both *ex ante* and *ex post*. According to communiqué 1998/4 (1), certain privatization projects needed to be notified to the competition authority. The competition authority issued an opinion on competition aspects that needed to be taken into account in the tender specifications. In specific circumstances, even an authorization by the competition authority was required. The panellist gave two examples of such pre-notification of concessions: the Mersin port case, and the TEDAS case relating to electricity distribution. Competition law enforcement would actually constitute an *ex post* intervention by the competition authority. In that regard, the panellist quoted two examples from the coal and the energy sector. Finally, she emphasized the importance of competition advocacy to ensure competitive outcomes from concessions.

33. In the debate which followed, many delegates emphasized the benefits of competition in the area of concessions, with a view to maximizing consumer welfare through improved access to infrastructure services, the provision of services and of goods of higher quality, adequate investments in infrastructures and competitive prices. However, a large number of delegates stated clearly that concessions could be improved, and welcomed the opportunity to learn from each other's experiences in this regard during the round table discussion.

34. The delegates shared experiences during the follow-up discussions, mainly related to infrastructure concessions in the fields of energy and water supply, airport, port and railway concessions. Many delegates reported that concessions were used in the transition from state-directed economies to market economies, as a means of privatization.

35. It was pointed out that the design stage of a concession was crucial to ensuring competition. That stage comprised the decision on the structure of a concession and the

formulation of the concessionaire's duties and obligations. However, in many countries, there was no legal obligation to consult the competition authority with respect to the design and award of concessions, and the recommendations of the competition authority were mostly not binding. Delegates had differing views on the extent to which the intervention of a competition authority at the design stage of a concession should be compulsory. The opinion was expressed that competition advocacy would be sufficient to ensure competition concerns were taken into account when concessions were designed and awarded. Another view favoured a solid legal basis for the intervention of a competition authority.

36. In addition, with respect to the designing of concessions, one delegate explained that the disequilibrium in technical knowledge and in negotiating power between large companies and government officials would often constitute a major challenge in developing countries. Developing countries often relied on the information prepared by the bidder for the assessment of a proposal. This could, consequently, bias the process. As a result, the bidder may impose conditions that have a negative impact on competition.

37. Regarding the awarding of concessions through public auctions, the view was expressed that competition authorities played an important role in preventing and detecting collusion. It was mentioned that leniency programmes could encourage undertakings to uncover bid-rigging cases. However, it would also appear necessary to train public procurement officers to detect bid-rigging. Furthermore, it was pointed out that it was important to attract a large number of bidders to tenders, to ensure a competitive bidding process. Under certain circumstances, joint bidding was considered acceptable.

38. Further contributions related to control of the concessionaire's performance. In that context, the question was raised of how best to ensure that a concessionaire respected his contractual obligations and did not abuse the position conferred upon him by the concession. It was mentioned that competition law was only helpful in that regard if the concession or the respective industry sector was not exempted from competition law. Specific sector regulations could also contain provisions that allowed control of concessionaires' performance, for example of prices and quality levels.

39. With respect to public monopolies, one delegate explained that, during the food and fuel crisis, his country had benefited from the presence of certain monopolies in the respective industry sectors. This had allowed for a certain stabilization of food prices, despite the crisis that recently hit the developing world.

40. Given the high level of interest in the topic and the importance of concessions, one delegate suggested that UNCTAD carry out a study on the value that competition authorities could add in the area of concessions if they were equipped with the right tools.

41. The keynote speaker concluded the round table discussion by drawing the audience's attention to the recommended practices on unilateral conduct, elaborated by the International Competition Network.

## **F. Voluntary peer review of competition policy in Indonesia**

42. The peer review of Indonesia was moderated by Mr. David Lewis, Competition Tribunal of South Africa. The peer reviewers were (a) Mr. Nick Heys, Australian Competition and Consumer Commission; (b) Mr. Alan Thompson, Commissioner of the Comisión para Promover la Competencia, Costa Rica; (c) Mr. Thilo Reimers, German Federal Cartel Office; and (d) Mr. Toru Aizeki, Japan Fair Trade Commission. The Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU) was represented by its chair, Mr. Benny Pasaribu, other commissioners and staff.

43. The first session consisted of the main findings of the report, followed by a statement by the chair of KPPU and a question-and-answer session. Ms. Elizabeth Farina, UNCTAD's consultant, presented the main findings and recommendations of the report "Voluntary peer review on competition policy: Indonesia" (UNCTAD/DITC/CLP/2009/1). She explained the substantive aspects of Indonesian competition law (Law No. 5/1999) and the institutional framework under which KPPU operated. Particular emphasis was placed on the multiple objectives of Indonesian competition law, and the relationship between KPPU and the judiciary. It was explained that the courts reviewed KPPU's decisions under appeal and that KPPU depended on the judiciary for the enforcement of its decisions. In her overall assessment, the consultant highlighted a number of positive points achieved by KPPU in spite being a young but growing agency. That was mostly reflected in the development of its budget and its human resources, and also in the number of decisions and recommendations issued to date. The consultant pointed out that, since its establishment in the year 2000, most of the cases handled by KPPU related to collusion in public tenders. A remarkably high percentage of decisions that were appealed were upheld by the courts. Advocacy efforts by KPPU were praised as well.

44. The consultant also identified some areas in the law that could need to be reviewed. Since Indonesian competition law did not provide for a maximum number of KPPU commissioners, from an operational perspective, there was a risk that a disproportionately high number of commissioners negatively impacted on the smooth functioning of KPPU. Furthermore, Indonesian competition law contained a number of provisions that needed review. In the consultant's view, KPPU bore the difficult burden of balancing the multiple objectives pursued by Indonesian competition law, which may have conflicted in individual cases. Additionally, she mentioned that outside of Law No. 5/1999, parallel provisions could be found in other laws and pre-existing legislation (e.g. in Indonesia's criminal law, its Civil Code and other industry laws), which may lead to confusion. Also some of the definitions of technical terms contained in Law No. 5/1999 would appear uncommon. In many instances, Indonesian competition law qualified offences as *per se* violations and those to which the rule of reason applied contrary to the categorization that most countries adopted in this respect. For example, according to the wording of Law No. 5/1999, the rule of reason applied to price fixing, market division and bid rigging, whereas those offences were qualified as *per se* violations in other countries. In that respect, it was suggested to amend Law No. 5/1999 and to use common competition law concepts for the definition of technical terms.

45. As a short-term measure, it was recommended that KPPU issue guidelines to clarify some unclear provisions of the law. As to enforcement, the consultant recommended that KPPU broaden the scope of its prosecution activity, by also investigating matters other than collusion in public tenders. Fines for competition law violations appeared to be too low to have a deterrent effect, and the percentage of fines that were actually paid was very low. Also, the dependence on the judiciary to enforce KPPU's decisions was considered a critical point. When the consultant drafted her report, there was no merger control system in place in Indonesia. In her final recommendations on how to achieve improvements in those areas, the consultant draw a clear distinction between issues that KPPU could address on its own initiative – e.g. further training of its staff and the creation of an internal documentation centre, and those matters that require an intervention of the legislator.

46. In his reply, KPPU's chair first presented some facts related to Indonesia's geographic situation, its population and its economy. His introduction also covered the enactment of Law No. 5/1999 and the establishment of KPPU. He then commented on the multiple objectives of Indonesian competition law, and stressed that those were not conflicting as they were all based on the principles of a democratic economy. A balance between public welfare and the interests of the business community needed to be maintained to improve the welfare and living standards of the people. With respect to those

provisions of the Indonesian competition law which appeared unusual from the perspective of other countries – namely the way in which Indonesian competition law distinguished between *per se* offences and those subject to the rule of reason – the Chair explained that KPPU had to use its margin of interpretation to make sense of those provisions. In practice, KPPU assessed all competition law infringements under the rule of reason.

47. In general, KPPU's chair concurred with the report's findings and recommendations. Indeed, he reported that KPPU had already made significant progress in implementing some of the recommendations. Since February 2009, KPPU had adopted seven new guidelines relating to different aspects of competition law enforcement. Most importantly, in May 2009, it issued guidelines on a voluntary pre-merger notification of concentrations. Those guidelines would enable KPPU to start merger review on a voluntary basis, while the required government regulation for the compulsory post-merger control procedure that was provided for by Indonesian competition law was still pending. With respect to the question of criminal sanctions, it was clarified that Law No. 5/1999 provided for criminal sanctions in the event of particular competition law violations. However, KPPU did not have any criminal jurisdiction. Therefore, only the courts had the power to impose those criminal sanctions. The chair of KPPU also mentioned that, by 2010, KPPU would have an independent budget. The internal code of conduct of KPPU had been replaced by a version that introduced an independent ad hoc tribunal. In addition, KPPU was in the process of drafting a memorandum of understanding with the national police and the audit board of Indonesia. Also, KPPU had encouraged presidential candidates to sign a pact on fair business competition. KPPU's chair concluded by confirming his organization's commitment to work together with UNCTAD and other international organizations to implement the peer review recommendations.

48. The questions raised by the reviewers related to the following areas: (a) enforcement (investigate powers, fines, leniency programmes and private enforcement); (b) advocacy (the role of the prime minister's special unit for the evaluation of government policies from a competition perspective and the implementation of KPPU's recommendations); (c) institutional aspects (the status of commissioners and their Chairs, the retention of staff); and (d) merger review. In addition, delegates from the Republic of Korea, France, Egypt, Pakistan, the United States, Tunisia, Mexico, Morocco, Brazil and Benin posed questions from the floor.

49. Regarding enforcement, KPPU explained that it did not have the power to carry out site inspections and confiscations. In that regard, KPPU depended on the support of the police. As to the level of fines, it was highlighted that the figure stated in the report was too low. Also, Indonesian competition law provided for sanctions other than fines, such as the exclusion of a competition law violator from public procurement. Additionally, the Chair informed the participants that, in May 2009, new guidelines on fines were issued and that a leniency regime was currently planned. In the current absence of a leniency regime, KPPU could enter into so-called "consent agreements" with business entities to put an end to competition law violations. Replying to the questions on advocacy, the representatives from KPPU pointed out that all advocacy materials were based on sound research.

50. In cooperation with the chamber of commerce, KPPU had conducted several workshops in different provinces of Indonesia. Press meetings were regularly organized, and KPPU published a newsletter on its website. As to the institutional aspect of staff retention, it was mentioned that the salaries of KPPU's staff were higher than the salaries of other civil servants in Indonesia. However, it was intended that the salary level be further raised to increase staff retention, once KPPU could dispose over its own budget. With respect to the question relating to the dismissal of commissioners, it was explained that although Law No. 5/1999 did not specify the causes of such a dismissal, it stated KPPU's independence from any government intervention. In response to the questions relating to

the introduction of merger review in Indonesia, the Chair explained in greater detail the voluntary pre-merger notification system provided for by the newly adopted guidelines, and underlined the need to build up expertise in merger control within KPPU. To that end, KPPU would welcome international support.

51. Delegates from the floor stated that the KPPU had to operate under very strict timelines, which would put the KPPU under a lot of pressure when dealing with complex matters. Against this background, it was suggested to include the review of investigation time-frame into the revision of Law No. 5/1999. A further question from the floor related to the competition law knowledge of judges who had to deal with appeals against KPPU's decisions. KPPU recognized that there was still a need for further competition law training of judges. In order to set up capacity building for judges, KPPU and the Supreme Court would have to cooperate. Asked about the perception of KPPU's work by other government bodies and by academia, KPPU answered that its relationship with the government had improved continuously over time. Also the relationship with the media was very good thanks to the regular media briefings every Thursday. In some cases, KPPU's media announcements contributed to a change of behaviour of the investigated parties. For example, in the cement industry, prices dropped immediately after KPPU announced that it was about to launch an investigation in this industry sector.

52. In the second session, KPPU was given the opportunity to ask specific questions to other competition authorities, with a view to benefiting from their experience. Firstly, KPPU wanted to know how other countries handled the multiple objectives of competition laws. Germany replied that, according to its law, the role of the Federal Cartel Office was to safeguard the competitive process and not to protect individual competitors, such as small enterprises. Therefore, the Federal Cartel Office would not need to balance conflicting objectives when applying the law. However, on a very exceptional basis, prohibited merger cases could be cleared by the German Ministry for Economics and Technology.

53. The delegates from Australia and South Africa replied that the principal role of their competition authorities also was to protect the competitive process. However, unlike in Germany, the competition authorities in Australia and South Africa had the power to authorize anti-competitive agreements if there was a net public benefit. That question was to be assessed by the competition authority, and not by a ministry. The delegate from Pakistan added that, in such situations, the term "public interest" needed to be read in the context of the competition law. Public interest in that context would actually mean ensuring competitive market structures.

54. KPPU's second question regarded criminal sanctions for competition law violations. In that respect, the United States shared its rich experience under the Sherman Act. Australia and South Africa reported that they were planning to implement criminal sanctions for competition law violations soon. Australia pointed out that that would require a good relationship with the office of the public prosecutor. Such cooperation could be formalized by a memorandum of understanding between the two authorities.

55. KPPU's final question, relating to political intervention in the recruitment of commissioners, was answered by the delegates from Australia and Zambia. The panellist from Australia explained in detail the appointment procedure of commissioners of the Australian competition authority under the 1995 Conduct Code Agreement. The parties to that code included the Australian Government and all states and territories of Australia. In fact, the Australian Government could not appoint a member or associate member of the competition authority unless a majority of parties to the code supported the appointment.

56. The delegate from Zambia explained in detail the procedure followed in the appointment of the Board of Commissioners for the Zambia Competition Commission. The board members were nominated and drawn from the professional and trade association. The

Government's role was limited to ratification of the nominations. The procedure allowed for independence in the decision-making process, as the appeal against the decision of the Board was only tenable in the court of law.

57. In the third session, the UNCTAD secretariat presented a technical assistance project to address the report's findings and recommendations. The proposed technical assistance pursued the following objectives: (a) to improve the legal and institutional framework; (b) to strengthen institutional and human resource capacity within KPPU; (c) to advocate competition law and policy; (d) to enhance understanding of the need for consumer protection; (e) to design ways for cooperation between KPPU and sector regulators and other government bodies; and (f) to facilitate KPPU's regional and international networking. Proposed activities within the framework of the technical assistance project included (a) advanced training courses on investigation techniques for case handlers; (b) formulating and updating of investigation manuals and guidelines; (c) attachment of international competition law experts to KPPU; (d) creation of a competition documentation centre; (e) publication of advocacy material; (f) sector-specific/economy-wide studies to identify competition issues; (g) developing a consumer protection policy; (h) assisting KPPU to build relationships with other government bodies, including local authorities, sector regulators and prosecutors' offices; and (i) fostering the exchange of KPPU staff with other competition authorities in the region.

#### **G. Consideration and review of the UNCTAD secretariat's report on the importance and use of economic analysis in competition cases**

58. The keynote speaker for the round table on economic analysis was Mr. Simon Bishop, RBB Economics, United Kingdom. The panellists were (a) Mr. Joon B. Kim, (Republic of) Korea Fair Trade Commission (KFTC); (b) Mr. Alberto Heimler, independent expert, Italy; and (c) Mr. Thulasoni Kaira, Zambia Competition Commission.

59. The keynote speaker opened the round table by emphasizing the central role of economic analysis in assessing competition cases, namely in merger analysis, assessment of the abuse of dominance and anti-competitive agreements between firms (horizontal and vertical). He highlighted the importance of the definition of the relevant market. In fact, the relevant market was the first part of any economic analysis and served as a basis for different sorts of economic tools, such as econometrics, price tests, price concentration, analysis of shipping and transportation costs, bidding studies and price ratios. Some tools, e.g. econometrics, were more sophisticated than others. He then addressed the difficulties in gathering reliable data for economic analysis. Possible sources comprised data from the parties (pricing data, sales data and internal docs), data from other firms in the market, industry reports and surveys carried out by competition authorities. He concluded by underlining again the crucial role of economic analysis in competition cases. He also mentioned that sound economic analysis had to be understandable by non-economists; otherwise it would defeat its purpose.

60. The first panellist introduced two merger cases of 2008 which showed how economic analysis played a crucial role in competition law enforcement: eBay's acquisition of G-market, the Republic of Korea's leading open market internet shopping mall, was approved, even though the combined market share post-merger was close to 90 per cent. After a careful analysis of entry barriers and dynamic characteristics of the market structure of the relevant industry, the KFTC found that the merged entity would continue to face significant competition in the long term. It was an example where economic analysis helped to better understand the functioning market. Tesco's acquisition of Eland Retail, a merger between the Republic of Korea's second- and third-largest hypermarket operators, showed how economic analysis could be used in designing remedies to cure potential anti-

competitive effects. For the definition of the relevant market, the KFTC decided to use the “diversion ratios” analysis instead of “union of overlapping circles” approach. For the assessment, it asked consumers, “If a specific store is closed which other store would you go to?” Based on the results of the survey, the KFTC decided not to impose structural remedies such as divestiture of local stores. However, it imposed behavioural remedies to address rising dominance in some local markets by limiting annual price increases for specific products. Based on its findings in the Tesco–Eland case, the KFTC considered behaviour remedies as a practical alternative to address competition issues in merger cases.

61. The second panellist concentrated on the standard of proof in antitrust cases. He distinguished between standards and norms, and highlighted that standards allowed for a certain level of flexibility, which needed to be balanced with the requirements of legal certainty. Actually, competition law would be characterized by standards and presumptions. These became important when competitive effects under the rule of reason were analysed. As opposed to *per se* violations, competition law infringements which were assessed under the rule of reason required a full-fledged economic analysis. He gave the example of information exchange which could actually be either pro- or anti-competitive, whereas the exchange of historic data on an aggregated level did not raise competition concerns, and the exchange of unaggregated recent data was highly critical. In this respect, he mentioned cases from Italy (insurance sector), the European Union (United Brands case) and the United Kingdom (tractors). He highlighted that certain market structures facilitated the appearance of cartels. Economic research had shown that cartels were more likely to be found in highly concentrated markets than in markets with a large number of players. With respect to the assessment of dominant position, he referred to the European Commission guidelines on article 82 of the European Commission treaty. Those guidelines emphasized the role of economic analysis in abuse of dominance cases.

62. The next panellist highlighted that, by its nature, competition law combined economic analysis and legal elements. He also stressed the importance of economic analysis with respect to the rule of reason. The panellist reported on the different economic tools used by the Zambian Competition Authority. These included the SSNIP test for the definition of the relevant market (recently applied in the proposed acquisition of the Zambia National Commercial Bank by the Dutch Rabo Bank), HHI analysis, price correlation and switching analysis. Pitfalls to be avoided in using economic analysis included the following: (a) stricter time periods in which to make a decision could lead to use of simpler rather than sophisticated methods; (b) subcontracting specialized experts to carry out the analysis could be an option depending on resources; (c) sample responses could be slow and narrow in scope; and (d) figures were usually debatable and could lead to varied interpretations. He concluded by stating that empirical analysis lay at the heart of modern competition policy.

63. An independent expert from Australia shared his experience as an expert witness in competition law cases before a court. He underlined the necessity of sound assessment of the factual circumstances of a specific case to draw economic conclusions. In fact, it would be important to apply economic theory to the facts in question and to prove economic assumptions. Otherwise, the findings of an expert witness would not be of value for the court. He mentioned an example of the Australian and New Zealand air industry. He added that it was also important that regionally close competition authorities adopt the same approaches (quantitative vs. qualitative analysis) for analysis to ensure coherent decisions. A number of delegates expressed their views on the role of expert witnesses. Some considered them as economic advocates of the parties to a case and were not necessarily neutral. Others underlined the professional ethics that economists would follow, similar to other scientific experts.

64. Contributions from the floor also included the question on how to prove excessive pricing as a form of abuse of dominant position. Difficulties in determining whether prices were actually excessive were witnessed in a number of jurisdictions. Reference to costs and prices charged by competitors was usually part of the required economic analysis in that respect. One delegate recommended instead assessing the reasons that allowed the excessive pricing instead of acting as a price regulator.

## **H. Round table discussion on capacity-building and technical assistance activities on competition law and policy in support of national and regional efforts**

65. The round table was moderated by Mr. Eduardo Jara Miranda, President of the Tribunal of the Defence of Free Competition, Chile. The panel was composed of (a) Mr. Mark Williams, Professor of the Hong Kong (China) Polytechnic University; (b) Ms. Teresa Ramirez, Advisor to the Presidency of INDECOPI, Peru; (c) Ms. Nicole Rojas, Advisor to the Superintendencia de Industria y Comercio, Colombia; (d) Mr. George Lipimile, Senior Advisor, Competition Policy and Consumer Protection Branch of UNCTAD; and (e) Mr. Pradeep Mehta, Secretary-General of CUTS International, India.

66. A panellist praised UNCTAD which – together with other multilateral and bilateral donors, universities and non-governmental organizations (NGOs) – was actively participating in capacity-building activities in East Asia. He referred to the four main elements of successful capacity-building in the area of competition law and policy: (a) achieving consensus on the need of competition policy; (b) motivating the adoption of that policy; (c) advocating change and considering the ways of doing it; and (d) sustaining momentum by ways of critical analysis, systemic enhancement and institution-building. He spoke of different sources of official assistance provided internationally or through bilateral cooperation arrangements, highlighted the role of academics and NGOs in enhancing the capacity of countries in the field of competition, and the importance of strengthening activities in the area of training and research. He also highlighted the specific features of capacity-building in China, Hong Kong (China) and East Asia, mentioned the role of various institutions and programmes, and provided suggestions based on some lessons learned from technical assistance activities in these countries.

67. Two panellists from countries benefiting from the COMPAL programme pointed out that COMPAL had facilitated the exchange of experiences and cooperation between competition agencies. They presented a joint proposal under the so-called regional component of the programme. The proposal included activities geared towards improving market efficiency, the institutional capacity of competition and consumer protection authorities, the regulatory framework, and the development of techniques of analysis to determine and deal with anti-competitive practices. In that regard, the exchange of experiences with and visits to more advanced competition agencies would represent a key aspect of that strategy. Also, both countries were ready to share lessons and experience gained with other countries of Latin America as well as Africa and Asia. UNCTAD should facilitate the application of section F of the United Nations Set on Competition, which would represent a key tool for voluntary cooperation on competition cases. Furthermore, consumer protection issues and the development of small and medium-sized enterprises would also represent an issue for future areas of collaboration.

68. A panellist referred to the achievements of and experiences of CUTS International in building capacity for a better buy-in for competition reforms. He highlighted the CUTS mission, which consisted of promoting fair markets to enhance consumer welfare and economic development, and its work on developing constituencies to push reforms, generate stakeholders support for reform and ensure policy immersion for sustainability and



permanency to reform actions. He emphasized different approaches used for capacity-building, e.g. through the 7Up Model, FunComp, PARFORE and INCSOC. He provided details of 7Up Model experiences in Bangladesh, India, Zambia, Viet Nam and Mauritius, and presented the future agenda of CUTS capacity-building activities in different countries, regions and areas. The importance of launching a campaign for a World Competition Day on 5 December was also mentioned.

69. The representative of UNCTAD highlighted the three main pillars of the UNCTAD's Competition and Consumer Policies Branch: consensus-building through intergovernmental machinery, research and technical assistance. He presented an overview of UNCTAD's capacity-building and technical assistance activities, their objectives, mandate, and the way of obtaining technical cooperation. He emphasized the main areas of UNCTAD's technical assistance in the area of competition and consumer protection, i.e. competition and consumer protection advocacy, drafting and reviewing of laws and policies, training programmes, institutional building, peer reviews and follow-up. He also presented the new Competition Programme for Africa (AFRICOMP), which was officially launched on 22 June 2009 and which was drawing on the experiences of the COMPAL programme implemented since 2004 in a number of Latin American countries. The new programme was based on pooling of existing funds and mobilizing new funds. It envisaged an integrated approach in respect to the forms of its implementation and flexibility in formulating different national and regional activities. AFRICOMP activities had already begun in 2009 in a number of countries and regional groupings, and were envisaged to benefit all African countries.

70. In the discussion, the delegates expressed their appreciation of the technical assistance and analytical work provided by UNCTAD and its continued major role in shaping the competition and consumer protection policies of many developing countries. They also praised other donors, in particular other developing countries, for the assistance provided. Many delegates discussed (a) the progress achieved in the adoption, implementation and modernization of their competition regimes; (b) implementation of specific projects; (c) their experiences in and role of international cooperation in the competition area; and (d) the importance of promoting competition advocacy for the efficient application of competition law and policy in their countries.

71. Information was provided on the UNCTAD-Tunisia Regional Training Centre on Competition for the Middle East and North Africa and potential donors were called to contribute to the success of this centre. The COMPAL programme was highlighted as a good example of the design and implementation of a technical assistance and capacity-building programme, and the importance of elaborating similar programmes was mentioned. It was noted that resource constraints were often pressing in developing countries, in particular those with young competition institutions with limited experience and a restricted budget. Assistance to the young institutions by relatively experienced agencies, including those based in developing countries, as well as the importance of finding adequate finance and an elaboration of a programme aimed at assisting in approaching potential donors was also mentioned.

72. A representative of Armenia requested UNCTAD to undertake a peer review of competition law and policy of Armenia during the Sixth Review Conference. A representative of the World Trade Organization pointed out the continued interest of his organization in competition issues which were being considered within the existing WTO agreements, including TRIPS.

### **III. Organizational matters**

#### **A. Election of officers**

(Agenda item 1)

73. At its opening plenary meeting on Tuesday, 7 July 2009, the Intergovernmental Group of Experts elected its officers, as follows:

Chair:	Mr. Eduardo Jara Miranda (Chile)
Vice-Chair-cum-Rapporteur:	Mr. Pramod Sudhakar (India)

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

(Agenda item 2)

74. Also at its opening plenary meeting, the Intergovernmental Group of Experts adopted the provisional agenda for the session (TD/B/C.I/CLP/1). The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. (a) Consultations and discussions regarding peer reviews on competition law and policy; review of the Model Law; and studies related to the provisions of the Set of Principles and Rules  
(b) Work programme, including capacity-building and technical assistance on competition law and policy
4. Provisional agenda for the Sixth Review Conference
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy

#### **C. Provisional agenda for the Sixth Review Conference**

(Agenda item 4)

75. At its closing plenary meeting, on 9 July 2009, the Intergovernmental Group of Experts approved the provisional agenda for the 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 (annex I).

#### **D. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy**

(Agenda item 5)

76. At its closing plenary meeting, on 9 July 2009, the Intergovernmental Group of Experts authorized the Rapporteur to finalize the report of the session.

## Annex I

### **Provisional agenda for the 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**

1. Opening of the Conference
2. Election of the president and other officers
3. Adoption of the rules of procedure
4. Adoption of the agenda and organization of the work of the Conference
5. Credentials of the representatives to the Conference:
  - (a) Appointment of a credentials committee
  - (b) Report of the credentials committee
6. Review of all aspects of the set of multilaterally agreed equitable principles and rules for the control of restrictive business practices:
  - (a) Review of the application and implementation of the Set
  - (b) Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices
7. Other business
8. Adoption of the report of the Conference

## Annex II

### Attendance\*

1. Representatives of the following states members of UNCTAD attended the meeting:

Angola	Kazakhstan
Armenia	Kenya
Australia	Kuwait
Austria	Madagascar
Azerbaijan	Malawi
Belarus	Mali
Benin	Mexico
Bhutan	Morocco
Bolivia	Myanmar
Bosnia and Herzegovina	Netherlands
Botswana	Nicaragua
Brazil	Nigeria
Burkina Faso	Oman
Cameroon	Pakistan
Chile	Peru
China	Philippines
Colombia	Portugal
Congo	Qatar
Côte d'Ivoire	Republic of Korea
Cuba	Romania
Cyprus	Russian Federation
Czech Republic	Saint Lucia
Dominican Republic	Saudi Arabia
Ecuador	Senegal
Egypt	South Africa
France	Spain
Gabon	Swaziland
Germany	Sweden
Ghana	Switzerland
Greece	Syrian Arab Republic
Guatemala	Thailand
Guinea-Bissau	Tunisia
Honduras	Turkey
Hungary	Ukraine
India	United Kingdom of Great Britain and Northern Ireland
Indonesia	United States of America
Iran (Islamic Republic of)	Viet Nam
Iraq	Yemen
Italy	Zambia
Japan	Zimbabwe
Jordan	

---

\* For the list of participants, see TD/B/C.I/CLP/Inf.1.

- 
2. The following intergovernmental organizations were represented at the meeting:
    - Association of South-east Asian Nations
    - Caribbean Community
    - Communauté économique et monétaire de l'Afrique Centrale
    - European Commission
    - Organization for Economic Cooperation and Development
    - Secretaria de Integración Económica Centroamericana
    - Southern African Development Community
    - West African Economic and Monetary Union
  3. The following specialized agencies or related organizations were represented at the meeting:
    - United Nations Industrial Development Organization
    - World Intellectual Property Organization
    - World Trade Organization
  4. The following non-governmental organizations were represented at the meeting:
    - General Category:*
    - BPW International
    - Consumer Unity and Trust Society (CUTS)
    - Ingenieurs du Monde
  5. The following panellists gave their contribution to the meeting:
    - Mr. François Souty (France)
    - Mr. F. Furlan (Brazil)
    - Ms. Deunden Nikomborirak (Thailand)
    - Mr. Damtoft Russell (United States)
    - Ms. Mariana Tavares de Araujo (Brazil)
    - Mr. Mauricio Herrera (El Salvador)
    - Mr. Léopold Boumsong (Cameroon)
    - Ms. Müge Pasaoglu (Turkey)
    - Mr. David Lewis (SACT)
    - Ms. Elizabeth Farina (Brazil)
    - Mr. Benny Pasaribu (KPPU)
    - Mr. Nick Heys (Australia)
    - Mr. Allan Thompson (Costa Rica)
    - Mr. Thilo Reimers (Germany)
    - Mr. Toru Aizeki (Japan)
    - Mr. Simon Bishop (RBB Economics)
    - Mr. Joon-Bum Kim (Republic of Korea)
    - Mr. Alberto Heimler (Italy)
    - Mr. Thulasoni Kaira (Zambia)
    - Mr. Marc Williams (United Kingdom University)
    - Ms. Teresa Ramirez (Peru)
    - Mr. Pradeep Mehta (CUTS)
-



**United Nations Conference  
on Trade and Development**

Distr.: General  
26 October 2009

Original: English

---

**Trade and Development Board**

**Trade and Development Commission**

Intergovernmental Group of Experts on Competition Law and Policy

Tenth session

Geneva, 7–9 July 2009

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

**Corrigendum**

**1. Paragraph 13, first two sentences**

*for*

The representative of the Consumer Unity and Trust Society (CUTS) proposed that the Sixth United Nations Review Conference, which would mark the 30th anniversary of the adoption of the United Nations Set, could be used to launch a World Competition Day. He was seconded by the representative of Egypt.

*read*

The representative of the Consumer Unity and Trust Society (CUTS) asked that the Sixth United Nations Review Conference, which would mark the 30th anniversary of the adoption of the United Nations Set, be used to launch a World Competition Day. The representative of Egypt proposed this and was seconded by the representatives of Armenia and Pakistan.

**2. Paragraph 16**

In point (d) of the second sentence, *for*

Mr. Russell W. Damtoft, associate director of the Federal Trade Commission of the United States

*read*

Mr. Russell W. Damtoft, associate director, Office of International Affairs, Federal Trade Commission of the United States

**3. Paragraph 49**

Before the last sentence, *insert*

Concerning private enforcement, KPPU emphasized that the Law No. 5/1999 did not contain any provisions that permitted private actors to bring civil claims.

**4. Paragraph 52**

At the end of the last sentence, *add*

in a formal and transparent procedure

**5. Annex II, paragraph 1**

*Add* El Salvador

**6. Annex II, paragraph 5**

*For* Mr. Damtoft Russell, *read* Mr. Russell Damtoft

---