Intergovernmental Group of Experts on Competition Law and Policy

18th SESSION

10-12 July 2019

Room XVII, Palais des Nations, Geneva

Friday, 12 July, 2019

Revision of UNCTAD Model Law on Competition, Part 2 – Commentaries Chapter IX and X

Presentation by Intergovernmental Group of Experts on

Competition Law and Policy - UNCTAD

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INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY







Revision of UNCTAD MODEL LAW ON COMPETITION, Part 2 - Commentaries, CHAPTERS IX AND X





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.
- 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 <u>THE END OF FEBRUARY</u> of the year following the IGE.



REVISION OF CHAPTER IX UNITED NATIONS CONFERENCE ON TRAD THE ADMINISTERING AUTHORITY AND ITS ORGANIZATION

- The title of competition authority : Commission, Council, Tribunal, Authority
- Regardless of the title, the core is the Independence from other government bodies or political groups, especially in decision-making
- Dependence : budgetarily and personally
- The composition of members
- Stipulating the appointment procedure and the number of member (flexible or fixed) in competition law
- Qualification of members
 - Requirements in competition law : legal expertise, economic expertise, public administration skills, regulatory enforcement experience, etc.
 - Many legislations state that the member should not have interests which would conflict with the functions to be performed

REVISION OF CHAPTER IX UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT THE ADMINISTERING AUTHORITY AND ITS ORGANIZATION (CONT'D)

- Tenure of member : Various from country to country
 - 10 years (Mexico), 8 years (UK), 7 years (Italy), 6 years (Armenia), 5 years (Indonesia), 4 years (Brazil), 3 years (Republic of Korea), indefinite period (Switzerland)
 - Common things : Have the possibility of being reappointed only for a single period.
- Other measures for the independence of decision-making from political reasons
- Prior stipulation on the removal conditions of members in competition such as being sentenced to disciplinary punishment or dismissal law (most of competition authorities)
- Possible immunity of members against prosecution or lawsuit (Pakistan)



REVISION OF CHAPTER X FUNCTIONS AND POWERS OF THE ADMINISTERING AUTHORITY

- The functions and powers of the Administering Authority could include
- Making inquiries and investigations
- Taking the necessary decisions
- Undertaking studies, publishing reports and providing information to the public
- Issuing forms and maintaining a register, or registers, for notifications
- Making and issuing regulations
- Promoting exchange of information with other States
- Confidentiality
- Reasonable safeguards, Protecting the identity of persons who provides information and protecting the deliberations of government in regard to current or still uncompleted matters

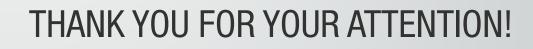


REVISION OF CHAPTER X UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT FUNCTIONS AND POWERS OF THE ADMINISTERING AUTHORITY

- Last revised in 2010. The 2019 Revision includes:
- Updates of detailed information to reflect changes in competition legislation or institutions in relevant jurisdictions (but there are no big change on the function and powers of the jurisdictions)
- Additional examples on:
- More than 60 jurisdictions operate leniency program, and Brazil, Russia Federation and South Africa have active leniency programmes, but most of medium and low income countries have no leniency programme
- Malaysia has the protection of confidential information and that means trade, business or industrial information that has economic value and is not generally available to or known by others







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SEVENTEENTH SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY