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Report on the Ad Hoc Expert Meeting on Consumer Protection

I. Agreed conclusions

The Ad Hoc Expert Meeting on Consumer Protection,

Recalling the United Nations Guidelines for Consumer Protection,

Further recalling the provisions relating to consumer protection issues adopted by UNCTAD XIII in the Doha Mandate, including the provisions in paragraphs 50 and 56(m) of the Doha Mandate,

Also recalling the resolution adopted by the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held in Geneva on 8–12 November 2010,

Reaffirming the fundamental role of consumer protection policy for inclusive economic development and the need to further promote the implementation of the United Nations Guidelines for Consumer Protection,

Reaffirming that the Guidelines constitute a broad policy framework outlining what governments need to do to promote consumer protection in the following eight areas: (a) basic needs, (b) safety, (c) information, (d) choice, (e) representation, (f) redress, (g) consumer education and (h) healthy environment,

Noting that UNCTAD XIII, held in Doha on 21–26 April 2012, addressed development-centred globalization,

Underlining that both the United Nations Guidelines for Consumer Protection and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices recognize the relationship between consumer protection and competition policies,

Recognizing that consumer protection policy complements competition law and policy in addressing national and global challenges, and that the two policies are mutually reinforcing,

Recognizing that both competition policies and consumer protection policies share the common goal of promoting and protecting consumer welfare,

Recognizing that new facts and conceptual frameworks require a re-evaluation of policy interventions in the area of consumer protection,

Recognizing that the coordination of competition policies and consumer protection policies results in more effective outcomes,

Underlining the importance of the empowerment of consumers,

Recognizing the need for advocacy and for the education of consumers on their responsibilities and duties,

Noting with satisfaction the depth and the enriching nature of the discussions held during the Ad Hoc Expert Meeting on Consumer Protection, and

Noting that since the adoption of the United Nations Guidelines for Consumer Protection by the General Assembly in 1985, there have been radical changes in the marketplace,

1. *Decides* that the United Nations Guidelines for Consumer Protection need to be reviewed, in order to assess how relevant they are in today's marketplace and whether they have achieved the outcomes that their drafters intended;

2. *Requests* the secretariat to prepare a draft report containing proposals for revised United Nations Guidelines for Consumer Protection, for consideration by the Intergovernmental Group of Experts on Competition Law and Policy at its thirteenth session, with adequate time allowed for them to be considered by consumer authorities in member States prior to that session;

3. *Recommends* that UNCTAD should – in light of the experiences with the Ad Hoc Expert Meeting on Consumer Protection – undertake discussions regarding the possibility of updating the United Nations Guidelines for Consumer Protection, under the auspices of the Intergovernmental Group of Experts on Competition Law and Policy;

4. *Further recommends* that UNCTAD should – in light of the experiences with the Ad Hoc Expert Meeting on Consumer Protection – undertake to collaborate on the content of potential revisions, and work on consumer protection enforcement projects as appropriate, in particular with the International Consumer Protection and Enforcement Network, Consumers International and the relevant bodies of the Organization for Economic Cooperation and Development, and in consultation with other consumer bodies;

5. *Appreciates* the quality of the documentation prepared by the UNCTAD secretariat, as well as the organizational arrangements made for the current meeting;

6. *Encourages* further promotion of consumer protection policy as a tool that contributes to the improvement of consumer welfare and supports economic growth, structural change, inclusive development and poverty reduction; and *invites* development partners to support such initiatives of developing countries and countries with economies in transition;

7. *Notes with satisfaction* UNCTAD's cooperation with other international forums, including the Organization for Economic Cooperation and Development and the Consumer Protection and Enforcement Network, and with business, academia, consumer organizations and regional institutions; and *appreciates* the secretariat's continued efforts to

take into account, in its publications and work, the outputs of these organizations and other relevant institutions.

II. Proceedings

A. Statement of the Secretary-General

1. The Head of the Competition and Consumer Policies Branch, Mr. Hassan Qaqaya, made the opening statement on behalf of the Secretary-General.¹

B. Keynote speech

2. Under the title “The Future Path of Consumer Protection”, Ms. Connie Lau, Chief Executive, Hong Kong Consumer Council, Council and Executive Member, Consumers International, delivered the keynote speech. She welcomed the fact that today many consumer organizations, both governmental and non-governmental, worked in a strategic way. However, they could face obstacles that forced them to be increasingly imaginative. Therefore, the consumer movement counted on the support provided by the United Nations Guidelines for Consumer Protection, which stated that governments must encourage “fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost”. The Guidelines that had been adopted in 1985 and expanded in 1999 were still valid today, but could need further development and updating so as to take into account technological developments and new objectives and principles, such as more consumer protection compared with intellectual property rights, and stronger provisions for competition policy in order to deal with emergent monopolies and anticompetitive business conduct.

3. Basic rights (food and shelter) still needed reinforcement with access to information, while new issues had arisen with relation to, for example, electronic commerce – particularly the right to privacy of personal information – and financial services. While competition policy and consumer welfare were indeed mutually beneficial, in many circumstances some direct supervision was also needed. This was the case of complex market environments such as telecommunications and finance, where consumers found it difficult, if not impossible, to compare prices for diverse products.

4. In the financial sector, the leaders of the Group of Twenty had recently endorsed a new set of international principles on financial consumer protection and called for the establishment of a new international organization to support consumer protection in relation to banking and credit, as advocated by Consumers International. However, more work remained to be done concerning, for example, the comparability of products, portability of account numbers and other mechanisms to ease the switching of accounts and new issues of market dominance driven by measures taken following the international financial crisis. Therefore, Consumers International had continued advocating less concentration and more competition in the sector.

5. The right to Internet privacy should be recognized in the same light as other consumer rights. Some initiatives had been taken in that area, such as that of the Trans Atlantic Consumer Dialogue, commonly known by its acronym TACD, towards Google in

¹ http://unctad.org/meetings/en/Presentation/ciclp2012_Opening_Qaqaya_en.pdf.

2012. The revision of the Guidelines should examine whether the issue of privacy should be included as a separate principle.

6. The Guidelines should also include an explicit reference to funding for consumer advocacy.

C. Session I

The interface between competition and consumer protection issues

7. The panellists were Mr. Peter Avery of the Organization for Economic Cooperation and Development (OECD) and Ms. Seema Gaur of the Competition Commission of India.

8. The UNCTAD secretariat made a presentation on the concept note outlining the subject matter. Competition and consumer protection policies aimed at promoting and protecting consumer welfare were mutually reinforcing. New facts and conceptual frameworks suggested a re-evaluation of policy interventions in the area of consumer protection. Both the Guidelines and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices recognized the relationship between consumer protection and competition policies.

9. Mr. Avery underlined the common goal of consumer and competition policies, which was to make markets work well for consumers by promoting and protecting their interests, while ensuring that businesses were fair and competitive. The scope of the two policies differed, but there was an overlap. Both policies were concerned with the behaviour of firms. He suggested that the coordination of policies resulted in more effective outcomes and helped avoid counterproductive actions. Indeed, institutional interface mattered and affected the outcome. In addition, he provided an overview of the OECD Consumer Policy Toolkit. Measures to empower consumers were important, and advances in behavioural economics had been made, offering potential benefits for improving the design of policy interventions in both policy areas.

10. Ms. Gaur provided an overview of the legal and institutional frameworks for the competition and consumer protection regime in India, where two separate enforcement agencies implemented the Competition Law and Consumer Protection Act adopted in 1986 for quick and cheap redress. The two agencies were attached to two different government ministries. While there was a process of consultations between the two bodies, no referral mechanism had been laid down in respective legislation. The panellist concurred with other speakers that there were strong complementarities between competition and consumer protection, both aiming to improving consumer welfare. Consumer protection brought direct individual relief, whereas competition law minimized market distortion and was aimed at a wider body of consumers.

11. During the discussion that followed, many delegates stressed the importance of consumer protection and stated that consumer protection and competition policies complemented each other. Cooperation and coordination between the competition agency and the consumer protection agency were essential.

12. Some delegates described the consumer protection legislation and institutions in their countries. One delegate said that competition law allowed them to protect consumers and defend their rights. Another delegate said that the scope of competition law was wider than consumer protection, since the former targeted businesses and consumers, whereas the latter was concerned solely with consumer welfare. She inquired as to how to detect consumer problems in the market. Another delegate underlined the importance of platforms, such as the current meeting, for sharing best practices. Yet another delegate said that in some jurisdictions, powers enforced competition, and that consumer protection

legislation was attributed to the same authority. She suggested that such a strategy did not imply that this should be the model for all jurisdictions, emphasizing the importance of cooperation between the relevant agencies in jurisdictions where such competence lay with separate institutions.

13. One delegate said that in her jurisdiction consumer protection was more of a concern because consumer rights were recognized by the Constitution and were therefore perceived as fundamental rights. Another delegate said that too much emphasis was put on consumer rights, and recalled consumers' responsibilities and duties. There was a need for advocacy in the area of consumer protection and for resources to set up consumer protection agencies, particularly in small jurisdictions.

14. The panellists made concluding remarks and answered questions posed by some delegates. On how to detect consumer problems, Mr. Avery gave the example of the European Union, and complaints were a major source of information on problems. Once the problem came to the attention of the agency, it should determine the responsible agency and refer the matter to that agency. Ms. Lau stressed that financial stability could not be achieved without consumer protection, as shown after the 2008 financial crisis. Although product safety provisions existed in all consumer protection laws, there were no product safety rules or legislation for financial products. On enforcement, there were two types of actions for consumers, one criminal, the other, civil claims. In Hong Kong, China, the former was enforced by the specialized enforcing agency, the latter, by the courts. Furthermore, a small claims tribunal dealt with smaller consumer problems and did not require legal representation. The Government was exploring the feasibility of class actions. Ms. Gaur drew attention to the need to educate consumers about their responsibilities and rights.

D. Session II

Emerging issues in consumer protection: New conceptual frameworks

15. Under the title "Consumer law: A fundamental, but little-known guide for a market economy," the first panellist, Mr. Henri Temple, Professor, Montpellier, France, shared his assessment of the potential of consumer law to render markets more efficient and humane. His speech was framed in the current context of the crisis of the market economy.

16. The panellist said that the objectives of the economy were to generate employment and satisfy needs of consumers. However, in the current situation, 20 per cent of all Europeans below the age of 25 years suffered from unemployment, and living standards were going down, both quantitatively and qualitatively. For the first time in decades, Europe faced a situation where children grew up in conditions less favourable than those of their parents. The reasons for these shortcomings related to the wrong belief that markets framed by an effectively enforced competition law made other types of state regulation and inventions obsolete, which eventually had led to the subprime crisis and its consequences for the financial and real economy. Some shortcomings of competition law were that it did not cover the relationship between businesses and consumers, it did not adequately address corruption and did not allow for adequate damages. Consumer protection regulation in the real estate market had been too weak, thus contributing to the crisis.

17. Consumer laws could make markets more efficient and humane. Consumer law was transversal in nature, that is, it was often composed of a large number of different provisions spread over different laws, such as sector-specific product safety regulations and special civil law provisions. Consumer laws were often younger than competition laws. The United Nations Guidelines on Consumer Protection were one of the origins of today's consumer laws, which had translated the rights of consumers formulated by the Guidelines

into obligations imposed upon producers. Noting the economic importance of consumer protection, he said that consumer protection equalled demand-side protection. Several tools were used by consumer legislation to overcome the issue of information asymmetry between demand and supply sides, such as the regulation of advertising, labelling and consumer contract terms. While consumer laws might provide for civil and criminal sanctions, they were mainly administrative in nature. By subjecting all players to the same conditions, those laws would level the playing field for companies and thereby stimulate competition on merit. They also had a structuring function, for example, the obligation for retailers to comply with food safety regulations. In order to respect those, retailers would only buy from wholesalers who complied with the same regulations. Those in turn would request the processors and producers of food to do the same. In this way, an effective “self-control” of the economy could be established. Both competition and consumer laws constituted guiding principles for a market economy. However, too little attention had been paid to that function of consumer laws. It was thus crucial to strengthen consumer laws to provide for a better legal framework of market economies.

18. The second panellist, Mr. Andrew Pickering, Office of Fair Trading, United Kingdom of Great Britain and Northern Ireland, devoted his presentation to behavioural economics as a new element at the juncture between competition and consumer protection law. He emphasized the potential of cross-fertilization of consumer and competition policies by naming some of the gains that competition policy could obtain from consumer policies, and vice versa. Vigorous competition provided firms with incentives to deliver what consumers wanted as efficiently and innovatively as possible, while effective consumers played a key role in activating vigorous competition between firms. For various reasons, consumers did not behave as rationally as lawmakers would expect; however, they could be characterized by bounded rationality. In reply to the question of how to improve consumer decision-making, the panellist distinguished three different phases: accession to information, assessment of information and action based upon information. He explained how policies that were aimed at promoting competition, consumer learning, standardization, and the regulation of information could help tackle behavioural biases.

19. He gave some examples of how the Office of Fair Trading had used insights gained through behavioural economics in practice. In 2010, it had published a study focusing on the impact of price frames on consumer decisions. It found that of the different forms of price frames, drip pricing clearly had the most egregious effects. Drip pricing was often used in purchases over the Internet, where the initially indicated price did not include all charges and additional costs, thus differing significantly from the final price a customer had to pay. Owing to an anchoring effect, consumers made their decision based upon the first announced price and did not reverse their decision when confronted with the final price. Thus, many consumers would purchase goods and services at a price that they were not necessarily willing to pay, had it been indicated initially. Furthermore, such pricing created the risk that companies did not compete on the aspects one would like them to compete on. Thanks to the intervention of the Office, 12 airlines had agreed to change the price information on their online portals and now indicated the final price, including credit card charges. The second example related to personal current accounts. A market study conducted in 2008 by the Office revealed that consumers were very hesitant to switch their personal current accounts from one bank to another, even if doing so was very favourable from a monetary perspective. One of the reasons was that customers were apprehended the red tape and possible risks associated with switching accounts. Therefore, the Office had taken steps to improve switching with a view to forcing banks to be more competitive in the area of current account terms.

20. Comments from the floor related to self-regulation, which the panellist described as a recent trend in consumer laws. While self-regulation of the industry was generally seen very favourably as being a market response to specific shortcomings, it had limits in the

financial sphere. For example, the regulation of credit cards would not be suitable for self-regulation. During economic and legal reforms, the establishment of a consumer protection system needed to go hand in hand with domestic traditions. In this context, delegates shared their experience concerning the institutional interplay between competition authorities, consumer protection authorities and sector-specific oversight bodies.

21. Another issue of discussion related to the political economy of competition and consumer policy, and the distribution of wealth in a transition economy. The representative of an emerging economy asked how best to ensure that all consumers benefited from economic growth.

22. Participants discussed the role of the judiciary in the revision of prices in consumer contracts. Did a price revision in consumer contracts infringe upon the freedom of prices, or was it a necessary remedy to tackle abuse?

E. Session III

Emerging issues in consumer protection: Complementarities and areas of tension

23. Session III was introduced by Ms. Cynthia Zapata, Consumer Affairs Agency, Costa Rica, who was accompanied by three panellists: Ms. Ayesha Budd, Netherlands Competition Agency; Ms. Martha Kisyombe, Fair Competition Commission, United Republic of Tanzania; and Ms. Deon Woods-Bell, Federal Trade Commission, United States of America.

24. Ms. Zapata described some steps taken by the consumer protection agency in Costa Rica in cases – two in particular – with important competition scope. The first case concerned tie-in sales in the insurance sector by a monopolist supplier. The latter's answer to prosecution by the agency was to differentiate and subsequently increase prices, which had led to consumer unrest. However, other competitors ultimately entered the market and prices had become more competitive. The second case dealt with the development of price observatories by the consumer protection agency, which was sensitive under competition law since it could lead to collusion, although that had not occurred. She said it was time to study the impact of anticompetitive practices on the welfare of consumers. Inter-agency cooperation could facilitate the detection and prosecution of anticompetitive practices, especially cross-border ones; therefore, international cooperation was paramount.

25. Ms. Woods-Bell explained how consumer protection and competition were conceptually closely related, since the former focused on the demand side, and the latter on the supply side of the market, even if they often tended to exist in two separate worlds at the operational level in many countries. She reviewed the history of both fields in the United States and the different scenarios for their application. The Federal Trade Commission sought to strike the right balance between intervention in the market to protect consumers and the preservation of a vibrant market economy. Both legal theories could be used to strike that balance. Consumer protection had supported competition by facilitating an understanding of how markets worked, by offering rationales to justify restrictions on competition, by transferring remedial experiences and by building public support for market economies. She also referred to some Commission cases such as Google buzz (illegal use of private data) and Intel (deceptive practices). Regardless of the institutional set-up, it was imperative for consumer and competition authorities to cooperate.

26. Ms. Kisyombe gave an overview of the interface between the two bodies of law in the United Republic of Tanzania, stressing the impact of information asymmetry in both fields. She presented the consumer protection and competition frameworks in the country, both at the legal and institutional level, highlighting the incorporation of the United Nations

Model Law and Guidelines. Some examples of emerging issues for consumer protection included insurance and savings products, remittances such as M-PESA, counterfeit drugs and unsafe consumer products. All of these cases had had a significant impact on consumers. For example, counterfeiting was a great challenge for the country, especially counterfeit drugs, as they represented a serious risk to health. The United Republic of Tanzania deployed both legal and non-legal measures in curbing the emerging issues of counterfeit goods and medicine, unsafe consumer products, and insurance and savings products. As far as legal measures were concerned, the issue of unsafe consumer products was extensively covered under parts VII, VIII and IX of the Fair Competition Act, 2003.

27. According to the 2007 amendments to the Merchandise Marks Act, 1963, any person convicted of dealing in counterfeit goods (medicine inclusive) was liable for imprisonment, or a fine, or both. Furthermore, the goods would be seized and destroyed at the owner's cost.

28. Competition agencies were intended to work for consumers, but rarely mentioned them in their decisions. For example, in the Dutch context of competition and consumer protection authorities, the challenge was cross-fertilization through real discussions between them. Currently, the authorities were merging, thus allowing this to happen more easily. The new unified agency was expected to harvest the benefits of complete and correct information, enhanced transparency, a better regulation for incumbents, an equitable playing field, a media outreach and a larger toolkit. Speaking with one voice should give more strength to its consumer and competition actions.

29. The Chair proposed an innovative procedure where some measures would be proposed, and participants would vote whether they agreed or not. Some examples included "competition solutions to market problems may cause short-term detriment to consumers in the interest of creating long-term benefits" (most agreed); "the goals of consumer protection competition authorities often conflict, leading to problems in the market" (most disagreed). This led to a lively debate among participants.

F. Session IV

Emerging issues in consumer protection: Financial services

30. The keynote speaker was Sothi Rachagan, from Malaysia. Other panellists were Robin Simpson, Consumers International, and Phil Evans, United Kingdom Competition Commission and Fipra International.

31. The topics addressed by Mr. Rachagan included preventing systemic failure, financial services inclusion, information education literacy and assessment of capabilities. Many of the assumptions of the pre-crisis paradigm were in fact wrong, but it was only through the crisis that this had been widely recognized. A key problem was the self-governing aspect of the financial services. Self-regulation was important and still had a role to play in financial services, although the regulatory body should be industry-wide and have compensatory responsibilities in times of crises. He stated the imperative of a politically feasible solution to a culture where it was unclear whether it served the market and the consumers it was dealing with. Further, the changing role of consumers from savers and borrowers to investors should be recognized, and the resolution authority must decide where consumers stood with this new paradigm. It was vital for consumers to take part in the regulation process of financial services. There was a need to revise the Guidelines to reflect the changes in the financial landscape and to promote a fair deal for individual consumers. As it was nearly impossible for financial literacy to be widespread, much of the architecture of financial services must change.

32. Robin Simpson described financial services as a public utility to which everyone should have access, including those in developing countries.

33. Consumers International had looked at financial services against the Guidelines. The 2011 OECD high-level guidelines were disappointing, as they were voluntary and overly qualified, and described the role revised Guidelines could have. While the Guidelines were a good match with Consumers International's own aspirations on transparency issues, comparability in the context of financial services has always been difficult to address. There was a need to include in the Guidelines a new subsection H on financial services in order to cover access, stability and competition. Further, the Guidelines should encompass financial services in terms of products or goods and services, and address issues such as minimum standards and product recall. Indeed, consumers should take part in the regulatory and redress processes and the Guidelines should facilitate this. Considering the bailouts that financial services had received, consumers should expect something in return.

34. Mr. Evans spoke on the application of behavioural economics to financial services and on the implications for consumers. In particular, traditional models of consumer choice did not address issues of boundedness with regard to rationality, will power or self-interest, which could have considerable effects when information was presented in an opaque manner. The fact that financial services and products were complex and numerous implied that a behavioural approach was appropriate, particularly as mistakes could be costly to the consumer and took a long time to uncover. Furthermore, mechanisms such as proxy measures and choice editors that aimed to aid consumers should be appropriately designed, especially as collective errors could lead to crises. In order for these problems to be addressed, information needed to be clear and honest, consumers should have the ability and opportunity to learn within the market and costs to the consumer should be minimized as much as possible.

35. Several representatives agreed that financial services were complex and emphasized the need for consumer education and clarity in terms of advertising, contract terms and costs. It was also important for regulators and consumer agencies to work together.

36. One delegate spoke of the experience of smaller emerging countries, where the small investors were on the losing end during financial crises. Other delegates described the opportunity cost of financial bailouts in terms of foregone investments in health care and education, and the problems faced by smaller nations with a highly concentrated banking sector located outside of the authority's jurisdiction. In addition, there was a need for ethical and transparent financial services.

37. One representative said there was a need for a platform for educating users in an easily understood way, as millions of investors had a limited understanding of financial services and risk.

38. The point to be kept in mind, according to Mr. Rachagan, was the need for two-tier regulation: national and global. Global architecture was extremely important for ensuring honesty, and its location was important, for example, the United Nations or the World Trade Organization. In effect, the situation must not be allowed to go back to "business as usual".

39. In response to the comments made by one representative, Mr. Simpson spoke of the possibility of limiting access to certain financial products, as common sense was important; information or education alone did not suffice. The proposed solution was that products themselves should be regulated; if they were too complex or risky, they should not be on the market. Further, the Guidelines could be more specific on financial services and would need to be adjusted as the world changed.

40. Mr. Evans closed the session by outlining the need for flexibility and the willingness to deal with “dangerous” products.

G. Session V The need to revise the United Nations Guidelines on Consumer Protection

41. The keynote speech was delivered by Mr. Ricardo Maguiña, Competition and Consumer Protection for Latin America (COMPAL), and Consumer Protection Commission (INDECOPI) of Peru. The four panellists were Ms. Indrani Thuraisingham, Consumers International; Mr. Bob Boelema, Netherlands Consumer Authority; Mr. Pradeep Singh Mehta, CUTS International; and Ms. Ligia Valderrama, Superintendence of Industry and Commerce, Colombia.

42. Mr. Maguiña presented the results of a survey carried out in Latin American countries that were part of the COMPAL Programme, and suggested ideas for a possible revision of the Guidelines. The Guidelines had assisted many countries around the globe in drafting consumer protection legislation and Latin American countries were reflecting on the next steps forward in the development of consumer protection. One possibility would consist of developing an approach similar to the model law on competition. Several relevant issues relating to the Latin American and Caribbean region were hazardous financial services, enforcement and sanctions, and the empowerment of consumer individuals and associations.

43. Mr. Mehta provided some background information on CUTS International, mentioning the consumer protection index as one of its core products. Rather than best practices, the Organization had identified a more useful and practical concept, that of good practices and allowing the adaptation of these practices to specific social and economic realities. The Guidelines had been adjusted in 1999 to include the principle of sustainable consumption. He welcomed the proposed further revision of the Guidelines and drew attention to seven points to be considered in this exercise:

(a) In many countries, access to universal services had been reduced as a result of privatization or deregulation. Therefore, the Guidelines should address this issues by indicating that access to universal services should be granted at reasonable prices;

(b) Consumer representation was essential to ensure that public interest was taken into account;

(c) Competition policy should ensure that the gains from globalization and regional integration were shared with consumers;

(d) Financial services were very important but access in the developing world was limited;

(e) Access to information should be expanded in the Guidelines;

(f) Access to justice was increasingly taking place in mediation and conciliation rather than in courts, which should be reflected clearly in the Guidelines;

(g) The Guidelines should encourage basic regional norms on optimal standards prevailing among the partners, rather than downsizing them.

44. Ms. Thuraisingham said that much has changed since the Guidelines had been adopted in 1985. Modern telecommunication tools and social media did not yet exist. While new consumer issues had arisen in these areas, other consumer issues remained the same,

such as access to essential services by the poor, for example, water and sanitation. Therefore, the Guidelines should address three points:

- (a) Technological advances requiring a new section on consumers in the digital age;
- (b) The distinction between consumers and non-consumers, who were suffering from extreme poverty and for whom access to essential services, was crucial;
- (c) The principle of access to goods and services satisfying basic needs to be incorporated in article 3 of the Guidelines.

45. With respect to competition issues, Ms. Thuraisingham said that many competition issues lay upstream from the retail consumer. However, one should also take into account that food producers such as farmers were also consumers. Therefore, certain measures, such as export subsidies granted in developed countries, which had an impact on the level of revenue of farmers in developing countries, also had a consumer dimension. The role of consumer organizations in the Guidelines could be expanded with regard to policy formulation and regulation, because in the last 15 years, many of them had represented consumer interest in policymaking processes and played an important role in consumer complaints. It was thus important to consider government financial support to consumer organizations.

46. Mr. Boelema said that the Dutch Consumer Authority was to be merged with the Competition Authority. At the outset, this merger could have been worrying for consumer protection, but the vision was to facilitate a comprehensive understanding of market problems and benefit from the economic studies of the competition authority. The Consumer Authority assumed the role of former President of the International Consumer Protection and Enforcement Network. Under the Dutch Presidency, UNCTAD had obtained the status of observer of that network. The pillars of consumer protection were public consumer protection and empowerment, and the representation of the interests of consumers by civil associations. Civil associations and private problem-solving mechanisms were key for less enforcement. In the Netherlands, alternative dispute resolution bodies accounted for more than 50 complaint committees. Decisions by these private complaint committees were binding for companies who were members of the committees. If the companies did not follow the respective decisions while carrying the logo of the committee, this would be considered unfair commercial practice that could be sanctioned by a fine. The enforcement division dealt solely with collective consumer interests, the rationale being that when private mechanisms did not solve consumer problems, enforcement would intervene. Many elements were covered in the Guidelines. However, enforcement, mentioned solely under article 17 of the Guidelines, should be enriched with the main principles for enforcement because without a proper enforcement system, consumers would not benefit from any possibilities the system offered to protect them.

47. The following points should be explored for insertion the Guidelines: understandable and clear legislation, clear mandates (responsibilities and tasks), adequate resources, qualified personnel, adequate powers to obtain the necessary information for enforcement and to effectively stop infringements, cooperation of government bodies for the benefit of consumers and international cooperation on a bilateral or individual basis to address the cross-border aspect of consumer problems. The issue of the empowerment of consumers should be strengthened because the more consumers were empowered, the less enforcement would be needed.

48. Ms. Valderrama said that it was timely to revise the Guidelines, which had failed to address two points. First, any consumer protection system should be connected to political reality; otherwise anachronistic laws would be in place. In e-commerce, an asymmetry of

information resulting from the indirect contact between sellers and buyers was very high, as the consumer did not have the possibility to check the product for its quality, for example. In addition, e-commerce put children at the mercy of a number of e-products, such as videos. Online payment mechanisms created a number of higher risks for consumers, as well as uncertainty regarding applicable laws and jurisdiction for effective redress. Further, the principle of technological neutrality should be taken into account in the Guidelines. Secondly, there was a need to protect children who were engaged in e-commerce. However, many children were consumers, as they accessed not only in traditional markets but also new ones. Special types of protection for vulnerable consumers such as children would therefore be necessary. The Guidelines should request that governments protect children effectively in accordance with article 17 of the United Nations Convention on the Rights of the Child so the Guidelines would be in line with other provisions of international law.

49. In the debate that followed, participants discussed the institutional set-up of consumer agencies, government funding for private consumer associations and the significance of regional cooperation and integration for consumers. There was a need to regulate advertising that targeted children and to advocate consumer protection issues effectively.

50. Mr. Maguiña said that the aspect of enforcement should be included in the Guidelines. In this respect, OECD could play an effective role. He wondered whether self-financing could be an option for funding consumer protection activities by government. Some consumer associations did an excellent job without government funding. However in Latin America this was not the case. Ms. Thuraisingham said that fundraising activities of consumer organizations varied from country to country, reflecting different levels of institutional development. In developing countries, consumer associations were struggling to finance their activities in an autonomous way, while agencies in developed countries were sometimes very independent. Mr. Boelema reiterated the idea of striking a balance between the enforcement and empowerment of consumers, as the latter would decrease enforcement.

H. Closing plenary

51. The representative of the United States of America expressed a reservation with respect to point four of the draft agreed conclusions as circulated in the room. While there were many consumer organizations, only one had been explicitly mentioned in the text. The representative of Suriname seconded the reservation, stating that other organizations could also help with the future work.

52. The representative of Consumers International said that his organization, which had 225 members located in 120 countries, was the only single global federation of consumer organizations. Since its foundation in 1960, it had been advocating the Guidelines. The representative of Malaysia said that Consumers International had played an important role in the adoption of the Guidelines and their expansion in 1999. Therefore, the Organization would merit to be mentioned explicitly in the agreed conclusions.

53. The representative of the United Kingdom made an observation with respect to point two of the draft agreed conclusions as circulated in the room. He said that while the current version read “*Requests* the secretariat to prepare a draft report containing proposals for revised United Nations Guidelines”, the previous language was “prepare a draft report containing a proposal for the revision of guidelines”. He sought clarification from the secretariat on this point, as well as on whether the proposed amendments to the Guidelines would be discussed in the next session of the Intergovernmental Group of Experts on Competition Law and Policy. The secretariat confirmed this understanding.

III. Organizational matters

A. Election of officers

(Agenda item 1)

54. At its first plenary meeting on Thursday, 12 July 2012, the Group of Experts elected Ms. Cynthia Zapata (Costa Rica) to serve as Chair.

B. Adoption of the agenda and organization of work

(Agenda item 2)

55. The Group of Experts adopted the provisional agenda contained in document TD/B/C.I/EM/1. The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. The interface between competition and consumer policies
4. Consultations on the need to revise the United Nations guidelines for consumer protection
5. Adoption of the outcome of the meeting

C. Adoption of the report

56. At its closing plenary meeting, on 13 July 2012, the Ad Hoc Meeting on Consumer Protection authorized the Chair to finalize the report of the meeting.

Annex

Attendance²

1. Representatives of the following States members of UNCTAD attended the expert meeting:

Angola	Mozambique
Armenia	Namibia
Benin	Netherlands
Bhutan	Niger
Botswana	Nigeria
Brunei Darussalam	Oman
Burkina Faso	Pakistan
Cambodia	Philippines
Cameroon	Poland
Colombia	Portugal
Costa Rica	Qatar
Côte d'Ivoire	Russian Federation
Democratic Republic of the Congo	Rwanda
Dominican Republic	Saint Lucia
Ecuador	Senegal
Egypt	Serbia
Gambia	Seychelles
Greece	South Africa
Guyana	Sudan
Hungary	Suriname
India	Swaziland
Iraq	Switzerland
Italy	Thailand
Jordan	Togo
Kazakhstan	Tunisia
Kenya	Turkey
Republic of Korea	Uganda
Kosovo (in accordance with United Nations Security Council resolution 1244 (1999))	United Republic of Tanzania
Lao People's Democratic Republic	United Kingdom of Great Britain and Northern Ireland
Malaysia	United States of America
Mali	Viet Nam
Mongolia	Zambia
Morocco	Zimbabwe

2. Representatives of the following observers attended the meeting:

Occupied Palestinian Territory

² For the list of participants, see TD/B/EM.I/INF.1.

3. The following intergovernmental organizations were represented at the meeting:
 - African Union
 - Caribbean Community
 - Economic Community of West African States
 - Organization for Economic Cooperation and Development
 - West African Economic and Monetary Union
4. The following specialized agencies or related organizations were represented at the meeting:
 - World Trade Organization
5. The following non-governmental organizations were represented at the meeting:

General category:

 - Consumers International
 - Consumer Unity and Trust Society (CUTS)
 - Ingénieurs du monde
 - Pan African Institute for Development
6. The following panellists made contributions to the meeting:
 - Ms. Connie **Lau**, CEO, Hong Kong Consumer Council, Hong Kong (China)
 - Mr. Peter **Avery**, Head Consumer Policy Unit, OECD
 - Ms. Seema **Gaur**, Competition Commission of India
 - Mr. Henri **Temple**, Professor, Montpellier, France
 - Mr. Andrew **Pickering**, Office of Fair Trading, United Kingdom
 - Ms. Cynthia **Zapata**, Director, Costa Rica Consumer Affairs Agency
 - Ms. Ayesha **Budd**, Senior International Adviser, Netherlands Competition Authority
 - Ms. Martha **Kisyombe**, Fair Competition Commission, United Republic of Tanzania
 - Ms. Deon **Woods-Bell**, Federal Trade Commission, United States
 - Mr. Sothi Rachagan **Sinnathurai**, Member of the Commission, Malaysia Competition Commission
 - Mr. Robin **Simpson**, Senior Policy Adviser, Consumers International
 - Mr. Phil **Evans**, Member, United Kingdom Competition Commission and Senior Consultant, Fipra International
 - Mr. Ricardo **Maguiña**, COMPAL and INDECOPI, Peru
 - Ms. Indrani **Thuraisingham**, Head, Regional Office for Asia Pacific and the Middle East, Consumers International
 - Mr. Bob **Boelema**, Strategic and International Affairs, Netherlands Consumer Authority
 - Mr. Pradeep **Singh Mehta**, Secretary General, CUTS International
 - Ms. Carmen Ligia **Valderrama**, Lawyer, Deputy Superintendent for Consumer Protection, Superintendence of Industry and Commerce, Colombia