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**Sixteenth session**  
 Geneva, 5–7 July 2017

**Report of the Intergovernmental Group of Experts on  
Competition Law and Policy on its sixteenth session**

Held at the Palais des Nations, Geneva, from 5 to 7 July 2017

**Contents**

	<i>Page</i>
I. Agreed conclusions .....	2
II. Chair's summary .....	4
III. Organizational matters .....	13

**Annexes**

I. Provisional agenda for the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy .....	14
II. Attendance.....	15

## I. Agreed conclusions

*The Intergovernmental Group of Experts on Competition Law and Policy,*

*Recalling* the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

*Taking into account* the resolution adopted by the 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 (Geneva, Switzerland, July 2015),<sup>1</sup>

*Considering* the provisions related to competition issues adopted by the fourteenth session of the United Nations Conference on Trade and Development (UNCTAD XIV; Nairobi, July 2016), including the provisions in paragraphs 69 and 76 (x) of the Nairobi Maafikiano,<sup>2</sup>

*Reaffirming* the fundamental role of competition law and policy for sound economic development and the need to further promote the implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

*Noting* that the 2030 Agenda for Sustainable Development and the outcomes of UNCTAD XIV focus on addressing the opportunities and challenges of globalization for development and poverty reduction,

*Underlining* that competition law and policy is one of the key instruments for addressing the benefits and challenges of globalization, including by enhancing trade and investment, resource mobilization and the harnessing of knowledge and by reducing poverty,

*Recognizing* that an effective enabling environment for competition and development should include both national competition policies and international cooperation to deal with cross-border anti-competitive practices,

*Recognizing further* the need to strengthen the work of UNCTAD on competition law and policy to enhance its development role and benefits for consumers and business,

*Noting with satisfaction* the important written and oral contributions from competition authorities and other participants which contributed to a rich debate during its sixteenth session,

*Taking note with appreciation* of the documentation prepared by the UNCTAD secretariat for its sixteenth session and of the peer review of the competition law and policy of Argentina facilitated by the UNCTAD secretariat,

1. *Expresses appreciation* to the Government of Argentina for volunteering for a peer review of competition law and policy and for sharing its experiences, best practices and challenges with other competition agencies during the sixteenth session of the Intergovernmental Group of Experts, and to all Governments and regional groupings participating in the review; and recognizes the progress achieved to date in the elaboration and enforcement of the competition law of Argentina;
2. *Invites* all member Governments and competition agencies to assist UNCTAD on a voluntary basis by providing experts or other resources for future and follow-up activities in connection with voluntary peer reviews and their recommendations;
3. *Decides* that UNCTAD should, in the light of experiences with voluntary peer reviews undertaken to date by UNCTAD and others and in accordance with available resources, undertake a further voluntary peer review of the competition law and policy of a

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<sup>1</sup> TD/RBP/CONF.8/11.

<sup>2</sup> TD/519/Add.2.

member State or regional grouping of States during the seventeenth session of the Intergovernmental Group of Experts, to be held from 11 to 13 July 2018;

4. *Underlines* the importance of international cooperation as recognized in section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including informal collaboration among agencies; emphasizes the importance of regional cooperation in the enforcement of competition law and policy; and invites competition authorities to strengthen their bilateral and regional cooperation;

5. *Underlines* the importance of a merger control regime for ensuring competitive markets while stimulating investment and innovation, especially in developing countries;

6. *Underlines* the benefits of enhancing and strengthening enforcement capacities and promoting a competition culture in developing countries and countries with economies in transition through capacity-building and advocacy activities targeting all relevant stakeholders; and requests the UNCTAD secretariat to disseminate the summary of the discussions of the Intergovernmental Group of Experts on this topic to all interested States, including through its technical cooperation activities and peer reviews;

7. *Calls upon* UNCTAD to promote and support cooperation between Governments and competition authorities in accordance with the Accra Accord (paragraphs 103 and 104), the Nairobi Maafikiano (paragraphs 69 and 76 (x)) and the resolution adopted by the 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 (paragraphs 3 and 16);

8. *Requests* the UNCTAD secretariat to prepare studies for the seventeenth session of the Intergovernmental Group of Experts, to facilitate consultations on the following topics, chosen from among the clusters in the resolution adopted by the 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:

(a) Challenges faced by developing countries in competition and regulation in the maritime transport sector;

(b) Competition issues in the sale of audiovisual rights for major sports events;

9. *Requests* the UNCTAD secretariat to facilitate the establishment by member States of a discussion group on international cooperation, open to participation by member States on a voluntary basis, to pursue exchanges on and debate the modalities for facilitating cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and to report to the seventeenth session of the Intergovernmental Group of Experts;

10. *Requests* the UNCTAD secretariat to prepare, for the consideration of the seventeenth session of the Intergovernmental Group of Experts, an updated review of capacity-building and technical assistance activities, taking into account information to be received from member States no later than 28 February 2018;

11. *Requests* the UNCTAD secretariat to prepare, in cooperation with other relevant international organizations, a compilation of best practices related to the implementation of competition law and policy, to assist developing countries and countries with economies in transition;

12. *Requests* the UNCTAD secretariat to prepare a further revised and updated version of chapters 5 and 6 of the Model Law on Competition on the basis of submissions to be received from member States no later than 28 February 2018;

13. *Notes with appreciation* the voluntary financial and other contributions received from member States; invites member States to continue to assist UNCTAD on a voluntary basis in its capacity-building and technical cooperation activities by providing experts, training facilities or financial resources; and requests the UNCTAD secretariat to pursue its capacity-building and technical cooperation activities, including training, and, where possible, focus on maximizing their impact in all interested countries.

*Closing plenary*  
7 July 2017

## **II. Chair's summary**

### **A. Opening plenary**

1. The sixteenth session of the Intergovernmental Group of Experts on Competition Law and Policy was held in Geneva from 5 to 7 July 2017. Representatives from States members of UNCTAD, including the heads of competition and consumer protection authorities, and from intergovernmental organizations, non-governmental organizations and academia, as well as competition experts, attended the session.

2. In her opening remarks, the Deputy Secretary-General of UNCTAD emphasized the significant role of competition law and policy in the achievement of the Sustainable Development Goals, more than might have been recognized, and the role of competition as a process that improved efficiencies, with competition law and policy essential in any market economy, citing the growth trend in the number of countries with competition laws – from 20 in the 1980s to 130 at present – as evidence of this fact. The Deputy Secretary-General highlighted the increase in the adoption and implementation of competition laws as an indication of the need to identify new ways to cooperate better and for UNCTAD to occupy a crucial position in bringing together experts to exchange experiences in addressing existing and emerging challenges and identifying common solutions. She encouraged member States and intergovernmental organizations to utilize UNCTAD as a platform to work together on matching requests for exchanges of experiences with expertise and to assist authorities in dealing with competition cases. In addition, she highlighted that competition agencies needed to adapt to the changes that came with trade and investment in a globalized world, as these changes presented new challenges in dealing with increased numbers of cross-border mergers and acquisitions and anti-competitive conduct such as cartels, which affected greater numbers of people and markets. Finally, the Deputy Secretary-General recalled the need to consider relocalization of the economy, including other environmental factors such as emissions, in order to avoid negative effects on communities.

3. The representative of one regional group commended the role of UNCTAD in guiding developing countries in competition law and policy issues. He noted that the regional capacity-building programme in the Middle East and North Africa, on competition, consumer protection, anti-corruption, gender equality and good governance, in collaboration with the Arab Group, strengthened the position of UNCTAD, and he urged UNCTAD to continue to provide support.

4. One delegate commended UNCTAD for its assistance in developing a legal and institutional framework for competition law enforcement in Botswana, noting that the national competition authority had matured and made notable progress in enforcement in its six years of existence. In view of these milestones, the delegate requested a voluntary peer review of the competition law and policy of Botswana to be conducted in 2018, to ascertain the effectiveness of competition law enforcement in the country.

5. Another delegate thanked UNCTAD for the provision of consistent support since the beginning of the implementation of competition law in China, and cited various activities undertaken in collaboration with UNCTAD, including capacity-building programmes.

6. Finally, another delegate referred to the voluntary peer review of the competition law and policy of Uruguay conducted in 2016, the findings and recommendations of which

had been discussed at the fifteenth session of the Intergovernmental Group of Experts in 2016. The recommendations had also been presented to the authorities in Uruguay responsible for their implementation. The delegate expressed her appreciation of the work of UNCTAD and stated that the peer review exercise had provided an opportunity to explore the strengths and weaknesses of the competition regime, and ways to improve it. Implementation of the recommendations would enhance competition and competitiveness in the economy of Uruguay.

## **B. Work programme, including capacity-building in and technical assistance on competition law and policy: Capacity-building and technical assistance activities implemented**

(Agenda item 3 (a))

7. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. The discussion was chaired by the Chair of the Intergovernmental Group of Experts. Panellists comprised the Chief Secretary of the Commission on Protection of Competition, Bulgaria, as well as representatives from the following economies and institutions: University of New South Wales, Australia; Superintendency of Competition, El Salvador; Japan Fair Trade Commission; and Ministry of National Economy, State of Palestine.

8. The UNCTAD secretariat presented testimonies from the beneficiaries of UNCTAD capacity-building programmes and highlighted technical assistance programmes that aimed to develop sound institutional and regulatory frameworks for effective competition law enforcement in developing countries and countries with economies in transition, including the following regional efforts: programme for Competition and Consumer Protection for Latin America, funded by Switzerland; capacity-building programme in the Middle East and North Africa, funded by Sweden; and project on strengthening competition for the Central African Economic and Monetary Community, funded by the European Union. At the national level, UNCTAD had completed a United Nations Development Assistance Framework project in Albania and a project in Zimbabwe funded by the European Union, and was implementing a capacity-building project in Ethiopia funded by Luxembourg (TD/B/C.I/CLP/43). UNCTAD cooperated with other development partners and competition authorities in supporting their capacity-building efforts in competition law and policy, for example in member States of the Commonwealth of Independent States with the Federal Antimonopoly Service of the Russian Federation; in Indonesia with the Japan Fair Trade Commission and Japan International Cooperation Agency; and in the Philippines with the Association of Southeast Asian Nations countries and the German Cooperation Agency. Other UNCTAD initiatives included the Sofia Competition Forum, bringing together competition officials from countries in Eastern and South-Eastern Europe to discuss common issues and develop guidelines to assist them in improving their legal frameworks. In 2005, UNCTAD had been given a mandate to support developing countries and countries with economies in transition through voluntary peer reviews of competition law and policy, unique in the multilateral arena. Such reviews served as a tool to identify areas for improvement in the competition regime of the country undergoing review, develop recommendations and implement them through a capacity-building project tailored to the country.

9. One delegate shared experiences as a beneficiary of the programme for Competition and Consumer Protection for Latin America, stating that, since 2011, competition authorities in the region had held annual seminars on trade and competition policies to discuss topics related to both policy areas, thereby creating synergies between the trade and competition communities and promoting competition policy among trade policymakers.

10. Many delegates, as beneficiaries of UNCTAD capacity-building programmes, expressed their appreciation to UNCTAD and donor countries for strengthening competition law and policy and building human resources and institutional capacities that enabled them to effectively enforce competition laws, and also highlighted the contribution of regional UNCTAD programmes in enhancing cooperation between competition agencies in their respective regions. In addition, in 2015, subsequent to the fourteenth session of the

Intergovernmental Group of Experts, UNCTAD and the Japan Fair Trade Commission had organized a training course on investigative tools for case handlers for African countries. Its success had led to the organization of a second course, held from 10 to 12 July 2017.

11. One delegate, as a beneficiary of the capacity-building programme in the Middle East and North Africa, requested assistance in training judges involved in the review of competition cases. Another delegate stated that there was no one-size-fits all in capacity-building and that each programme had to be tailored, taking into account the specific needs of the beneficiary country. Several delegates commended the support of UNCTAD in strengthening their national competition regimes. The representative of one intergovernmental organization stressed the importance of staff exchange programmes for younger agencies and the detachment of officials from such agencies to more experienced agencies, suggesting that training workshops could be tailored to actual case handling and investigation rather than theoretical knowledge and to identifying markets and cases on which competition authorities could work together. For example, the Common Market for Eastern and Southern Africa, in cooperation with UNCTAD, contributed to staff training on merger reviews in Ethiopia.

12. The representative of another intergovernmental organization detailed a new regional programme on competition and consumer policy for eight members of the Central African Economic and Monetary Community to be implemented by UNCTAD; the programme aimed to establish and consolidate an effective institutional and regulatory framework on competition and consumer policy in Central Africa.

13. Finally, the Economic Community of West African States expressed interest in benefiting from UNCTAD technical assistance in the field of competition policy.

### **C. Work programme, including capacity-building in and technical assistance on competition law and policy: Challenges faced by young and small competition authorities in the design of merger control**

(Agenda item 3 (b))

14. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. An introduction by the secretariat highlighted the challenges faced by young and small competition authorities in the design of a merger control regime (TD/B/C.I/CLP/45). The discussion was chaired by the Vice-Chair-cum-Rapporteur of the Intergovernmental Group of Experts. Panellists comprised representatives from the following countries and intergovernmental organizations: Albania, Botswana, Egypt, Kenya, Paraguay, the Philippines and the West African Economic and Monetary Union.

15. The keynote speaker, a partner at Bredin Prat, France, noted the challenges common to all national competition authorities, yet specific to young and small authorities, such as credibility of the institution. The obligations to be respected by enterprises concerned notifications and deadlines to be complied with under the principles of celerity, transparency and legal certainty. Under control procedures, the rules had to be clear. In some jurisdictions, public interest targets such as industrial policy, employment and economic and social policy were taken into account in the decisions of the authority. National competition authorities had to be independent and efficient in order to have credibility, and merger control systems needed to be adapted to the circumstances and needs of each jurisdiction. Authorities needed to set priorities and, above all, fight cartels.

16. The panellist from Paraguay referred to the national constitution of 1992, which had introduced the principle of a free market. The competition law of 2013 included an ex ante notification regime. Commissioners had been appointed in 2015; currently, the authority had nine officials, including three commissioners. However, it was difficult to analyse mergers due to short deadlines and a lack of resources.

17. The panellist from Albania shared experiences from the national merger control jurisdiction and the challenges faced in this area. The law provided a clear legal arrangement regarding the concept of concentrations, requiring mergers to be notified

before their conclusion, following which the authority would analyse the economic efficiency of the operation in markets. Current challenges involved providing adequate training to authority members and improving the analysis of mergers, which included incorporating remedies in adopted decisions.

18. The panellist from Botswana noted that the national competition authority had been established in 2011. The assessment of mergers was based on prevention or the substantial lessening of competition test, the acquisition of a dominant position and public interest considerations, including maintaining and promoting exports and employment, advancing citizen empowerment initiatives, enhancing the competitiveness of small and medium-sized enterprises and promoting technical and economic progress, as well as industrialization and how national industries competed internationally.

19. The panellist from Egypt noted that there had been an evolution in the national field of concentration control and that the competition authority had revealed the growth of concentration operations, especially in the international arena. More international cooperation was needed. Currently, there was a proposal to establish more appropriate notification thresholds and an evaluation system based on the analysis of efficiencies, to avoid the creation or strengthening of companies in a dominant position.

20. The panellist from the Philippines noted that the national economy had been on a trajectory of higher growth since the beginning of the current decade. However, a number of challenges remained, including in poverty reduction and with regard to the persistence of high levels of inequality in the distribution of wealth, income and opportunities. The main goals related to the need to focus on staff capacity-building, to ensure the highest standards in merger reviews and a high sense of integrity and professionalism.

21. The panellist from Kenya stated that challenges for the competition authority included striking the right balance between public interest and competition assessments in merger control; balancing different national economic policy goals such as on industry, investment and employment with competition policy; and addressing capacity and budget constraints. Kenya had been the first country to undergo a voluntary peer review, and had benefited from the peer reviews of other countries, the expertise of developed agencies and International Competition Network programmes.

22. The panellist from the West African Economic and Monetary Union stated that the competition authority of the Union had rules in four areas, namely antitrust agreements, the prohibition of a dominant position, prohibition of State aid and merger control. Merger control was an ex post regime based on an abuse of a dominant position, and implemented in conditions provided for in legislation.

23. One delegate noted that the competition authority of Austria was young and small, and struggled with limited numbers of staff to control cartels, mergers and other anti-competitive practices, as they had a limited budget and faced an increasing number of mergers each year. Another delegate noted that the challenges faced by the competition authority of Algeria, established in 1995, were similar to those faced by other authorities. The relevant law had been revised in 2003 – notification was voluntary and State-owned enterprises were not obliged to notify of mergers – and only one notification had been received since the revision.

24. One delegate noted that Italy had a mandatory merger notification regime. Previously, there had been two thresholds, namely combined national turnover for individual undertakings and turnover of the acquired entity, which resulted in a high number of notifications of mergers that would not affect competition, and was burdensome for the authority. Under the revised law of 2012, thresholds were made cumulative instead of alternative, leading to a decrease in the number of merger notifications.

25. Another delegate noted that the challenges for some jurisdictions included the informal nature of the economy, the lack of a competition culture and a lack of interest by political authorities. Yet another delegate detailed the experiences of the Ministry of Commerce of China, responsible for merger reviews. By the end of 2016, 1,719 cases had been reviewed, and only two had been rejected. The design of remedies was one of the biggest challenges, and the design of an exemption regime was crucial. The conditions of

this regime were satisfied if a merger was in the public interest and, under the law in China, firms might merge even if the merger could lead to a lessening of competition.

26. Another delegate noted that Argentina had had a merger control regime for 18 years yet the National Commission for the Defence of Competition was 37 years old. A minimum number of staff members were needed for merger control. One available tool was to fast track procedures to rapidly review those merger cases that did not have important competition-related effects. In addition, the delegate noted that the Caribbean Community needed to adapt its regime to local circumstances, as done in the region. Initially, it had encouraged mergers in order to be able to compete internationally, but the situation had now changed.

27. Finally, another delegate noted that the merger control regime in India had started in 2011, and that in 2016, over 600 cases had been reviewed. Major problems included the growth dilemma, or dynamic efficiency versus allocative efficiency. Electronic commerce and new emerging markets made market definitions a challenge, and another challenge lay in the availability of data.

**D. Work programme, including capacity-building in and technical assistance on competition law and policy: Enhancing international cooperation in the investigation of cross-border competition cases – Tools and procedures**

(Agenda item 3 (c))

28. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. In opening the discussion, the UNCTAD secretariat took stock of efforts undertaken to promote cooperation at national, regional and international levels and the tools and procedures that had been identified and their application in dealing with competition cases, emphasizing that a concerted effort was needed to promote international cooperation in dealing with cross-border anti-competitive practices (TD/B/C.I/CLP/44). Panellists comprised the President of the competition authority of France and the President of the National Institute for the Defence of Competition and the Protection of Intellectual Property, Peru, as well as representatives from the following countries and intergovernmental organizations: Japan Fair Trade Commission; Federal Trade Commission of the United States of America; and Competition Commission of the Common Market for Eastern and Southern Africa.

29. The keynote speaker, the Head of the Federal Antimonopoly Service of the Russian Federation, underscored the need for cooperation in competition issues in the current globalized and digitalized world. Access to information and data was critical as it dictated everything in this world. In 2016, Brazil, China, India, the Russian Federation and South Africa had concluded an agreement to further their cooperation, including the creation of working groups on the pharmaceutical sector, intellectual property, global food value chains and the automobile industry. The Head proposed the establishment of practical tools of cooperation among competition agencies based on section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and presented a draft toolkit entitled “International cooperation of competition authorities on combating restrictive business practices of transnational corporations and transborder violations of rules of competition”, encompassing mutual notifications, information exchanges, international consultations and joint market analyses. Finally, the Head proposed the creation of a discussion group within the Intergovernmental Group of Experts to study ways to enhance cooperation under section F.

30. The President of the competition authority of France stressed that competition agencies needed to be effective at the international level to deliver on their mandates. The authority cooperated through capacity-building with young authorities and engaged in enforcement cooperation. The European Competition Network was a good example of regional cooperation. Since 2004, the Network had allowed for the decentralization of competition law enforcement and smoother cooperation among national authorities, which had yielded a uniform enforcement of competition law and led to the principle of



subsidiarity in enforcement between national and regional authorities. The Network also allowed for consultations, information exchanges and joint enforcement action among its members. All investigations were communicated to other authorities participating in the Network, allowing for the early signal of cases. Before making a decision in a case with an impact at the European level, authorities submitted draft decisions for comments from participating peers. The President emphasized the need for stronger informal cooperation between UNCTAD and the Organization for Economic Cooperation and Development, and supported the proposal to create a discussion group that would help achieve international efforts in protecting competition.

31. The President of the National Institute for the Defence of Competition and the Protection of Intellectual Property, Peru, reviewed the national history of international cooperation, highlighting the Lima Declaration between Chile, Colombia and Peru, under the auspices of UNCTAD, which allowed for information exchanges in competition cases. Since 2015, the authority had concluded memorandums of understanding that had facilitated cooperation without the need to sign international treaties. The main characteristics of modern cooperation agreements included consultations, transparency and technical assistance. Such agreements also included confidentiality clauses, whereby all information shared with other authorities was presumed to be confidential and required the agreement of the parties prior to being shared with third parties. Further, if either party identified anti-competitive practices with cross-border implications, they were expected to inform the other party of any investigations or proceedings. The President stressed the importance of international agreements for joint international actions, and requested the Intergovernmental Group of Experts to consider the proposal on cooperation, including mutual recognitions of decisions.

32. The panellist from the Japan Fair Trade Commission noted that the international agreements of the Commission, both formal and informal, included waivers for confidential information, allowing for exchanges of information on markets and companies involved, dates of simultaneous dawn raids and lead agencies of investigations. While the Commission had not been permitted to share confidential information under first-generation agreements, following the recommendation of the Organization for Economic Cooperation and Development in 2014 concerning international cooperation on competition investigations and proceedings, under second-generation agreements, confidential information could be shared without the need for a waiver. Since 2015, the International Competition Network had encouraged international cooperation on the sharing of non-confidential information in cartel investigations without the need for any formality other than online registration. The panellist identified the lack of incentives for international cartelists to apply for leniency in developing countries as one of the challenges in initiating cross-border cartel enforcement, and requested UNCTAD to support regional and international initiatives and to promote cross-border information exchanges.

33. The Chief Executive Officer of the Competition Commission of the Common Market for Eastern and Southern Africa highlighted that most of its member States did not have a legal provision in their laws to cooperate internationally. The treaty allowed for notifications, information exchanges, consultations and the coordination of actions, and the mandate of the Common Market was to provide support and assistance to, and cooperate with, national authorities. It allowed for informal cooperation between its members and joint actions. The Common Market had been particularly active in promoting cooperation in cross-border merger investigations and provided advisory opinions to member States. For example, it had assisted Madagascar, Seychelles and Uganda in drafting competition and consumer protection laws. The Chief Executive Officer expressed concern as to whether real cooperation could take place between developed and developing country agencies, given the imbalance of capacities and resources.

34. The panellist from the Federal Trade Commission of the United States elaborated on the current challenge of making cooperation work with developing country agencies. A survey by the Organization for Economic Cooperation and Development in 2013 had found that 52 per cent of agencies had experience with cooperation but only 13 per cent cooperated on a regular basis, and the greatest obstacles to cooperation were legal barriers, low willingness to cooperate and differing legal standards. The panellist stated that

UNCTAD had a good understanding of the needs of developing countries and provided an excellent forum to promote international cooperation.

35. The panel discussion was followed by an address by the former Director of the Division on International Trade in Goods and Services, and Commodities, UNCTAD, who highlighted that good governance of globalization required international cooperation on competition policy to ensure its sustainability, and stressed that no trade policy could be successful without competition policy.

36. An interactive debate ensued. Several delegates detailed the characteristics of their cooperation agreements. One delegate highlighted the active role of UNCTAD in exploring ways of cooperation between competition agencies. Another delegate concurred that international cooperation played an important role in competition enforcement and shared the experience of a case in 2010 of a compressors cartel – involving Brazil, the United States and the European Union, in which simultaneous dawn raids had been carried out, thereby enhancing the quality of evidence – and supported the proposed cooperation toolkit.

37. The representative of one intergovernmental organization detailed a memorandum of understanding of the Southern African Development Community on inter-agency cooperation, establishing working groups on mergers, cartels and research. The main objective of the memorandum, signed in 2016, was information sharing and joint enforcement, research and capacity-building activities.

38. The representative of one non-governmental organization expressed concern regarding protectionist trends on the international economic agenda, which might have an impact on international cooperation on competition.

39. One delegate referred to international mergers with implications for Kazakhstan, leading to high prices, and stressed the need to establish a global mechanism under an international treaty such as a convention on fighting cartels; he invited delegates to support the initiative to develop and adopt such a convention and the corresponding toolkit. Another delegate gave an example from the national pharmaceutical market in Armenia, where drug prices were higher than in neighbouring countries; he supported the adoption of the proposed cooperation toolkit. Yet another delegate stressed the importance of information exchanges and consultations on competition cases, noting that cooperation with the Fair Trade Commission of the Republic of Korea had assisted Turkey in investigating a case related to sunglasses.

40. Many delegates supported the initiative to develop a convention on fighting cartels and the proposal for a discussion group within the Intergovernmental Group of Experts, and two delegates and one intergovernmental organization supported the proposal for a discussion group. One delegate emphasized the need for concerted efforts in fighting cartels and cross-border mergers, as their effects were spread across jurisdictions. Another delegate noted that before creating new instruments it would be useful to better understand how existing instruments were used. Yet another delegate stated that UNCTAD could promote cooperation through the discussion group and provide contact lists and compilations of case law. One delegate noted that the proposal on international cooperation was included in bilateral treaties such as memorandums of understanding among Brazil, China, India, the Russian Federation and South Africa. Another delegate noted that the lack of an international definition of confidential information and a lack of trust inhibited international cooperation. Finally, the representative of one intergovernmental organization stated that progress in international cooperation required an analysis of practical barriers and that the work of the Organization for Economic Cooperation and Development on international cooperation would inform future discussions and work in this area.

**E. Work programme, including capacity-building in and technical assistance on competition law and policy: Peer review of the competition law and policy of Argentina**

(Agenda item 3 (d))

41. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy undertook one voluntary peer review. The review was moderated by a Member of the Board of the competition authority of Portugal. The peer reviewers were a Commissioner from the Administrative Council for Economic Defence of Brazil, a representative from the competition authority of Italy and a representative from the Federal Trade Commission of the United States.

42. The secretariat highlighted that since 2005, voluntary peer reviews of competition law and policy undertaken by UNCTAD had allowed for competition authorities in developing countries to undergo a process of self-evaluation and independent evaluation, both of which enabled an understanding of the strengths and weaknesses of their competition systems. UNCTAD provided a strategy to disseminate the results of reviews and a plan for the implementation of recommendations. The strategy had been evaluated in 2015 by an independent expert, with positive results. In the last 12 years, 24 member States had undergone the peer review process.

43. An UNCTAD consultant presented the peer review report, and detailed the legal framework of Argentina for competition, aimed at enhancing consumer welfare and the promotion and safeguarding of competition. He reviewed the current situation, noting that the first law of 1923 had undergone various revisions, the latest in 1999. The current legislation covered anti-competitive practices, both horizontal and vertical, as well as abuse of a dominant position and merger control. With regard to institutional arrangements, the National Commission for the Defence of Competition was the only authority in the area of competition. The consultant reviewed some relevant cases of merger control (Caso Telefónica and Telecom; Iberia and British Airways; Multicanal and Cablevisión) and advocacy (a report on credit cards). He welcomed the drive to promote competition law and policy in Argentina since 2015, as shown by the introduction of a draft bill on competition before the parliament. The report included several recommendations for legal and institutional reform, including to limit political pressure on competition enforcement; increase the competition authority budget; establish a tribunal for the defence of competition; strengthen the roll-out of anti-cartel activity; enhance the efficiency of investigations; review current notification arrangements; continue advocacy efforts; broaden the functions of the competition authority in regulated sectors; increase thresholds for the notification of concentration operations; regulate the suspension effects of notification; reduce time periods for the processing of cases; implement a leniency programme; and encourage private enforcement of competition law.

44. During the question-and-answer session, the representative from the competition authority of Italy inquired about addressing difficulties faced by the National Commission for the Defence of Competition with regard to thresholds for the compulsory notification of mergers. The President of the Commission noted that current thresholds had been set at a time of parity with the United States dollar but that, since the devaluation of the Argentine peso, they had become too low, and that the Commission advocated adopting flexible or indexed thresholds to avoid this situation in future. With regard to a further query concerning fines, in particular the possibility of including guidelines to further specify the related criteria and aggravating and alleviating circumstances in the calculation of fines, the President was not in favour of including such guidelines in the law, in order to give more flexibility to the competition authority, thereby allowing for more adaptable criteria.

45. The Commissioner from the Administrative Council for Economic Defence of Brazil requested details of the leniency programme, in particular whether Argentina allowed benefits for second-in and third-in applications, and the conditions and exceptions that applied, and also posed a question related to advocacy efforts directed to the private and public sectors. The President stated that there was a proposal to lower the benefit to 20–50 per cent for second-in and third-in applications if new evidence was brought to the authority, as well as for leniency plus benefits if evidence was brought forward for

the investigation of other cartels. In addition, the President noted that it had drafted guidelines for business associations and recommendations for the parliament and the central bank on credit cards, as well as for the telecommunications regulator and port authority.

46. Finally, the representative of the Federal Trade Commission of the United States queried whether Argentina planned to introduce penal sanctions to increase deterrence in the fight against cartels, and what actions Argentina foresaw to ensure the independence of the competition authority from the Government. The President stated that, at present, the National Commission for the Defence of Competition did not favour introducing criminal sanctions in merger repression, and foresaw the creation of a body within the Ministry of Production to address competition issues, in order for the Government to express its political interests to the competition authority without hierarchical power over the latter.

47. During the interactive discussion, several delegates and the representative of one intergovernmental organization expressed their support for the efforts of Argentina in promoting competition and commended Argentina for undergoing the peer review process. Delegates enquired about Argentina's experience in managing staff rotation, the judicial review of competition enforcement, the organization of teams and the extraction of assets to force the insolvency of the businesses responsible. In addition, the delegation of Argentina addressed questions to specific delegates on experiences in moving from post-merger to pre-merger analyses, how to encourage applications for leniency programmes and how to design a graduation of sanctions that would be upheld by courts. The delegates noted that that moving from post-merger to pre-merger analyses increased opportunities for international cooperation, that leniency programmes needed high levels of appropriation from the private sector and that providing clear and transparent guidelines for the graduation of sanctions eased judicial reviews.

48. The secretariat presented a proposal for a technical assistance project for Argentina based on the findings and recommendations of the peer review report. Its overall goal was to achieve a better business environment and a well-functioning market economy in Argentina. In particular, the project would address the legal and institutional frameworks of the Commission, as well as its capacity to enforce competition law and to carry out advocacy activities.

49. The President of the Commission agreed with the recommendations and thanked UNCTAD for guiding his country throughout the process, noting the need to maintain the momentum of implementing the recommendations.

## **F. Other business**

50. At an informal session directly before the closing plenary, the UNCTAD secretariat presented the revisions made to chapters 2 and 7 of the Model Law on Competition, including an update of information on existing examples from various jurisdictions and the addition of new examples from other jurisdictions. Chapter 2 now included new issues such as the application of competition law to State acts and measures and competitive neutrality principles. The commentaries to Chapter 7 now included narrative text on emerging issues such as the collaborative economy and regulation and competition in this sector. The secretariat also presented the findings of a report on the implementation of the recommendations of the peer review of the competition law and policy of the United Republic of Tanzania conducted in 2012. The United Republic of Tanzania had implemented some of the recommendations yet there remained areas of the national competition legislation that required improvement.

51. One delegate offered to prepare a repository of existing tools in cooperation with UNCTAD, in order to facilitate competition law enforcement, and make them available to other competition agencies.

### **III. Organizational matters**

#### **A. Election of officers**

(Agenda item 1)

52. At its opening plenary, on 5 July 2016, the Intergovernmental Group of Experts on Competition Law and Policy elected Ms. Mona El Garf (Egypt) as its Chair and Ms. Thabisile Langa (Swaziland) as its Vice-Chair-cum-Rapporteur.

#### **B. Adoption of the agenda and organization of work**

(Agenda item 2)

53. Also at its opening plenary, the Intergovernmental Group of Experts adopted the provisional agenda contained in document TD/B/C.I/CLP/42. The agenda was thus as follows:

1. Election of officers;
2. Adoption of the agenda and organization of work;
3. Work programme, including capacity-building in and technical assistance on competition law and policy:
  - (a) Capacity-building and technical assistance activities implemented;
  - (b) Challenges faced by young and small competition authorities in the design of merger control;
  - (c) Enhancing international cooperation in the investigation of cross-border competition cases: Tools and procedures;
  - (d) Peer review of the competition law and policy of Argentina;
4. Provisional agenda for the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy;
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy.

#### **C. Provisional agenda for the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy**

(Agenda item 4)

54. At its closing plenary, on 7 July 2017, the Intergovernmental Group of Experts approved the provisional agenda for its seventeenth session (annex I).

#### **D. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy**

(Agenda item 5)

55. Also at its closing plenary, the Intergovernmental Group of Experts authorized the Vice-Chair-cum-Rapporteur to finalize the report after the conclusion of the session.

## **Annex I**

### **Provisional agenda for the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy**

1. Election of officers
2. Adoption of the agenda and organization of work
3. Work programme, including capacity-building in and technical assistance on competition law and policy:
  - (a) Studies related to the provisions of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:
    - (i) Challenges faced by developing countries in competition and regulation in the maritime transport sector
    - (ii) Competition issues in the sale of audiovisual rights for major sports events
  - (b) Voluntary peer review of competition law and policy
  - (c) Report of work on capacity-building in and technical assistance on competition law and policy
  - (d) Review of chapters 5 and 6 of the Model Law on Competition
  - (e) Report of the discussion group on international cooperation
4. Provisional agenda for the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy
5. Adoption of the report of the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy

## Annex II

### Attendance\*

1. Representatives of the following States members of UNCTAD attended the session:

Albania	Kuwait
Algeria	Kyrgyzstan
Argentina	Lao People's Democratic Republic
Armenia	Latvia
Australia	Lesotho
Austria	Malawi
Bahamas	Malaysia
Belarus	Mauritius
Benin	Mexico
Botswana	Morocco
Brazil	Myanmar
Bulgaria	Namibia
Burkina Faso	Nepal
Cameroon	Oman
China	Panama
Colombia	Papua New Guinea
Congo	Paraguay
Costa Rica	Peru
Côte d'Ivoire	Philippines
Dominican Republic	Portugal
Ecuador	Republic of Korea
Egypt	Romania
El Salvador	Russian Federation
Ethiopia	Saudi Arabia
France	Seychelles
Georgia	South Africa
Germany	Spain
Haiti	Swaziland
Hungary	Switzerland
India	Tunisia
Indonesia	Turkey
Islamic Republic of Iran	Ukraine
Italy	United Kingdom of Great Britain and Northern Ireland
Japan	United States of America
Jordan	Viet Nam
Kazakhstan	Zambia
Kenya	

2. Representatives of the following non-member observer State attended the session:

State of Palestine

3. Representatives of the following intergovernmental organizations attended the session:

African, Caribbean and Pacific Group of States  
Caribbean Community  
Common Market for Eastern and Southern Africa  
Economic Community of West African States  
Eurasian Economic Commission  
European Union

\* This attendance list contains registered participants. For the list of participants, see TD/B/C.I/CLP/INF.7.

League of Arab States  
Organization for Economic Cooperation and Development  
West African Economic and Monetary Union

4. Representatives of the following specialized agency or related organization attended the session:

World Bank

5. Representatives of the following non-governmental organizations attended the session:

*General category:*

Consumer Unity and Trust Society International  
Consumers International  
Engineers of the World  
Global Traders Conference  
International Centre for Trade and Sustainable Development  
Village Suisse

*Other:*

Brazilian Institute for Consumer Law and Policy  
Mumbai Grahak Panchayat

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