

# Informal Expert Group Meeting on Consumer Protection

*Salle XII, Palais des Nations, Geneva*

## SUMMARY OF SUBSTANTIVE ISSUES

**27 March 2015**

1. The Informal Expert Meeting on Consumer Protection was attended by more than 60 participants from over 40 Member States, intergovernmental and non-governmental organizations. Experts exchanged views on the content of the Draft Resolution for consideration by the General Assembly (Draft Resolution) to revise the United Nations Guidelines for Consumer Protection (UNGCP), in preparation for the 7<sup>th</sup> United Nations Review Conference of July 2015.
2. The UNCTAD secretariat recalled that the Informal Expert Meeting was a continuation of the work of the 1<sup>st</sup> Ad-hoc Expert Group Meeting, held in July 2012, the 2<sup>nd</sup> Ad-hoc Expert Group Meeting, held in July 2013, and the last Ad-hoc Expert Group Meeting, held in January 2015. The secretariat outlined that the mandate of the current consultations originated from the decision of the 6<sup>th</sup> United Nations Review Conference, held in 2010, directing the secretariat to hold three expert group meetings. This successive Informal Expert Meeting was called by the secretariat upon request from Member States, in order to collect their views and interests on the latest version of the Draft Resolution. The report of this meeting will be submitted to the 7<sup>th</sup> United Nations Review Conference, along with those of the three Ad Hoc Expert Group Meetings. The statement mentioned that the process of the discussions would link up the interface between competition and consumer policies report and other emerging issues of interest to Member States.
3. The agenda was organized following the proposed Draft Resolution, and was mainly composed of discussions on horizontal issues, e-commerce, financial services, other issues and implementation of the UNGCP. The current version of the Draft Resolution is composed of twenty three perambulatory and nine operative clauses, and includes an Annex containing the proposed revision of the UNGCP. The Annex contains the original text of the UNGCP (as it stands since 1999) and new additions on: scope of application; legitimate needs; principles of good business practices; dispute resolution and redress mechanisms; domestic framework for consumer protection; adequate resources for enforcement; e-commerce; financial services; measures relating to specific areas; international cooperation; and international institutional machinery, which proposes the creation of an Intergovernmental Group of Experts on Consumer Protection Law and Policy (IGE on consumer protection) within the framework of a committee of UNCTAD.

### **A. Opening Session: Presentation of the state of consultations on Draft Resolution and its Annex: UNCTAD secretariat**

4. Mr Guillermo Valles, Director of the Division on International Trade in Goods, Services, and Commodities of UNCTAD, delivered a welcoming address to the meeting. He framed the current process of revision of the UNGCP as a natural outcome of the evolution of world trade in the aftermath of the financial and economic crisis. After years of focusing on the supply side of trade,

multilateral efforts are now also addressing the demand side, as shown in the discussions on the upcoming Sustainable Development Goals, placing consumers at the core of the construction of a global governance agenda. Mr Valles welcomed the proposals put forward by a large number of Member States and thanked the continued engagement of all UNCTAD members in revising the UNGCP, thus matching ambitious goals with pragmatic approaches. Ms Nathalie Homobono, Director General for Competition Policy, Consumer Affairs and Fraud Control of France, and Chair of the Ad Hoc Expert Group Meeting on Consumer Protection of 22 and 23 January 2015, thanked the UNCTAD secretariat for convening the Informal Meeting, and also thanked participants for their high level of engagement, which has yielded concrete results in revising the UNGCP. Ms Homobono recalled that the objective of the meeting was to collect the views of experts on the issues that should be included in the Annex, especially on the ways to ensure the implementation of the UNGCP through an institutional machinery.

5. Mr Valles presented the state of consultations on the Draft Resolution and recalled that the mandate of UNCTAD on consumer protection emanates from both the 6<sup>th</sup> United Nations Review Conference<sup>1</sup> of 2010, and the Doha Mandate<sup>2</sup> of 2012. While the former asked UNCTAD to host Ad Hoc Expert Group Meetings on Consumer Protection, the latter asked UNCTAD to formulate and implement consumer protection policies. The third and last of the Ad Hoc Expert Group Meeting was attended by more than 130 participants from Member States, international organizations and non-governmental organizations, and asked UNCTAD to continue consultations of the Draft Resolution to be submitted for consideration to the 7<sup>th</sup> United Nations Review Conference, which could then, if appropriate, propose it to the General Assembly for approval. In so doing, the secretariat reflected the discussions of the Ad Hoc Expert Meeting in the version of the Draft Resolution circulated on 27 January 2015. More than 50 comments from Member States and other relevant stakeholders were received until 16 March 2015. The secretariat then circulated a revised version on 27 February 2015 for discussion in informal meetings.
6. Two informal meetings were called by the UNCTAD secretariat to continue consultations. The first meeting, held on 17 March 2015, was addressed to Permanent Missions in Geneva and discussed the preamble and the operative clauses. The second meeting of 27 March 2015 was being held for experts to discuss the Annex to the Draft Resolution. Mr Valles informed participants on the discussions held during the first meeting of 17 March 2015. Participants in that meeting were Permanent Missions of the chairs of the Working Groups for the revision of UNGCP (Brazil, France, Gabon, Germany, Malaysia and Portugal), UNCTAD's regional coordinators, and interested Permanent Missions. Delegates welcomed the discussion on the revision of the UNGCP and showed interest in the institutional arrangements proposed therein. In particular, delegates asked for further information on the possible establishment of an IGE on consumer protection, the difference between IGE Meetings and Ad Hoc Meetings, and requested an estimate on the resources a potential IGE on consumer protection would require.
7. On the possible establishment of an IGE on consumer protection, Mr Valles recalled the General Assembly resolution A/RES/35/63 of 5 December 1980, which created the Intergovernmental Group of Experts on Competition Law and Policy (IGE on competition). Its language and

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<sup>1</sup> UNGA RE/ 65/142, paragraph 23

<sup>2</sup> UNCTAD Doha Mandate (TD/500/Add.1), paragraph 56 UNCTAD should: (m) Conduct analysis and research and help developing countries and countries with economies in transition to formulate and implement competition and consumer protection policies, promote the sharing of best practices, and carry out peer reviews with regard to the implementation of such policies.

structure were used in the current Draft Resolution's operative clause 7 and Section VII of the Annex. In 1980, the General Assembly decided on the establishment of the IGE on competition and requested the Trade and Development Board to implement it, also deciding that the necessary resources be made available. If this past practice were to be followed in the current process, several steps would lie ahead. The Draft Resolution under consultations will be submitted to the 7th United Nations Review Conference and presented on the session of 9 July 2015. If the United Nations Review Conference were to adopt it, it would submit it to the General Assembly for approval. According to past experience, the General Assembly could consider the Draft Resolution as soon as December 2015, and it would then refer it to the Trade and Development Board at its next session. Any decision bearing budgetary implications would need to be considered in the discussions of UNCTAD's budget for the period of 2017-2018 at the soonest. Should Member States wish to continue with the current momentum, a provisional arrangement should be agreed upon to cover the period until that time.

8. Mr Valles presented a comparative table showing the different characteristics of Ad Hoc Meetings and IGE Meetings, namely: whereas both are called by the United Nations Review Conference, IGE Meetings are intergovernmental by nature while participants in Ad Hoc Meetings do so in their expert capacity; although both benefit from interpretation, only IGE Meetings benefit from translation and documentation of official UN documents; whereas IGE Meetings have a guaranteed meeting venue on United Nations premises, Ad Hoc Meetings are allocated rooms upon availability; regarding the outcome, IGE Meetings produce agreed conclusions, while Ad Hoc Meetings produce a report, both of which are submitted to the United Nations Review Conference.
9. On the resources that would be required for a possible IGE on consumer protection, Mr Valles noted that there is no official estimate at this stage as the consultations on the Draft Resolution are still on-going. Nevertheless, Mr Valles presented the experience of the existing IGE on competition, which has been standing for more than 30 years. It is held for three days, welcoming over 350 participants from Member States, intergovernmental organizations and non-governmental organizations; it produces approximately 10 sessional documents, and 5 non-sessional documents; its discussions are interpreted into the six United Nations official languages; and it has a team of 6 professional posts and 2 support staff to serve it. Taking into account the potential synergies that would surely arise between the existing IGE on competition and the possible IGE on consumer protection, Mr Valles estimated a possible IGE on consumer protection would approximately require half of the existing resources for the IGE on competition.
10. Experts expressed their interest in the creation of an IGE on consumer protection. One delegate asked for further clarification on the timeframe, while another welcomed the fact that the Trade and Development Board would play a central role if any institutional arrangements were to be decided by the General Assembly. Most experts called for the establishment of an IGE on consumer protection as soon as possible, so as to ensure consumer protection finds a proper forum for policy discussion within the United Nations. Some delegates asked whether it might be possible to use extraordinary procedures to speed up its creation.

## **B. Discussion on Horizontal issues**

11. Ms Teresa Moreira, Director General for Consumer Protection of Portugal, moderated the discussion on horizontal issues, which relate to: definitions and scope of application (Guidelines 2 and 3), principles for good business practices (Guidelines 11) and redress and consumer

protection framework provisions (Guidelines 38 to 46). In particular, the provisions on definitions and scope of application define consumer protection policies and the concept of the "consumer" as such. Guideline 11 contains seven principles for good business practices, namely: (a) fair and equitable treatment; (b) commercial behaviour; (c) disclosure and transparency; (d) education and awareness; (e) protection of privacy; (f) complaints handling; (g) conflict of interests; and (h) cooperation with consumer protection enforcement authorities. The provisions on redress were divided in three sections: F. Dispute resolution and redress mechanisms (Guidelines 38 to 43); G. Domestic Framework for consumer protection (Guidelines 44 to 46); and H. Adequate resources for enforcement (Guideline 46). Ms Moreira asked participants to express their views and concerns on the changes to the Draft resolution.

12. Experts valued the proposed scope of application although expressed different views on the definition of "consumer." While some experts proposed to limit the definition to use for family or household purposes, as contained in other international texts, other experts called for it to also encompass professional purposes for informal one-man undertakings. Most experts welcomed the flexible approach that allows for national laws to adopt wider definitions. One expert asked to include the definition of "provider."
13. Some clauses of Guideline 11 on good business practices, attracted particular attention from experts. There was especial interest in better framing principle (e) on the protection of privacy so as to encompass consumer data but not extend to other kinds of data. Some experts proposed new text on the conflict of interests of principle (g) in accordance with the OECD/G-20 High Level Principles on Financial Consumer Protection. Some experts asked for this clause to be moved to the financial services section.
14. The sections on redress and consumer protection frameworks were welcomed by experts, who asked the secretariat to review the language so as to ensure consistency throughout the text. Various minor language proposals were presented to be taken to consideration in the new drafting. Some non-governmental organizations asked for a reference to the capacity building of consumer organizations.

### **C. Discussion on E-commerce**

15. Ms Nathalie Homobono moderated the session on e-commerce, as contained in the current section K, Guidelines 68 to 72. She opened the floor for experts to share their views on the current drafting. Experts generally agreed with the content of the current draft. There were questions on Guideline 71, on digital content products, as to whether it is necessary or whether it should be modified so as to not prejudice intellectual property issues. While some experts asked for it to be focused on disclosure, other experts proposed to delete that reference.

### **D. Discussion on Financial Services**

16. Dr Sothi Rachagan, Vice-Chancellor of Predana University of Malaysia, moderated the discussion on financial services, as contained in section L. of the Draft Resolution, Guidelines 73 to 77. Experts discussed the opportunity to include a reference to consumers' over-indebtedness. While one expert advocated for dealing with personal insolvency and over-indebtedness, other experts advised against it or believed it was covered by the current reference to responsible lending. One expert proposed to include a precision to Guideline 77 (h) so as to cover consumer

financial data, which was seconded by various others. Some other language modifications were proposed for the new version of the Draft Resolution.

## **E. Discussion on Other Issues**

17. Ms Ana Cândida Muniz, General Coordinator for Consumer and Citizenship Brazil, and Ms Beatrix Lindner, Staff Counsel in Directorate General on International Consumer Affairs Federal Ministry of Justice and Consumer Protection of Germany, moderated the discussion on Other Issues. The issues under discussion were the legitimate need 5(j) on privacy, and the measures relating to specific areas of energy, public services, and tourism (Guidelines 85 to 87, respectively.) Some experts asked for a new legitimate need to be included referring to the access to essential goods and services in line with the spirit of the upcoming Sustainable Development Goals. One expert asked for the deletion of the reference to universal access in Guidelines 85 and 86. New language was proposed for the legitimate need 5j, so as to focus on consumer privacy issues. Experts also called for some adjustments to Guideline 87 to address the specific characteristics of tourism. One expert reiterated its call to include housing as a specific issue.

## **F. Discussion on Implementation**

18. Mr Ferdinand Mangongo, of the permanent mission of Gabon, moderated the discussion on implementation, containing provisions on international cooperation among Member States (Guidelines 91 to 99) and a new section VII on International institutional machinery (Guidelines 104 to 106.) Mr Mangongo recalled the functions that were proposed for the international institutional machinery, namely the creation of an IGE on consumer protection, mirror the functions of the current IGE on competition as contained in Section G of the General Assembly resolution A/RES/35/63 of 5 December 1980. The two additional functions that have been proposed for a possible IGE on consumer protection are to conduct voluntary peer reviews and to provide capacity building and technical assistance to developing countries and economies in transition on consumer laws policies, as mandated in the Doha Ministerial Declaration.<sup>3</sup> On the section on international cooperation among Member States, one expert asked to delete the reference to national laws and international agreements of Guideline 98. On the section on international institutional machinery, the majority of experts expressed support for the current proposed functions of the IGE on consumer protection and valued this initiative as a game changer in international consumer protection. One expert presented a letter signed by all members of the Iberoamerican Forum of Governmental Agencies on Consumer Protection, calling for a permanent institutional structure to be created within UNCTAD to deal with consumer protection at a global level. Some experts showed interest in getting more acquainted with the work of the existing IGE on competition to better understand the proposal on the IGE on consumer protection. Several experts proposed to delete the references to "upon consensus" throughout this section, while other experts preferred to maintain these to ensure work programmes of the IGE are set by consensus.
19. The discussion moved on to the content of operative clause 7, which contains two alternative options for the General Assembly: either "decides to establish" an IGE on consumer protection, or "requests the Trade and Development Board [...] to consider the establishment" of an IGE on consumer protection. All experts agreed on the benefits of establishing an IGE on consumer protection. While a large majority of experts expressed preference for the first option, some

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<sup>3</sup> Op. cit. 2

others asked for further information on the mandate and functions of the proposed IGE on consumer protection. As way of comparison, Mr Valles recalled the successes of the current IGE on competition. Firstly, it serves as a catalyzer for UNCTAD's three pillars of activity; policy analysis, technical assistance and consensus building. Secondly, its Voluntary Peer Reviews have been praised for contributing to the improvement of competition laws and institutions at the national level and for bringing together donor and beneficiary countries. Thirdly, it has found ways to successfully complement the work of other fora, such as the ICN and the OECD, without unnecessary duplication of efforts. Finally, it has shown how cooperation and soft law approaches are fit for bringing about significant positive impact. Experts welcomed the review of the IGE on competition, and expressed their interest in bringing about an IGE on consumer protection that may deliver the same good results. Experts asked the secretariat to continue consultations so as to find a formula that suits the opinions and interests of all Member States on the drafting of operative clause 7.

## **G. Conclusions**

20. Mr Valles thanked participants for the constructive and fruitful discussion. The UNCTAD secretariat will compile and process the opinions and interests expressed during the meeting and will produce a new Draft Resolution. In order to do so, some deadlines were proposed and accepted. Experts are invited to send their written opinion and contributions to the secretariat ([Arnaud.Izquierri@unctad.org](mailto:Arnaud.Izquierri@unctad.org) and [Graham.Mott@unctad.org](mailto:Graham.Mott@unctad.org)) before 10 April 2015. The secretariat will revise the current draft and will circulate the resulting version on the first week of May. If needed, an informal meeting could be called by the end of May to discuss pending issues.