



## United Nations Conference on Trade and Development

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### 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, 6–10 July 2015

Item 6 (b) of the provisional agenda

**Consideration of proposals for the improvement and further development  
of the Set, including international cooperation in the field of control of  
restrictive business practices**

## **Capacity-building and technical assistance on competition and consumer protection law and policy: Review and outlook**

**Note by the UNCTAD secretariat**

### *Executive summary*

UNCTAD provides capacity-building and technical assistance on competition law and policy to developing and least developed countries, as well as to countries in transition in accordance with requests received, the needs of the countries concerned and available resources. This includes both national and regional assistance in drafting competition laws and policy guidelines, as well as capacity-building in the implementation of competition policy with a long-term perspective in line with the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the requests made by the Sixth United Nations Conference to Review All Aspects of the Set. This report consolidates the annual reviews of the capacity-building and technical cooperation activities of the UNCTAD secretariat since 2010 that were submitted to the meetings of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy between 2011 and 2014. In addition, the report provides an assessment of the impact of UNCTAD intervention in the area of competition and consumer policies in the last five-year period. The final section of this report deals with the outlook for cooperation activities based on the new UNCTAD strategy, Global COMPAL, adopted in 2014.

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## Introduction

1. Taking into account increased needs for technical cooperation and technical assistance for all developing countries, including small island developing States, landlocked developing countries and other structurally weak, vulnerable and small economies and countries in transition, 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 adopted a resolution<sup>1</sup> (TD/B/RBP/CONF.7/L.16) requesting the UNCTAD secretariat to carry out, in consultation with other organizations and other providers so as to avoid duplication, a review of technical cooperation activities, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy. This consultation was carried out in 2011 and reported to the IGE in a note by the secretariat entitled “Effectiveness of capacity-building and technical assistance extended to young competition agencies” (TD/B/C.I/CLP/11/Rev.1).

2. In accordance with paragraph 4 of the resolution, the note by the secretariat of 2012 entitled “Capacity-building extended to young competition agencies” (TD/B/C.I/CLP/17) reviewed the assistance provided by donor countries, recipient countries and other international organizations. The report of 2013 entitled “Capacity-building and the UNCTAD voluntary peer review as a capacity-building tool” (TD/B/C.I/CLP/22) made a detailed reference to the UNCTAD voluntary peer review process and the particularities of this mechanism in UNCTAD. Finally, the note by the secretariat of 2014 entitled “Review of capacity-building and technical assistance in competition law and policy” (TD/B/C.I/CLP/30) offered a further review of UNCTAD capacity-building activities.

3. The secretariat, in the implementation of the decisions of the Sixth Review Conference and subsequent IGEs, has taken measures to strengthen the Competition and Consumer Protection Policies Programme, as elaborated upon in the following chapters. The relevance, impact and effectiveness of the work of the Competition and Consumer Policies branch have been enhanced as a result of these actions and have gone forward in setting a new worldwide strategy called Global COMPAL based on the successful experience of a programme established since 2003 for the Latin American region.

### **A. Rationale for technical assistance and capacity-building of UNCTAD work on competition and consumer policies**

#### **UNCTAD mandate**

4. UNCTAD is the focal point on all work related to competition policy and consumer protection within the United Nations system which, in turn, is part of United Nations work on trade and development. The heart of its work on trade and development – the mandate for which dates back to the adoption of the United Nations Set of Multilateral Principles and Rules for the Control of Restrictive Business Practices in 1980 – represents an acceptance of the view that the basic norms of competition law, which have long been in use in developed countries, should extend to the operations of enterprises, including transnational corporations, in developing countries. Thus, the Objectives section of the United Nations Set emphasizes that the interests of developing countries in particular should be taken into account in the elimination of anticompetitive practices that may cause prejudice to international trade and development. Furthermore, the Objectives section sees the United Nations Set as an international contribution to a wider process of encouraging

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<sup>1</sup> See para. 4 of the resolution contained in TD/B/RBP/CONF.7/11.

the adoption and strengthening of laws and policies in this area at the national and regional levels.

5. The Sixth United Nations Review Conference called upon UNCTAD in its resolution to "...provide technical assistance for capacity-building in the area of competition law and policy by (...) (e) preparing and executing national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity; (f) mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area".<sup>2</sup>

6. In addition, paragraph 56 (m) of the Doha Mandate requested UNCTAD to "[C]onduct analysis and research and help developing countries and countries with economies in transition to formulate and implement competition and consumer protection policies, promote the sharing of best practices, and carry out peer reviews with regard to the implementation of such policies".

7. In accordance with the above-mentioned mandates, UNCTAD provides technical assistance related to the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation, and by building national institutional capacity to enforce effective competition and consumer protection legislation. At the national level UNCTAD therefore organizes:

(a) Assistance in the preparation of competition and consumer protection laws and related legislation;

(b) Consultative meetings to review draft competition and consumer protection laws with representatives of Governments. These activities represent an essential step in the way of competition and consumer protection legislations adoption;

(c) Intensive courses on competition and consumer protection laws and policies including training courses on evidence gathering in competition cases and sectoral consumer protection enforcement;

(d) Training courses for judges on issues related to competition laws and policies;

(e) Training courses on the implementation of competition law for newly appointed commissioners.

8. At the regional level, UNCTAD assists in the drafting and implementation of regional rules on competition. It also organizes a number of conferences, seminars and workshops aimed at contributing to capacity-building and multilateral cooperation in the area of competition. At the regional and subregional levels, UNCTAD therefore conducts:

(a) Studies and reports on strengthening institutions in the area of competition;

(b) Regional workshops and conferences on competition law and policy;

(c) International conferences on competition policies for all regions of the world;

(d) Studies and reports on a possible framework for cooperation on competition policy, trade and related issues for regional integration groupings;

(e) Regional training of judges and public prosecutors on the enforcement of competition law.

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<sup>2</sup> See note 1.

9. UNCTAD capacity-building and training activities have increased considerably during the five-year period reviewed. This is due in part to the considerable interest demonstrated by member States, at both the domestic and regional levels, and in part to the solidarity demonstrated by donors from many countries that made generous financial contributions and contributions in kind.

10. This report summarizes the capacity-building and technical cooperation activities of the UNCTAD secretariat from 2010 to 2015, and is based on the yearly reports submitted to the IGE.<sup>3</sup> More detailed information can be found in these reports.

### **Contribution of UNCTAD to integrating developing countries and economies in transition into the world economy**

11. The primary aims of UNCTAD are to integrate developing countries and economies in transition into the world economy and to promote the sustainable economic growth of these countries, thus contributing to poverty reduction.<sup>4</sup>

12. The experience of developed and emerging markets has shown that successful integration into the world economy can be correlated with economic growth and poverty reduction. Countries that have opened themselves up to trade and adopted market-oriented policies have grown much faster than those that have not. However, still too often, international and internal barriers prevent them from benefiting fully from the world trading system and the opportunities offered by globalization.

13. To benefit from trade, developing countries and economies in transition must improve their competitiveness and meet the criteria required for international markets. UNCTAD aims to support developing countries' efforts for creating an enabling business environment; and to support their efforts to develop trade capacities. Competition policy is part of an overall development strategy and has the specific objectives of helping developing countries using private sector, trade and investment as an instrument for sustainable growth and poverty reduction. Competition policy is not a substitute but a necessary and increasingly important complement to opening to trade.

14. The rationale for competition policy is based on the observation of market failures and the idea of creating a level playing field for economic operators<sup>5</sup> as well as controlling government monopolies<sup>6</sup>. Further, it provides opportunities for small and medium-sized enterprises to participate in economic activities, and by prohibiting bid rigging, competition law can reduce opportunities for corruption in public procurement.

15. All restrictive business practices imply barriers to entry and higher costs. Some restrictive business practices are significantly higher in developing countries and economies in transition than in developed countries<sup>7</sup>. For example, import and export cartels distort trade and raise costs for consumers and business; monopolies in infrastructure such as

<sup>3</sup> See TD/B/C.I/CLP/11/Rev.1, TD/B/C.I/CLP/17, TD/B/C.I/CLP/22 and TD/B/C.I/CLP/30.

<sup>4</sup> TD/500/Add.1.

<sup>5</sup> This includes challenging agreements between businesses not to compete, through cartels, price fixing and territorial divides, for example. Businesses may also make formal, legal groupings such as marketing boards and cooperatives, which can in effect operate as cartels.

<sup>6</sup> Governments often have restrictive licensing regimes for certain sectors and products, such as for agricultural inputs, for example, seeds and agrochemicals.

<sup>7</sup> Developing economies are particularly vulnerable to anticompetitive practices: poor business infrastructure and complex regulatory and licensing regimes make it harder for companies to enter these markets; their policies, laws and regulations are often not sufficiently robust, while their enforcement agencies lack the capacity to effectively detect and tackle many instances of anticompetitive behaviour; citizens, and businesses are less aware of the importance of competition and do not exercise their rights or fulfil their responsibilities.

telecommunication, financial services and air transport can make doing business very expensive and less readily available, particularly for small and medium-sized enterprises. Hence, the adoption of sound and effective competition laws and policies could play a direct and important role in ensuring that the benefits of opening to trade are not negated by anticompetitive practices or State monopolies. It can also play an important role by ensuring that consumers have the right of access to non-hazardous products, adequate information to enable them to make informed choices according to individual wishes and needs and the right to effective redress. This directly improves their welfare and also contributes to creating a level playing field for businesses and eliminates unfair trade practices such as counterfeiting products.

16. Increasingly, companies and supply chains are international, while competition and consumer protection laws and enforcement agencies are generally national. Individual countries have struggled to address anticompetitive practices and/or practices that violate consumer rights at the international level, which requires regional and global collaboration so that competition and consumer protection rules can be established and enforced.

#### **UNCTAD work on competition and consumer policies**

17. By working on competition and consumer policies, UNCTAD aims to ensure that the benefits of increased competition, open and contestable markets and private sector investment in key sectors are enjoyed by partner countries and ultimately, that consumer welfare is enhanced. The Competition and Consumer Policies Programme services the IGE and the ad hoc expert group meetings on consumer protection policies when mandated, undertakes competition policy peer reviews and implements sector-specific and economy-wide competition and consumer policy reforms that create a level playing field among companies and consumers, increasing the effectiveness of antitrust and consumer protection policies in developing countries and countries in transition.

### **B. Review of the main technical assistance and capacity-building activities and their results and impact between 2010 and 2015 by clusters**

#### **Regional programmes and initiatives**

18. From 2010 to 2015, UNCTAD continued to implement regional programmes in two regions in particular: Latin America and Africa. In Latin America, UNCTAD carried out the second phase of the Competition and Consumer Protection for Latin America (COMPAL) programme.<sup>8</sup> In Africa, the West African Economic and Monetary Union (WAEMU) regional programme within the framework of the Competition Programme for Africa, known as AFRICOMP,<sup>9</sup> was implemented.

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<sup>8</sup> COMPAL is the Spanish acronym for “Competencia y Protección del Consumidor en América Latina”. It is a technical assistance and capacity-building programme on competition and consumer protection that was developed and implemented by the UNCTAD with the support of the State Secretariat for Economic Affairs of Switzerland. The objective of the programme was to develop and promote sustainable competition and consumer protection systems in order to improve the economic performance and competitiveness of participating countries. Promoting a competitive environment in developing countries leads to increased innovation, productivity and international competitiveness, which is particularly important in view of the globalization of international trade and value chains.

<sup>9</sup> Officially launched in Geneva on 22 June 2009, this new initiative was taken in response to the mandate given in the Accra Accord (para. 104 (g)). It is aimed at helping African countries develop appropriate administrative, institutional and legal structures for effective enforcement of competition and consumer law and policies. Most of the UNCTAD technical cooperation activities in Africa in the second half of 2009 were undertaken within the frameworks of AFRICOMP. The programme

19. The second phase of COMPAL, or COMPAL II, was evaluated by external auditors and was based on studies in Colombia, Nicaragua and Peru, and regional activities as perceived from these countries. The following conclusions were reached by the audit:<sup>10</sup>

(a) **Relevance:** COMPAL is based on national demands established from the bottom-up. Activities carried out in the national components are defined by the partner organizations in consultation with COMPAL management;

(b) **Efficiency:** COMPAL became a complex programme with both national and regional components, involving 12 countries. In some, 50–60 activities were implemented by a large number of mainly local consultants. COMPAL is surprisingly efficient in terms of outputs in relation to costs. The use of local consultants has especially been a success;

(c) **Effectiveness:** Taken together, COMPAL I and II have succeeded in making the programme successful, attracting a number of countries outside the original five, most of them joining at their own expense. COMPAL has delivered many activities proposed by partner organizations that are generally recognized to be of satisfactory to excellent quality. COMPAL has been instrumental in setting up competition and consumer protection agencies and in creating awareness on the issues and cooperation in the region;

(d) **Sustainability:** As these activities are determined by competition and consumer protection agencies, they have a motivation to use the results of COMPAL and integrate them into their ongoing operations. Member States of UNCTAD have made a commitment to include COMPAL activities in their annual work plans. Moreover, in some cases the activities are funded by member States. When sustainability is at stake, this generally means that the inputs have not been sufficiently good to warrant continuation or there is a shift in orientation by management favouring other priorities. In a poorer country such as Nicaragua, whose competition and consumer protection agencies are young, budget constraints in government is a significant risk factor for sustainability;

(e) **Management:** The role of UNCTAD in managing COMPAL must be considered efficient, with in relative terms, low overheads. The considerable use of electronic means in the administration of the programme is positive and cost-effective in particular;

(f) **Advisory Group of Experts:** This body was set up to support COMPAL II on the recommendation of the 2007 evaluation of COMPAL I. It is an innovate element of COMPAL that could be further enhanced in the third phase of COMPAL;<sup>11</sup>

(g) **The role of the donor:** Switzerland has played a critical and essential role in the development of COMPAL. It was instrumental in initiating the programme and was the

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provides for a more coordinated and streamlined approach in technical cooperation activities, based on the needs of each beneficiary country while promoting regional cooperation. It emphasizes beneficiaries' ownership and is demand driven. The programme further seeks to establish closer links with the private sector, as well as with non-governmental organizations and local learning institutions. In May 2010, AFRICOMP was expanded to include nine additional beneficiary countries.

<sup>10</sup> See "An Evaluation of COMPAL II. Final Report", 2012, DEVFIN Advisers.

<sup>11</sup> The Advisory Group of Experts is a group of former heads of competition and consumer protection agencies who support the successful implementation of COMPAL activities. The Group was launched along with COMPAL II. Its functions are to provide comments and suggestions to the COMPAL team in Geneva, Switzerland for developing the strategy and activities of the Programme; to identify areas of potential interest to beneficiary countries of the COMPAL Programme; to contribute to the well-functioning and successful achievement of concrete activities of the Programme, namely, by providing comments and suggestions on reports, studies, legislation and bills on competition and consumer protection and participating in conferences, round tables and other COMPAL events; and to participate in field missions in order to ensure the exchange of experiences and provide support to beneficiary countries of the Programme.

first donor to supporting it a long-term commitment of near 10 years. Switzerland has also actively participated in the governance of COMPAL since the beginning and has promoted the programme at various international events.

20. According to the review of the main cooperation activities with WAEMU within the framework of AFRICOMP, a great number of workshops at the national and regional level<sup>12</sup> were conducted in to support WAEMU countries in reforming their competition framework. In particular, UNCTAD has prepared six new bills (regulations and directives) that will amend significantly the institutional and substantive aspects of the regional competition rules. From 2013 onwards, these activities were complemented with a two-week training course organized for their case handlers and the representatives of their member States in cooperation with the Zurich School of Management and Law, back to back with the thirteenth and fourteenth IGE sessions in Geneva. In addition, two drafting sessions were organized in Geneva in cooperation with the Competition Directorate of the WAEMU Commission. The aims of these sessions were to draft guidelines that would decentralize the enforcement power to member States, and thereby improve the enforcement of the community rules in WAEMU. Additional activities in Ouagadougou and in Abidjan in 2014 were carried out to put forward regional amendments of the law. All these reforms will be then presented by UNCTAD before the WAEMU Commission for perusal and approval by the Council of Ministers. The outcome of these activities is central to the effectiveness of the regional competition regime in WAEMU and remains to be seen in the coming years.

21. In 2011, UNCTAD and the Austrian Competition Authority began to collaborate on competition matters concerning the Middle East and North Africa Region. The idea was then presented at a meeting organized in connection with the twelfth IGE in Geneva in July 2012, where the structure that the cooperation initiative could adopt was widely discussed. The debates resumed during a meeting held in Rabat on 15 and 16 November 2012. The meeting consisted of three round tables on the needs of competition authorities in the region, organizational issues of the cooperation initiative and the work programme for the following two years. The first Euro-Mediterranean Competition Forum workshop was organized in connection with the thirteenth IGE in July 2013 and dealt with competition advocacy towards certain constituencies in the private and public sectors. The second workshop was held in Tunis in November 2013 and addressed the relationship between competition agencies and sector regulators. The next two meetings were held on the margins of the International Competition Network in Marrakech, Morocco, in April 2014 and in Geneva back to back to the IGE in 2014.

22. In 2012, UNCTAD and the Bulgarian Competition Authority launched the Sofia Competition Forum. The Forum is an informal mechanism for interaction between the Balkan competition authorities, allowing them to outline the common challenges they encounter in their day-to-day activities as competition agencies. In addition, the Forum will attempt to find approaches to overcome hurdles with regard to the approximation of their national competition policies to the best European and world standards in this field. The beneficiaries are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia, and Serbia.

23. In a relatively short period of its existence, the Forum succeeded in attracting to its seminars some of the leading competition experts and prominent speakers from the most experienced and esteemed national authorities and international organizations and

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<sup>12</sup> For instance the Regional Competition Forum in Ouagadougou (27–30 November 2012) on the relationship between competition authorities and sector regulators, and competition policy and public procurement within the WAEMU competition regime.



institutions in the field of competition policy. The Forum has recently endorsed and published a report on the comparative overview of Balkan competition regimes, which aimed to compare the laws of neighbouring jurisdictions and outline areas that would require further study and intense cooperation among Forum members. Moreover, the Forum provides an excellent opportunity for active international cooperation, which supports the competition authorities of the participating countries.

24. In late 2014, two major regional programmes were launched for the Middle East and North Africa Region and the region of the Association of Southeast Asian Nations (ASEAN). It is too early to review these programmes, as the implementation of their activities is just beginning. In November 2014, UNCTAD and the ASEAN Secretariat signed a cooperation agreement to launch a regional project for the ASEAN countries in the area of sectoral consumer protection enforcement of relevance to ASEAN economic integration. In addition, the inception phase of the COMPAL Programme with the support of the Swedish Government was launched with field visits in the eight beneficiary countries in the Middle East and North Africa Region in March and April 2015. It is expected that activities will be implemented starting in July 2015 for the period of four years.

### **Project review**

25. Between 2010 and 2015, UNCTAD continued its demand-driven efforts to assist in the creation of a competition culture in developing countries. To that end, it provided technical assistance in the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation, as well as in areas contributing to a better understanding of the issues involved. It also contributed to building national institutional capacity to enforce effective competition legislation. Further, UNCTAD assisted Governments in identifying the role of competition policy in development, its implication at national, regional and international levels, as well as strategies for regional and subregional cooperation in this field. As a result of the voluntary peer reviews prepared by UNCTAD, several national technical assistance projects were carried out as a follow-up to policy recommendations, for example in the tripartite peer review of the United Republic of Tanzania, Zambia and Zimbabwe. Mobilization of resources at the IGE where the individual projects were submitted has been positive. Finally, responses to technical assistance requests have led to the development of national competition projects, such as in the case of Ethiopia, where a project was recently launched in December 2014 with the financial support of Luxembourg.<sup>13</sup> Other technical assistance requests are being channelized through United Nations special funding programmes such as “Delivering as one”, particularly in relation to Albania and Mozambique.

26. In a study prepared by the UNCTAD secretariat for the eleventh session of the IGE, it was indicated that the assessment of the impact of capacity-building was a difficult and complex task. This exercise requires information and data that can be difficult to collect to conduct this type of exercise.<sup>14</sup> However, this task can be aggregated and easily collected when delivering long-term regional programmes such as COMPAL with the full commitment of their beneficiaries and partners. The upward trend of UNCTAD technical cooperation and capacity-building activities providing assistance within the framework of regional and subregional groupings can provide a new approach to the worldwide work of capacity-building and technical assistance, as detailed below.

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<sup>13</sup> See UNCTAD, 2014, UNCTAD and Luxembourg join forces to strengthen competition policy and consumer protection in Ethiopia, available at <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=896>, accessed 25 April 2015.

<sup>14</sup> See TD/B/C/CLP/11/Rev.1.

### **C. Global COMPAL: New UNCTAD capacity-building and technical assistance strategy on competition and consumer policies and laws**

27. On the basis of the experience gained from the work under COMPAL for Latin America in the last 12 years, the Secretary-General of UNCTAD launched Global COMPAL in Lima on 5 May 2014. This new strategy is meant to cover competition and consumer protection policies for all regions of the world; therefore, COMPAL has now stands for Competition and Consumer Protection Policies for All.

28. Paragraph 61 of the latest UNCTAD report on Capacity-building (TD/B/C.I/CLP/30) mentioned the Global COMPAL strategy and provided key lessons learned during the 10 years of experience with the Latin American Programme on Competition and Consumer Policies and Laws.

29. COMPAL for Latin America has since become an UNCTAD model of regional cooperation for capacity-building on competition and consumer protection policies and has established itself as the platform in Latin America for knowledge sharing and peer learning and as a model for South–South cooperation. The Programme has succeeded in significantly strengthening legal and institutional frameworks and has managed to place competition and consumer protection policies on the national and regional agendas. Concrete achievements of COMPAL II include the adoption or reform of competition and consumer protection laws and their subsequent enforcement, advice and training for the set-up of competition authorities and the enlargement of the Programme from 5 to 15 members.

30. A second external evaluation of COMPAL in 2012 concluded that it was a successful, worthwhile programme that had made clear contributions to institutional development in Latin America. The evaluation recommended a third phase of the programme with the objective of consolidating the achievements of COMPAL and strengthening regional cooperation. The evaluation further recommended that UNCTAD should replicate COMPAL in other regions such as the Middle East and North Africa, the Balkans, the Commonwealth of Independent States and ASEAN.

31. With this in mind, UNCTAD launched two programmes in the ASEAN region (“Consumer protection matters”) and the Middle East and North Africa Region based on the experience in Latin America. In addition, COMPAL III was initiated in Latin America in March 2015. The regional initiative will achieve a self-sustained programme with the aim of consolidating the acquired capacities of the relevant stakeholders and strengthening regional cooperation on competition and consumer protection laws and policies using an integral approach.

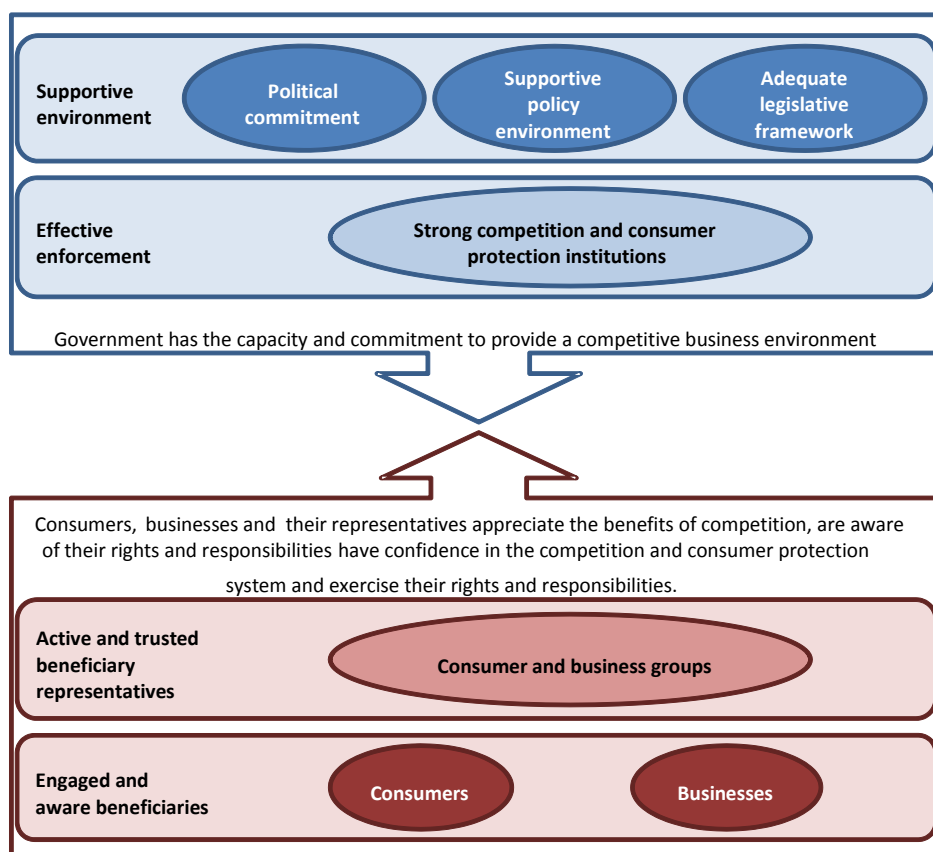
#### **Intervention strategies: National, regional and global components**

32. The areas of the intervention strategies of Global COMPAL are the national, regional and global components. To ensure partner countries’ buy-in and commitment to UNCTAD, all activities will be planned and implemented with the involvement of their competition and consumer protection agencies, as well as other national, regional and global networks where appropriate.

33. The objective of the national component is to strengthen the competition and consumer protection systems in the partner countries. Work under the national component will be entirely demand driven and focused on each country’s needs. To ensure strong national ownership of the programme, each country’s needs assessments will be conducted in partnership with their competition and consumer protection agencies. The analyses will draw on agencies’ strategic priorities and will be informed by other key studies coming from donor’s needs assessments of competition agencies, as well as peer reviews of competition law and policy conducted by UNCTAD and the Organization for Economic

Cooperation and Development (OECD). The needs assessments will review all the components of a country's competition and consumer protection system, which are summarized in the figure below. This will cover constraints to competition in specific sectors, considering both business conduct that restrains competition and government policies that burden competition. Based on the findings of the assessments, each country will develop an action plan, setting out its intervention priorities. These plans will be aligned with the strategies of the competition and consumer protection agencies to ensure coherence.

### Components of a national competition and consumer protection system



34. UNCTAD will work with partner countries to implement their action plans. While priorities will vary between countries, they are likely to focus on the following:

- (a) Improving the policy and legislative environment
  - (i) Building political commitment. UNCTAD will make the case for competition and consumer protection, targeting key decision-makers in Government, the civil service, parliament and the judiciary. UNCTAD has access to government ministers and parliamentarians owing to its status as a United Nations programme;
  - (ii) Generating a supportive policy environment. UNCTAD will carry out studies and reviews to identify gaps and inconsistencies between countries' competition policies and other national and regional policies. These might include areas such as investment promotion and industrial policy. UNCTAD will also support Governments to address weaknesses identified by developing appropriate policy positions;

(iii) Strengthening the legislative and regulatory framework. UNCTAD will assist countries to strengthen their legislation and regulations, including through its peer reviews;

(iv) Advising on legal and regulatory changes that can open markets to competition;

(v) Drafting new laws and regulations for effective antitrust policies;

(vi) Carrying out reviews to identify regulatory gaps and inconsistencies with national and regional laws;

(vii) Providing technical advice in the implementation of competition policies, including State aid regulations and competition advocacy initiatives, creating a level playing field across the entire economy;

(viii) Mainstreaming principles of competition policy within broader investment climate reforms,

(ix) Building the capacity of the judiciary to improve its understanding and application of competition and consumer protection regulations.

(b) Building the capacity of competition and consumer protection agencies

(i) Building the capacity of enforcement agencies. UNCTAD will strengthen agencies' substantive and corporate functions. Substantive support will build agencies' capacity in areas such as cartel prosecution, identifying anticompetitive agreements, etc. Corporate support will improve agencies' capacity in areas such as planning, performance management, communications, etc. that are essential for the agencies to operate effectively.

(ii) Both types of support have the ultimate aim of enabling the agencies to better investigate and resolve anticompetitive practices and defend the rights of consumers. Support for communications will also assist agencies to raise awareness of (and confidence in) their services among businesses and the public.

(iii) Developing tools and information products. UNCTAD will assist competition and consumer protection agencies to produce essential tools and information products to identify and tackle anticompetitive behaviour. These will include studies, manuals, guidelines, and knowledge management tools, such as Competition Assessments that identify constraints to the development of competitive markets.

(c) Building the capacity of consumer groups and business associations: UNCTAD will raise their awareness of the details of competition and consumer protection law, and of their rights and responsibilities. The programme will also support these groups with communication and outreach to their constituents.

35. UNCTAD will work with competition and consumer protection agencies to evaluate the success of activities implemented and to identify and compile best practice and key lessons. This information will then be disseminated through the regional and global components.

36. The regional component has two main objectives: to promote peer-to-peer learning between competition and consumer protection agencies and to identify and address international competition and consumer protection issues that require regional collaboration. In addition, regional activities provide an effective avenue for involving other non-partner countries. Involving additional countries in the regional component adds momentum and visibility to the programme, and broadens its impact.

### **Peer-to-peer learning**

37. Experience from the previous two COMPAL phases found that regional peer-to-peer learning is an extremely effective tool for building the capacity of competition and consumer protection agencies. It enables those agencies that are more advanced to support and mentor the weaker agencies, which benefits both groups and develops relationships between the agencies which will outlast the programme, ensuring sustainability. The programme will bring together representatives from the national agencies, as well as from regional bodies and networks to share their experiences and discuss key lessons from the programme's work at the national level. UNCTAD will also encourage the more developed agencies to play a leadership role and take responsibility for developing the capacity of the less advanced agencies. An example is the COMPAL School for Competition and Consumer Protection under COMPAL III, which provides training for representatives from competition and consumer protection agencies in all COMPAL countries.

### **Addressing regional issues**

38. As companies and value chains become increasingly international, competition and consumer protection issues often need to be addressed at the regional or global level. Countries have to work together to identify cartels and other anticompetitive behaviour, and develop coherent regulatory responses. UNCTAD will provide agencies with the tools to help them identify anticompetitive practices at the regional level.<sup>15</sup> The Programme will facilitate discussions between agencies with shared concerns, providing them with the necessary information and guidance to identify solutions. UNCTAD will continue to provide support to the agencies as they implement these solutions.

39. The objective of the global component is to promote learning between regions by sharing best practice and to identify and address global competition and consumer protection issues. Direct interactions between partners from different regions are valuable for sharing experiences, building networks, identifying areas of common interest and establishing collaborative initiatives. UNCTAD will therefore seek to arrange global meetings back to back with other events, such as the IGE, OECD events and the World Trade Organization Aid for Trade meetings, to allow partners to meet at a manageable cost. However, UNCTAD will also make use of information and communications technology to allow programme partners to collaborate and share information remotely.

### **Sharing best practices**

40. As in the regional component, counterparts from competition and consumer protection agencies will share experiences, best practice and lessons learned when they meet at global forums. In addition, UNCTAD will compile information tools and best practice guides as a public resource for all participating countries to use. UNCTAD has already established a virtual library where it will continue to make these resources available. Key documents and executive summaries will be translated into English and, where appropriate, into other United Nations languages.

### **Addressing global issues**

41. Emerging global issues will be identified during discussions between partner agencies. UNCTAD will promote deliberations on specific problems with an international dimension and, in response to demand from participating countries, conduct investigations

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<sup>15</sup> In Latin America, for example, UNCTAD developed a notifications database, which contains the notifications on anticompetitive behaviour received by national competition agencies. Agencies are therefore able to see whether similar practices have already been notified in another country, which would imply an international cartel.

to provide information to inform these debates. UNCTAD will also seek to link competition and consumer protection agencies from different regions with areas of common interest to promote collaborative initiatives.

### **Promoting convergence**

42. As more countries adopt sound competition principles and enforcement techniques, there will be “soft” convergence towards best current practices. This will reduce the costs to business of compliance with increasingly harmonized enforcement standards, encouraging trade and investment to the benefit of developing countries. UNCTAD will work with other multilateral institutions to continue to build consensus on appropriate competition law and policy principles in developing as well as developed nations. The World Bank and OECD will be the most recurrent agencies with which UNCTAD will constantly find synergies and common interests to work together on specific projects and/or activities.

### **Assessment of programme interventions, impact and risks**

43. COMPAL interventions will be assessed and their impact evaluated through a number of tools that are also required for all forms of government action when imposing or reducing costs on businesses, the voluntary sector or the public sector. They are a central element of the Government’s objective to regulate only where necessary and reduce the burden of regulation on business and the voluntary sector.

### **Evaluation and results-based management**

44. Impact evaluation for evidence-based policymaking implies questioning the regulatory work carried out by Governments. Questions such as what works, what does not, where, why and for how much are always relevant in making an evaluation. Common definitions of impact used in evaluation generally refer to the totality of longer-term consequences associated with an intervention on quality-of-life outcomes. For example, the OECD Development Assistance Committee defines impact as the “positive and negative, primary and secondary long-term effects produced by a development intervention, directly or indirectly, intended or unintended”.

45. The aim of regulatory impact assessments is to assess the need for, and impact of, proposed regulations and amendments to existing regulations. They are a tool to help policymakers understand the consequences of possible government regulation.

46. The guiding principles of this approach are as follows:

(a) The quality of policymaking and the extent to which they influence development strategies must be viewed within the wider context of the realities of policymaking;

(b) There needs to be a continued and structured approach to post-implementation review across all government departments;

(c) There is a need to ensure clarity on future directions and coverage of competition law and policy during transition towards a market economy;

(d) There is a need to increase government accountability as Government improves the transparency of policy decisions so that it can encourage evidence-based policymaking that helps deliver more effective policy decisions;

(e) Competition policies should explicitly consider the impacts of legislation when it comes into force. There should be a stronger emphasis on compliance and enforcement issues, including the distribution of compliance and associated cost estimates of the proposed enforcement regime;

(f) Support to policymakers should be provided through ongoing senior management commitment that provides proactive rather than passive support and promotes the importance of better regulations. There is a need for greater awareness and an improved understanding of the requirements of competition neutrality; communicating with all public policymaking officials is also necessary. Policymakers should buy in to the benefits of using competition neutrality and understand how it can assist policy development; targeted packages of training and support that integrate competition neutrality into mainstream policy development should be provided.

47. Global COMPAL will face risks, including a potential lack of political will and problems replicating the COMPAL model beyond Latin America. UNCTAD has developed strategies to mitigate these risks.

48. Like other programmes, it will need to mitigate the following risks:

- (a) A lack of political will for change;<sup>16</sup>
- (b) Belief that the COMPAL approach is not replicable outside of Latin America;<sup>17</sup>
- (c) A lack of collaboration from other development partners.<sup>18</sup>

### **Thematic geographical focus and the principle of COMPAL interventions**

49. One of the recommendations of external evaluators was that COMPAL has provided an opportunity for a large, thematic global strategy in competition and consumer protection. The previous phases of COMPAL had demonstrated that a large, long-term intervention provided a level and continuity of support that delivered considerable change across regions. There is, therefore, a significant opportunity for replicating and scaling up this approach in other regions. Hence, the main areas of the Global COMPAL strategy are described below.

### **Technical assistance for competition and consumer protection policies and regulations**

50. Issue 1: The opening of trade and investment pose a considerable number of complex and challenging issues for developing countries at the national and regional levels, such as monopolization, abuse of dominance, anticompetitive mergers and State monopolies. Countries involved in the globalization process often lack the capacity and the

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<sup>16</sup> While all the partner countries have made a commitment to improve competition and consumer protection, there may be a lack of political will to enforce this policy, as local elites and businesses are often comfortable with the anticompetitive status quo. A mitigating factor should be the use by UNCTAD of the main comparative advantage derived from the open-door approach and direct access to politicians and lawmakers in the national parliaments.

<sup>17</sup> The COMPAL approach has proved very successful in Latin America, but has not been tested in other regions. It might not prove so effective in more diverse regions, particularly those with several languages, which could limit the sharing of best practice and peer learning. A mitigating factor could be the regional components of each region, as they could be the best catalyst for introducing pilot programmes and cross-fertilization between regional components of other regions. In addition, cross-continent sectoral studies will be of crucial importance to further indicate commonalities between companies operating in regions with similar business patterns.

<sup>18</sup> Several other organizations, such as OECD, the International Competition Network, the International Consumer Protection and Enforcement Network, the World Bank and the Inter-American Development Bank, are working in the field of competition and consumer protection. If they do not engage with Global COMPAL, there is a risk that competition and consumer protection agency partners will receive inconsistent and contradictory advice. A mitigating factor could be that Global COMPAL will have an interoperability scheme whereby all partner organizations will have to communicate activities through the pressure of donor countries such as Switzerland.

institutions necessary for introducing and adopting regulatory reforms to deal with such challenges.

51. Approach 1: The aim is to enhance the effective capacities of developing countries to adopt and implement competition programmes. To this end, UNCTAD supports the following measures:

- (a) Introduction of competition policy frameworks and national legislation;
- (b) Institutional capacity-building, including establishment of competition agencies;
- (c) Training and upgrading skills of enforcers in the area of competition policies;
- (d) Regional cooperation initiatives across these areas.

52. Issue 2: Opening to trade provides potential benefits not only to business but also to consumers. However, consumer protection laws are necessary to ensure that anticompetitive practices do not harm consumer welfare; such laws therefore complement competition law and policy in ensuring that consumers have access to non-hazardous products, to adequate information to enable them to make informed choices and to effective redress in case of injury.

53. Approach 2: The aim is to enhance the effective capacities of developing countries to adopt and implement consumer protection programmes. To this end, UNCTAD supports the following approaches:

- (a) Introduction of consumer protection policy frameworks and national legislation;
- (b) Institutional capacity-building, including establishment of consumer agencies;
- (c) Training and upgrading skills of enforcers to provide effective and affordable redress to consumers;
- (d) Combating unfair trade practices such as misleading advertising, fraud, data protection and counterfeit products;
- (e) Regional cooperation initiatives across these areas.

#### **Creating an enabling environment for the private sector**

54. Issue: Raising trade capacities and ensuring a greater integration into international value chains remain a challenge for enterprises, particularly for small and medium-sized enterprises in beneficiary countries.

55. Approach: The aim is to assist the private sector in beneficiary countries in building up sustainable capabilities by meeting international norms and standards and by creating a competitive environment without unnecessary bureaucratic burdens. To this end, UNCTAD will support the following measures:

- (a) Advocacy for understanding competition law principles and voluntary compliance;
- (b) Guidelines and information notes for businesses on the substantive application of competition and consumer laws;
- (c) Guidelines on leniency programmes for business executives;



(d) Training workshops, seminars for State-owned enterprises and government departments to ensure that regulation and government measures do not crowd out private sector activities;

(e) Information notes and awareness-raising activities on the need to integrate the informal sector into the formal economy;

(f) Advocacy for eliminating unfair trade practices, including counterfeit products.

### **Competition neutrality**

56. Issue: Both public and private anticompetitive practices are an important reason why economic growth and development has not yet reached its full potential in many developing countries. The elimination of government measures such as State aid to State-owned enterprises, favourable tax treatments and discounts is a major obstacle to the efficient use of scarce public resources. It is only by complying with non-discriminatory treatment of public and private enterprises as well as repealing outdated and unnecessary regulations that the potential benefits of trade and investment liberalization can be secured in the long term. In most countries, promoting a vibrant private sector and of a public sector that enjoys good governance, transparency, accountability and freedom from corruption may allow the potential for economic growth, development and poverty alleviation to be achieved.

57. Approach: The aim is to assist Governments in adopting both competition neutrality and appropriate frameworks for enforcing competition law. To this end, UNCTAD supports the following:

(a) Formulation of a national competition neutrality strategy;

(b) Dialogue between policymakers, legislators and senior management of State-owned enterprises on the need for policy coherence between competition, consumer and other public policies;

(c) Selected studies on infrastructure and public utilities;

(d) Regulatory impact assessment studies;

(e) Developing coherence strategy between industrial trade, investment and competition policies.

### **Follow-up and impact assessment of activities**

58. Issue: Beyond independence and accountability of the competition and consumer protection agencies, the overall political and social support is an essential component for a competition culture. In particular, one of the key pre-conditions for a meaningful development of a competition culture is broad support by consumers and businesses, the existence of competition neutrality and full compliance with the competition law by public and private enterprises.

59. Approach: To address some of these challenges, UNCTAD carries out peer reviews as well as other country reports which identify weaknesses, strengths and areas of improvement. These recommendations are incorporated in annual capacity-building activities extended to peer-reviewed countries and reported to the IGE on Competition Law and Policy. UNCTAD through this new strategy will further support:

(a) Voluntary peer reviews of new member countries;

(b) The review and consultations on the findings and recommendations for discussion at the IGE;

- (c) Advisory services and training for competition and consumer policies agencies;
- (d) The development of coherent competition and public policies;
- (e) The organization of a national dialogue, forums on development of trade and investment and poverty reduction strategies.

**Expanded regional focus**

60. Issue: COMPAL initially put its focus on Latin American countries. At the outset, this was considered to be a pilot group of beneficiary countries facing similar hurdles under common economic, social and cultural backgrounds. While it is crucial for UNCTAD to continue to support Latin American countries, lessons learned, and products and best practices developed can also be shared with countries in other regions. UNCTAD has received a large number of requests from countries willing to join COMPAL and/or have access to the products developed so far. This expansion would have a positive and multiplier effect on other developing countries outside Latin America. The recent launch of the COMPAL Middle East and North Africa Region programme is an example of this.

61. Approach: In order to effectively facilitate the accession of new members into the Programme and to respond to different needs and circumstances, tailor-made policy advice and capacity-building activities will be extended to beneficiary countries. UNCTAD should be able to advise and add value to the most advanced competition and consumer protection agencies in different regions of the developing world. Hence UNCTAD should support:

- (a) Expansion of the Advisory Group of Experts to include talent from other regions;
  - (b) Establishment of a knowledge management platform available in three United Nations languages (Spanish, English and French) that facilitate access to all products (manuals, guidelines and studies produced under COMPAL);
  - (c) Development of a national development strategy for each new member country.
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