Intergovernmental Group of Experts on Competition Law and Policy

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Friday, 13 July 2017
Morning Session

Agenda Item 3d. Review of chapters V and VI of the Model Law on Competition

Presentation by
UNCTAD

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INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY
UNCTAD MODEL LAW ON COMPETITION

- A reference document used as a benchmark for competition law and policy drafting and revising purposes.

- Composed of two parts: Part 1, a permanent guide including model competition law provisions and is NOT subject to revision.

- Part 2 - Commentaries to relevant Chapters.

- Part 2 is a compilation of competition law and enforcement practices from both advanced and young competition regimes.
REVISION OF THE UNCTAD MODEL LAW ON COMPETITION

- WHAT IS REVISED? The commentaries in Part 2 of the Model Law are revised every few years by the UNCTAD secretariat.

- The mandate to revise the Model Law is given by the UN Conference to Review the UN Set on Competition held every five years.

- Member States CAN contribute to the revision if they send their inputs by END OF FEBRUARY of the year following the IGE.

- For IGE 2018, the secretariat revised the commentaries to Chapters 5 and 6 of the Model Law.
REVISION OF CHAPTER V
NOTIFICATION OF AGREEMENTS

▪ Last revised in 2010. The 2018 Revision includes:

▪ Reinforced comparison of *ex ante* and *ex post* notification regimes in terms of advantages and disadvantages of both regimes, especially for young competition agencies.

▪ Updated information on competition legislation and authorities of jurisdictions mentioned in Part 2.

▪ Additional examples from various jurisdictions on:
  ▪ A new table on types of notification regimes in Australia, COMESA, Italy, Albania, Singapore and Turkey, are provided.
  ▪ Review standards and exemptions (Australia)
Last revised in 2010. The 2018 Revision includes:

Updates of information to reflect changes in competition legislation or institutions in relevant jurisdictions.

Additional examples on:

- **Jurisdictional thresholds** in voluntary merger control regimes from Hong Kong, China and Mauritius; in mandatory merger control regimes from Canada, Chile and Israel.
- **Substantive assessment criteria** from Costa Rica, India.
- **Remedies** from the Russian Federation.
REVISION OF CHAPTER VI
MERGER NOTIFICATIONS (CONT’D)

- A new section on “Recent enforcement trends”, including updates on:

  - Saudi Arabia – increase in merger notifications; direct enforcement by the Competition Council.
  - China – increased reviews of mergers between TNCs; recent big merger cases reviewed by MOFCOM and remedies imposed.
  - European Commission – Simplified procedures for mergers that do not raise competition concerns.
REVISION OF CHAPTER VI
MERGER NOTIFICATIONS (CONT’D)

- New section on “Recent enforcement trends”, including updates on:
  
  - Novelties in merger review: Examine the impact of a merger on innovation competition (Dow/DuPont merger).
  
  - Substantial increase in concentration in high-tech markets with examples from Microsoft-Skype and Microsoft-LinkedIn mergers – European Commission’s approach.
  
  - Challenges in assessing competition effects in mergers in technology markets: relevant market definition; and innovation competition - United States FTC approach to some recent cases.
THANK YOU FOR YOUR ATTENTION!

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