

Ad Hoc Expert Group Meeting on Competition, Consumer Protection and Sustainability
28 September 2022

10:00 - 18:00 hrs.
Room XIX, Palais des Nations, Geneva and online

SUMMARY

The Ad Hoc Expert Meeting on Consumer Protection was attended by 235 participants from 57 member States, intergovernmental and non-governmental organizations. The Ad Hoc Expert Meeting held consultations on the issue of “Competition, consumer protection and sustainability”.

Ms. Teresa Moreira, Head of UNCTAD’s Competition and Consumer Policies Branch, opened the meeting by briefly introducing UNCTAD’s mandate related to sustainability. The Bridgetown Covenant adopted at UNCTAD’s 15th Ministerial Conference identifies climate change, biodiversity loss and environmental degradation as major global challenges, and calls for sustainable economic growth. She stressed the key role of competition and consumer protection law and policy in achieving sustainability goals. As businesses increasingly take sustainability initiatives, they may sometimes need to cooperate with their competitors, which could violate competition law; therefore, competition authorities in member States need to provide clear guidance. UNCTAD plays an active role in facilitating global discussions. Consumers, especially the younger generation, are increasingly aware of their common and shared responsibility in the green transition. Ms. Moreira highlighted UNCTAD’s relevant instruments, namely the United Nations guidelines for consumer protection (UNGCP) and the Biotrade Principles and Criteria, which provide governments and other stakeholders with concrete and actionable advice and guidance on empowering consumers to make sustainable choices and promoting sustainable production patterns.

The morning panel focused on competition and sustainability. Following an introductory presentation by the secretariat, speakers shared their experience and views from the competition authority, regional organization and scholar perspectives.

The representative of the Authority for Consumers and Markets (ACM) in Netherlands presented the agency’s efforts on sustainability considerations in the competition law, focusing on horizontal agreements between competitors. He explained the incentives for companies to take sustainability initiatives and the importance of both general guidance and individual informal guidance. He then elaborated the cornerstones of the agency’s cooperation guidelines and their application. He also introduced ongoing discussions within the European Union, including the draft Directive on Corporate Sustainability Due Diligence. To conclude, he stressed that competition authorities should allow companies to take responsibilities as it was difficult to reach a global consensus on the right regulation.

The representative of the Administrative Council for Economic Defense (CADE) in Brazil shared their national experience. She explained that CADE established guidelines and included sustainability matters in antitrust dialogues. She found that agreements among competitors for sustainability usually did not

raise competition concerns for CADE when they were voluntary and without sharing sensitive information. Although the competition law has limitation in considering sustainability factors, she shared how the environmental, social, and governance (ESG) agenda could cover a broader scope including consumer right and could be linked with good business practices in competition. In Brazil, competition law enforcement has also been contributing to sustainability goals by funding relevant projects with antitrust fines. In terms of challenges faced by developing countries, she stressed that countries had different goals even within the same region, which made regional and global efforts difficult, calling for more international dialogues and coordination.

The representative of the West African Economic and Monetary Union (WAEMU) Commission spoke about efforts and discussions in the subregion. In terms of cooperation agreements, he explained that the Organization for the Harmonization of Business Law in Africa (OHADA) took actions to promote joint venture in sustainable investments in Research & Development (R&D) and production. Although the Commission has not undertaken sustainability initiatives, he explained how the current framework allowed for sustainability initiatives through state aid. He also shared a merger control case in the telecommunication sector where the Commission issued a favourable opinion by highlighting its high sustainability impact. He added that several innovations in the ongoing reform of the control of economic concentrations had the potential for enhancing sustainability. He concluded by welcoming UNCTAD to provide capacity building and technical assistance to support updating their regulatory framework and implementing competition rules.

The representative of the Federal Economic Competition Commission (COFECE) in Mexico shared how the Commission contributed to sustainability goals. She explained that the competition law in Mexico did not include public interests, but the Commission took advocacy efforts and conducted market studies to make an impact. She shared the example of advocating for consumer access to cheaper energy from clean sources in the electricity sector. The Commission also issued opinions on sectoral guidelines and filed for supreme court review on constitutional controversies in sector policies. Sustainability is not just about the environment and can also overlap with other policy goals; she mentioned their recent case about wage caps for women soccer players. The Commission has been actively sharing their experience in international forums and the speaker welcomed more international discussions.

A professor from the Amsterdam University explained the key assumptions behind green antitrust. He outlined some theoretical and empirical evidence in the literature on the uptake of corporate social responsibility (CSR), which indicates that consumers are willing to pay extra for CSR efforts and companies have more incentives to do CSR when they compete rather than collaborate. His model examined corporate behaviour under four possible regimes, and he concluded that CSR agreement was least likely to work. He warned that policies to allow sustainability agreements only might be counter-productive by achieving minimal green impact with maximum price increase and by over-relying on self-regulation rather than public policies. He recommended that competition authorities stay reserved and be critical about exempting cartels under a sustainability defence; instead, they could explore other competition dimensions to promote sustainability.

An interactive discussion ensued. Several delegates shared how competition authorities contributed to promoting sustainability goals. The delegate of the Russian Federation mentioned efforts such as conducting market studies and participating in discussions. The delegate of Austria introduced their competition authority's new guidance. In addition, the delegate of the European Economic Community called for transparency, legal certainty and measurability in competition law and enforcement when it handles sustainability issues.

In the afternoon, the UNCTAD secretariat presented highlights of an UNCTAD forthcoming publication on competition, consumer protection and sustainability. A panel discussion followed.

The representative of the Association of Southeast Asian Nations (ASEAN) Secretariat presented the development sustainability initiatives in the region. He highlighted key documents and programmes such as the ASEAN Socio-Cultural Blueprint of 2025 and the ASEAN+3 Leadership Programme on Sustainable Production and Consumption. He also introduced regional projects on promoting sustainable consumption, including capacity building workshops, a regional forum, which have contributed to developing the ASEAN Toolkit on Sustainable Consumption, with the support of UNCTAD. ASEAN countries have been nudging consumers for sustainable consumption through different avenues, including the regional blueprint plan, national strategies and community engagement. The Toolkit also provides examples of evidence-based approaches using nudging, actional information and role models. To conclude, he stressed the three challenges in sustainable consumption, namely what to buy, how to use and how to dispose.

The representative of the United Nations Environmental Programme introduced the One Planet network Consumer Information Programme, which aims to support the provision of quality information and to develop strategies to engage consumers in sustainable consumptions. He shared their learning, including providing various tools to improve consumer information and engaging wide and diverse partners. He also presented the Guidelines for Providing Product Sustainable Information and upcoming actions to implement it in key sectors. He stressed that One Planet and UNCTAD play a critical role in integrating consumer information into global agendas and called for global dialogues. He stated that sustainability initiatives could be improved by mainstreaming sustainable consumers into sectoral policies, nudging consumers gradually and making relevant information available to consumers. To conclude, he highlighted the need for connecting partners, empowering consumers and scaling up actions.

The representative of the National Consumer Service of Chile (SERNAC) shared their experience in incorporating sustainability into consumer policies. He stressed the importance of consumer information and awareness of sustainable lifestyles. He introduced a project, which established a platform that provides information on the environmental and social impacts of consumer products. Based on their national experience, he highlighted the need for robust product design, guidance for clear rules, public-private tools and initiatives, and institutional resilience to overcome barriers along the way of promoting sustainable consumption.

The representative of Consumers International shared their views. He highlighted the huge intention-action gap, meaning that consumers wanted to live a sustainable lifestyle but faced barriers to change their behaviour. To narrow the gaps, he pointed out the need to improve consumer information and reduce less sustainable options. He shared some examples in the energy sector and in waste and recycling, recommending broader initiatives to engage beyond the middle-class and educated groups and to include poor and vulnerable populations. To create an enabling environment for sustainable consumption, he stressed that consumers should represent and participate in the policy-making process. Globally, he called for making consumer information more available, accessible and credible through standardization and consumer engagement. In addition, combatting misleading green claims will require guidance and regulations. To conclude, he emphasized the great potential of consumer policies in promoting sustainable consumption and called for collaboration on commonly identified areas.

An interactive discussion ensued. Several delegates from shared their recent experience in promoting sustainable consumption. A delegate from China shared an example of controlling excess packaging of commodities through standards and monitoring. A delegate from India introduced policy changes to address e-commerce challenges, misleading advertisements and e-waste. A delegate from Mexico stressed the importance of social media for consumer outreach and education. A delegate from the OECD shared their new project that focuses on addressing barriers to behavioural change and welcomed collaboration with international partners. A delegate from MGP India mentioned group buying and delivery of groceries as a promising model. Several delegates¹ highlighted the importance of collaborating with the environmental sector and other partners as well as embedding consumer behavioural insights. In response to a floor question on ecolabeling, the speaker from One Planet pointed out the failure of using binary categorization in green labelling and recommended a scoring or spectrum approach.

In the closing remarks, Ms. Moreira shared takeaways from both sessions. Regarding competition and sustainability, she highlighted the need for concrete and clear guidance, a balance between different goals, a variety of advocacy tools, collaboration between authorities and sectoral regulators and exchange of best practices. She stressed UNCTAD's role as a global forum to facilitate information exchange and dialogues. In terms of consumer protection and sustainability, she highlighted several actions that Governments and consumer advocates can implement. They should mainstream sustainable consumption into consumer policies and other government actions including environmental policies, ensure policy coordination among relevant public bodies, deploy various regulatory and information tools, and guide businesses to make green products and accurate information available to consumers.

¹ Mexico, OECD