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Agenda Item 3e. Report of the discussion group on international cooperation

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International Cooperation in Competition Investigations: a Private Sector Contribution

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International Cooperation

- Informal and formal cooperation is gaining traction
- Agencies that have not participated yet have not missed the boat – the area is still relatively new and developing worldwide
- The work of UNCTAD, ICN and OECD in this area has been extensive over the past few years
- But more can be done to remove obstacles and address other issues:
  - Awareness, Trust and Confidence
  - Effectiveness and procedural fairness when cooperation is appropriate and efficient
The FAS and COFECE Proposals

• The work done at UNCTAD via the Russian FAS Proposal (the Toolkit) and the Mexican COFECE Proposal significantly move things forward to assist in particular younger agencies looking to cooperate

• I see the two proposals as important and complementary
  • The COFECE Proposal -> Substantive/Practical
    • Addressing issues related to awareness, know-how, trust, contacts/network
  • The FAS Proposal -> Procedural
    • Providing a concrete framework for cooperation
A Way Forward – Discussion Group 2018/19

• My suggestion is to merge the two Proposals into a form of “Practical Guide” focussed on key issues and steps relevant to younger agencies

• Including sections on:
  • **Substance** – “What is it?”: formal and informal cooperation types; what other agencies do (to promote convergence/understanding); information exchange; contacts/network (COFECE)
  • **Procedure** – “How to do it”: for those ready to engage (FAS Toolkit)

• UNCTAD Obstacles Survey – use the results to guide the *Practical Guide*
Two additional suggestions

• In addition to the points brought out in the COFECE/FAS Proposals and UNCTAD Obstacles Survey, from a private sector perspective, consider including sections on:
  • **Fairness and Due Process**: to ensure the rights of those being investigated or participating in an investigation are respected and protected throughout cooperation
  • **Waivers of confidential information**: a key tool, focusing on how to create a “waiver friendly” environment by promoting trust/confidence with the business community/private bar – see my 2014 IGE contribution on this subject
The Five “Cs” of Cooperation

• No matter how you do it, keep in mind these guiding principles when creating cooperation policy/structures
  • Contacts – who to call
  • Confidence – understanding what it is/how to do it
  • Confidentiality – protect confidential information
  • Cash-constraints – make it practical and do-able
  • Convergence – harmonized regimes cooperate better, seek out and adopt international best practices
Thanks!

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