



United Nations Conference on Trade and Development

Distr.: Limited
12 November 2010

Original: English

**Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed
Equitable Principles and Rules for the Control of Restrictive Business Practices**
Geneva, 8–12 November 2010

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

**Resolution adopted by the Conference at its closing plenary meeting
on 12 November 2010**

*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,*

Having reviewed all aspects of the Set of Multilaterally Agreed Equitable Principles
and Rules for the Control of Restrictive Business Practices, 30 years after its adoption, and
recognizing the positive contribution made by the Set and by Intergovernmental Group of
Experts on Competition Law Policy to the promotion of competition culture,

Noting especially the changes which took place in the world economy, as well as the
reforms that developing countries and countries in transition have made over the last three
decades, including the liberalization of economies and the development of competition,

Reaffirming as well the resolutions on strengthening the implementation of the Set
adopted by the previous five United Nations Conferences to Review All Aspects of the Set
of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive
Business Practices,

Taking note of the decision taken by UNCTAD XII in paragraph 104 of the Accra
Accord that “UNCTAD is the focal point on the work on competition policy and related
consumer welfare within the United Nations system. It provides to its member States a
forum for intergovernmental policy dialogue and consensus-building in the area of
competition laws and policies. It should continue to carry out research and analysis in this
area for, and/or in collaboration with, its member States and international networks on
competition policy. UNCTAD should continue to be a forum to discuss competition issues
on the multilateral level, with close linkages to existing networks of competition
authorities, and to promote the use of competition law and policy as tools for achieving
domestic and international competitiveness. UNCTAD’s work in this area should promote

competition law regimes that take into account the prevailing conditions in the developing countries”,

1. *Takes note with appreciation* of the documentation prepared by the UNCTAD secretariat for the Conference: TD/RBP/CONF.7/2, TD/RBP/CONF.7/3, TD/RBP/CONF.7/4, TD/RBP/CONF.7/5, TD/RBP/CONF.7/6, TD/RBP/CONF.7/7, TD/RBP/CONF.7/8, UNCTAD/DITC/CLP/2010/1 Overview, and UNCTAD/DITC/CLP/2010/1;

2. *Takes note in particular* of the revised Model Law and its commentary as a very important guide to the economic development and competition approaches followed on various points by different countries. Recognizes the importance of the independence of decision-making in competition cases. It should be understood that the Model Law and its commentary do not affect the discretion of countries to choose policies considered appropriate for themselves, and that they should be periodically reviewed in the light of reforms and trends at the national and regional levels;

3. *Requests* the UNCTAD secretariat to revise periodically the commentary to the Model Law in the light of legislative developments and comments made by member States for consideration by future sessions of the Intergovernmental Group of Experts, and to disseminate widely the Model Law and its commentary as revised;

4. *Further requests* the UNCTAD secretariat – taking into account increased needs for technical cooperation and technical assistance for all developing countries, including small island developing States, landlocked developing countries and other structurally weak, vulnerable and small economies and countries in transition – to carry out, in consultation with other organizations and other providers so as to avoid duplication, a review of technical cooperation activities, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy by:

- (a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;
- (b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;
- (c) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and subregional seminars;
- (d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of the least developed and other developing countries, and the nature of cooperation undertaken;
- (e) Preparing and executing national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity;
- (f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

5. *Calls upon* Governments to make efforts to increase the participation of experts/representatives – particularly from developing countries, least developed countries

and countries in transition, including those countries which have not yet adopted competition policy or laws – in future sessions of the Intergovernmental Group of Experts, and in the Seventh Review Conference, if approved by the General Assembly;

6. *Urges* intergovernmental organizations and financing programmes and agencies to provide resources for the activities mentioned in paragraphs 4 and 5 above;

7. *Appeals* to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned in paragraphs 4 and 5 above;

8. *Decides* that:

- (a) Future Intergovernmental Group of Experts sessions should include at least four clusters of issues for informal consultations among participants on competition law and policy issues with special focus on practical cases: the clusters should cover:
 - (i) Appropriate design and enforcement of competition law and policy;
 - (ii) International cooperation and networking;
 - (iii) Cost-Effective, complementarity and collaboration in the provision of capacity building and technical assistance to interested countries;
 - (iv) Consultations on the Model Law;
- (b) As part of such consultations, the Intergovernmental Group of Experts should undertake a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning anticompetitive practices and other issues relevant to competition which have been raised by member States;
- (c) Future revisions of the Model Law should be carried out in stages so as to allow adequate time for the secretariat to update the relevant chapters and for in-depth consultations among member States;
- (d) Countries wishing to be peer reviewed at UNCTAD are encouraged to give advance notice to the secretariat so as to adequately prepare the Peer Review report and maximize the opportunities for exchange of views and experiences with other member countries. After an understanding is reached as to the timing of the Peer Review, a detailed agenda and timetable for the peer review should be disseminated by the secretariat at least one month in advance of the session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations, and the likelihood of participation in the consultations by competition experts from all regions should be ascertained;
- (e) A rigorous application of competition policy is a very important way of guaranteeing well-functioning markets, which in turn is a precondition for the efficient use of resources, economic development and social well-being. Competition policy thus impacts not only on the economic environment but also on the organization of society at large. It is in this way that competition policy serves the interests of consumers at large and ordinary citizens. However, as competition and consumer policy are extended into new areas such as emerging markets for the social services traditionally provided by governments, new research and consultations among member States on these issues need to be brought fully to bear on the appropriate design and institutional framework for their application;

9. *Invites* UNCTAD to convene between United Nations Review Conferences two ad hoc expert group meetings on the interface between competition policy and consumer welfare;

10. *Calls upon* States to strive to implement all provisions of the Set to ensure its effective application;

11. *Decides* that, in the light of the strong worldwide trend towards the adoption or reform of competition laws and the development of national competition laws and policies over the period since the Set was adopted, the Intergovernmental Group of Experts should embark on an exercise, upon request from member States and in collaboration with national and regional competition law and policy authorities, to map out and further strengthen common ground among States in the area of competition law and policy in identifying anticompetitive practices that affect the economic development of countries. In this context, the focus of the exercise, inter alia, should be on:

- (a) Identifying “common ground”, i.e. broad similarities in the approaches followed on different competition law and policy questions by governments;
- (b) Shedding light and encouraging exchanges of views in those areas where the identification of “common ground” is more difficult – for example, where there are differences among economic theories, or among competition laws or policies, such as:
 - (i) The role of competition law and policy in the strengthening and improvement of the economies of developing countries and countries in transition and, in particular, the development of the business community;
 - (ii) The interface between competition law and policy, technological innovation and efficiency;
 - (iii) The competition policy treatment of the exercise of intellectual property rights (IPRs) and of licences of IPRs or know-how;
- (c) In-depth analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of anticompetitive practices having effects in more than one country;
- (d) Taking into account economic globalization and liberalization of the economies of developing countries and countries in transition, to identify appropriate measures to help those countries that might be hampered by anticompetitive practices;

12. *Invites* governments, during future consultations in meetings of the Intergovernmental Group of Experts, to clarify the scope or application of their competition laws and policies, with a view to improving mutual understanding about substantive principles and procedures of competition law and policy. In the context of this exercise, governments may wish to discuss:

- (a) How the Set of Principles and Rules might be better implemented, particularly those provisions which have not been adequately implemented so far;
- (b) Techniques and procedures for detecting and sanctioning collusive tendering, including international cartels and other anticompetitive practices;
- (c) The strengthening of information exchange, consultations and cooperation in enforcement at the bilateral and regional levels, including subregional groupings;

- (d) How competition laws and policy should apply to State activities such as regulation of State enterprises, State monopolies, natural monopolies and enterprises with exclusive rights granted by the State; and
- (e) How the benefits of competition laws and policy could be enjoyed by all citizens;

13. *Affirms* the fundamental role of competition law and policy for sound economic development and recommends the continuation of the important and useful work programme within UNCTAD's 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;

14. *Further recommends* that the General Assembly convene a Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, to be held in Geneva, under UNCTAD auspices, in the year 2015.
