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Minutes Seventh Meeting
Working Group on modalities of UNCTAD voluntary peer review exercises, 17
March 2022

The nineteenth and fifth sessions of the Intergovernmental Groups of Experts (IGE) on Competition Law and Policy and on Consumer Protection Law and Policy, held from 5 to 9 July 2021, decided to “renew the mandate of the Working Group on modalities of UNCTAD voluntary peer review exercises, open to member States on a voluntary basis, without any financial implications for the regular budget of the United Nations, to further discuss and improve the existing procedures and methodology based on the possible improvements identified to date”. The Working Group held its seventh meeting on 17 March 2022 (at 14:00 CET).

1. The meeting was opened and moderated by the UNCTAD secretariat.
2. The UNCTAD secretariat recapped the discussion up to the last meeting by briefly introducing the secretariat’s proposal document titled “Revised Process of UNCTAD Voluntary Peer Review on Competition and on Consumer Protection Laws and Policies”, circulated in January 2022, and comments from the signatories of the “joint proposal”¹, Germany, Prof. Peter Whelan (University of Leeds), Consumers International and Dr. Laura Best (Nelson Mandela University).
3. The UNCTAD secretariat also announced that Germany and West African Economic and Monetary Union (WAEMU) provided their comments in writing after the last meeting, which were already circulated to Working Group participants.
 - i. Germany presented its comments, in particular: the “joint proposal” requires significant additional commitment from peer reviewers which, based on their experience as a peer reviewer of Chile’s consumer protection law and policy, could hamper countries from accepting to be peer reviewers. The voluntary peer review procedure should be comfortable with all countries.
 - ii. WAEMU also presented its comments, in particular: the voluntary peer review exercises should always keep its non-binding character at all stages of the review, and the peer reviewed member States is at the heart of the process and thus all recommendations from the peer review should be consulted with it.
 - iii. Peru stated that: i) sending all the background documentation to peer reviewers would imply additional costs and delay in the

¹ United States (USDOJ and USFTC), Australia, Chile, Italy, Mexico (COFECE and Profeco), the Philippines, and Dr. Laura Best (Nelson Mandela University).



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- process due to the necessary translation, ii) peer reviewers could propose an expert(s), complementary to UNCTAD's proposal, but it should be the reviewed member States that chooses the expert(s), iii) peer reviewers can provide comments to the peer review background report, but it should be the reviewed member State that decides to accept those comments based on its objectives and the feasibility of implementing the recommendations, and iv) questions to the reviewed member State during the IGE session should be sent in advance, because answers may require prior consultation and coordination not only with other divisions in the competition/consumer protection authority but also with other government authorities and stakeholders.
- iv. The United States responded to those reactions by explaining that the "joint proposal" did not intend to impose additional costs and tasks on peer reviewers, but to provide more opportunities to engage in the discussions at various stages. Also, they did not wish that comments from peer reviewers to the background report to be incorporated, but to be considered by the peer reviewed country. They also expressed understanding of the needs of sending questions in advance, and explained that the proposal was to make sure that there would be an opportunity for substantive exchange, which could take place in preparation of the IGE meeting.
 - v. Germany added that the wordings of the document should clarify that those roles of peer reviewers are not mandatory but providing them with more opportunities to be involved.
 - vi. Sweden stated that it agreed on the substance of the proposal from the secretariat, and argued to avoid additional costs as the funding is already limited. It also emphasized the difference between the OECD's voluntary peer review, where reviewed member States are "scrutinized" in light of the OECD Recommendations, and UNCTAD's peer review, which is a part of technical assistance for developing countries.
4. For the next meeting, the UNCTAD secretariat welcomed comments to the minutes of the meeting, the secretariat proposal entitled "Revised Process of UNCTAD Voluntary Peer Review on Competition and on Consumer Protection Laws and Policies" and the reactions to that document before 8 April 2022. Shortly after, the UNCTAD secretariat will circulate a revised proposal considering those additional comments for consideration at the next meeting Working Group participants will consider whether i) they can reach to the consensus on the document, which will then be submitted to the IGE or ii) they



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do not reach consensus on any proposal which may lead to consider the extension of this Working Group's mandate. In any case, individual/group of member States can submit their own proposals via their permanent missions in Geneva for consideration of the IGE at any time.

5. Following the meeting, Peru (reviewed in 2020) sent its comments in writing and Chile (reviewed in 2021) sent further comments. All comments received since the last meeting are reproduced in Annex.
6. The UNCTAD secretariat informed that the minutes of these meeting would be uploaded in the Working Group subsite (<https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-voluntary-peer-reviews>). The next meeting will be held on 3 May 2022.



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Working Group on modalities of UNCTAD voluntary peer review exercises		
7th Meeting – List of Participants		
Name	Organization	Country
Delcio Penelas	Competition Regulatory Authority	Angola
Maria Paola Rubin	DNDCYAC	Argentina
Samir Sabljica	Ministry of Foreign Trade and Economic Relations	Bosnia and Herzegovina
Savio da Silva Costa	Administrative Council for Economic Defense (CADE)	Brazil
Francisco Pacheco	PROCON - Florianópolis	Brazil
Mareke Aden	Federal Ministry for Justice and Consumers	Germany
Rafael Regla	Profeco	Mexico
Francisco Alejandro Pedraza Cortes	Federal Economic Competition Commission (COFECE)	Mexico
Ivonne García González, Jimena Itzel Sierra Navarrete	Federal Telecommunications Institute (IFT)	Mexico
Alicia Vilca Accinelli, Lesli Roxana Gonzales Cabanillas, Yvette Stephany Sanguinetti Campos,	National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI)	Peru
Ryad Awaja	Permanent Observer Mission of the State of Palestine to the UN in Geneva	State of Palestine
Yvonne Stein	Ministry of Finance	Sweden
Krystle S. Maharaj	Trinidad and Tobago Fair Trading Commission	Trinidad and Tobago
Caldwell Harrop	Department of Justice	United States
Russell Damtoft, Michael Panzera	Federal Trade Commission	United States
Seydou Sacko	Economic Community of West African States (ECOWAS)	
Francois Souty	European Commission	European Union



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Ado Olivier Paterne Angaman	West African Economic and Monetary Union (WAEMU)	
Joongweon Jeoing	Bae, Kim & Lee LLC	
Laura Best	Nelson Mandela University	
Dr Marek Martyniszyn	Queen's University Belfast	
Peter Whelan	University of Leeds	
Diana Brioso Goncalves		
Petek Konuk		



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Annex: written comments received since sixth meeting of the Working Group

Germany

Dear colleagues,

I would like to thank you very much for the open exchange of views on February 9. However, after reviewing the minutes and the revised peer review process, and in light of our discussions, I would like share with you some of our thoughts: Germany is very concerned that with a lot of stipulations as far as the selection and the activities of the peer reviewers are concerned, as proposed by the USA , Australia, Chile, Italy, Mexico, the Philippines and Dr. Laura Best from Nelson Mandela University, it might be rather difficult to conduct the peer review at all.

As the document itself points out, there has hitherto never been more than one applicant undergoing a peer review at a time. As last year's peer reviewers, we have also witnessed at close hand that it is not easy to find people committed to this task (of conducting the review). For the responsible ministry in Germany, for example, the task meant a workload that could only be achieved with a significant additional commitment from several employees.

The suggestions made prior to the last Working Group Session regarding the prior experience of peer reviewers, but also their involvement in the preparation and writing of the peer review could overwhelm many of the institutions from countries that could be considered as potential peer reviewers.

For example, the peer reviewers are supposed to be consulted and have to give their opinion even before the experts who write the peer review report are appointed. They are also supposed to receive background information on the fact-finding mission and be consulted during the preparation of the report and be able to provide comments on this at an early stage.

This may well be possible and conceivable in a well-rehearsed process that has been in place for a long time. However, for such a new process as the peer review, this strikes us as over-burdening the procedure.

We see, and appreciate, that the group of states has also considered how to include the widest possible range of states as peer reviewers, cf. the language requirements for peer reviewers. However, the other further proposals for very intensive involvement of peer reviewers might undermine this effort.

On the other hand, we welcome the proposal to informally discuss the presentation of the peer review in advance, as this can also be helpful in the preparation of the IGE meeting.



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I am looking forward to our discussion on the 17th.

Kind regards
Mareke Aden

WAEMU

Dear Delegates,

I would like to thank you very much for the your proposals made during the last Working Group Session.

WAEMU as the first regional grouping of developing countries to undergo this process would like to make the following recommendations:

- The voluntary peer review exercises must always keep its non-binding character at all stages of the review;
- The volunteering member State/regional organization under review must always be at the heart of the process. so all recommendations arising from the evaluation must be taken in consultation with it; with the support of the secretariat ;
- The role of the UNCTAD Secretariat at all stages of the process must be strengthened

Best regards,
Ado Olivier ANGAMAN

Peru (peer reviewed in 2020)

- Due to the evaluation experience, the deadlines for executing the Peer Review process are tight. In this sense, if at the beginning of the process it will be necessary to send all the background documentation to the reviewers, we would have to consider the language of the documents, since translation process could imply time, and potentially costs. It is important to mention that the information exchange process is continuous.
- We agree with the proposal that peers could propose a list of experts, complementary to UNCTAD list, nonetheless it should be the evaluated country that chooses experts, due to language aspects, experience of the consultant(s) and the Topics required at the country level.
- We agree that Peer comments should be sent before the presentation of the peer review, but it should be the evaluated country that decides the final version of the document based on its objectives and the feasibility of implement the recommendations.



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- We agree that questions of the reviewing countries should be sent in advance, given the complexity of the subject and the structures of each country. This is because many times the answers may involve coordination not only within the entity that leads the review process, but also with independent entities, or other members of the consumer protection system, as is the case in Peru.

Alicia Vilca Accinelli

Chile (reviewed in 2021)

Dear all,

First, I'm very sorry for this late reply. I was on vacation during the last meeting of this WG and then on sick leave. So, unfortunately, we lost Thursday's session and its possible outcomes.

We have carefully read the further comments forwarded by the Secretariat and, as the last Peer reviewed country, we would like to highlight the importance of this exercise as a manner to achieve strategic definitions from the reviewed country/region organization.

To pursue these strategic definitions, reviewed countries should choose the Peer Reviewers, the areas to be covered during the examination, and the technical experts responsible for the background report. These considerations keep in mind that the Peer Review is an exercise of self-assessment that allows public policy improvements, and the interested should have the possibility of deciding and considering its options with the valuable guidance from the Secretariat.

As an opportunity for improvements, we see that we should also include experience in elaborating UN reports as requirements for choosing technical experts. In addition, in this ítem, we see as a must condition, having an external expert who is fluent in the country's official language. In the Chilean experience, we went through some difficulties because one of our experts wasn't native in Spanish, and some stakeholders wouldn't participate in the process if English were chosen for a fact-finding mission.

As our colleagues from Germany pointed out, we also share the concern that a significant involvement of peer reviewers in the preparation and writing of the peer review report could overwhelm institutions that might want to participate as potential peer reviewers.

At last, we also would like to add that, a more complex process implies more resources to develop these exercises, undermining the evaluation's final purpose and reducing potential countries asking to be reviewed and countries wanting to review others.



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I hope these ideas help to clarify our observations about the different comments received

Kind regards,
Daniela Gil