



Report on the implementation of the guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices to the twenty-first session of the Intergovernmental Group of Experts on Competition Law and Policy

A. Background

The Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Review Conference), held from 19 to 23 October 2020, adopted the document “Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” (GPP).

In accordance with the provisional agenda adopted by the twentieth session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held from 20 to 22 July 2022, the UNCTAD secretariat has prepared this report to the twenty-first session of the IGE on Competition Law and Policy.

B. Dissemination of the GPP

In its Resolution, the Eighth UN Review Conference requested the UNCTAD secretariat to continue the dissemination of the GPP. Accordingly, UNCTAD Secretariat has been working on the wider dissemination of the GPP on various occasions.

Besides reporting on the implementation of the GPP to IGEs on Competition Law and Policy, UNCTAD has made references to the GPP and its practical use at the different meetings in 2022 and 2023 of the working group on cross-border cartels as well as several technical assistance and capacity building activities for member States.

C. Questionnaire on the GPP

To analyse the implementation of the GPP, UNCTAD circulated a questionnaire in May 2023 (Annex). 36 competition authorities¹ responded to the questionnaire.

1. Experience in using the GPP

Since the adoption of the GPP in October 2020, the UNCTAD Secretariat has received two specific requests from competition authorities in developing countries to facilitate

¹ Albania, Armenia, Australia, Bangladesh, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, Canada, Croatia, Cyprus, Czech, Eurasian Economic Commission, Egypt, El Salvador, Ecuador, Georgia, Germany, Indonesia, Italy, Japan, Kenya, Luxembourg, Malawi, Malaysia, Mauritius, Paraguay, Peru, Philippines, Russia, Serbia, Seychelles, Spain, Switzerland and Turkey.



consultation between member States under Section F of the Set, based on Section III. of the GPP (The role of UNCTAD in facilitating cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices),² In addition to that, the questionnaire revealed that three other competition authorities have referred to Sections I. (Guiding principles) and II. (Toolkit for cooperation in competition cases) of the GPP in their particular case investigations. Specifically, the GPP provided guidance on requests for informal cooperation and the exchange of non-confidential information and experience with other competition authorities, and on possible cooperation at each stage of investigation. They also followed the instructions of the GPP in obtaining confidentiality waivers from leniency applicants and companies involved.

Meanwhile, 32 competition authorities have not consulted with the GPP in their cases. Instead, competition authorities which belong to already-established networks tend to use the existing cooperation frameworks; the European Competition Network for EU member States, the ASEAN Regional Cooperation Framework, and the COMESA Competition Regulations (10 respondents in total). Recommendations of OECD³ and ICN work products and contacts, which are outlined in the Appendix of the GPP, were also consulted often (6 respondents in total). Moreover, some (6) competition authorities emphasised specific bilateral and multilateral agreements for cooperation in the forms of Memoranda of Understanding (MoUs) or Free Trade Agreements (FTAs). These responses show that competition authorities tend to use the instruments that are more proximate, long-standing, and familiar to them.

There were also competition authorities which had no cross-border cases since the adoption of the GPP (12 respondents) and which finalised their cases without collaborating with other competition authorities (2 respondents). Three respondents stated that they did not know about the GPP.

2. Better utilisation of the GPP

The questionnaire sought the views of competition authorities on how the GPP can be better utilised.

On the one hand, the GPP is positively regarded as a tool that facilitates cooperation between competition authorities by clarifying possible approaches and providing a framework and protocol for their interactions and motivating them to engage in effective collaborative relationships. It is especially beneficial for promoting cooperation between competition authorities that do not have regular contact with each other and

² https://unctad.org/system/files/non-official-document/ccpb_IGECOM2022_Implementation_GPP_en.pdf.

³ OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings (2014).



have not (yet) established a relationship of trust. Several competition authorities also pointed out that the GPP can be a trigger to build a closer relationship with other jurisdictions, gradually foster mutual trust and accumulate cooperation experiences, or then even sign MoUs or other cooperation agreements, which are more solid and systematic cooperation frameworks. The GPP can be a good complementary instrument, although it is not legally binding.

On the other hand, the GPP still needs to be further disseminated to and recognised by competition authorities, especially smaller and younger ones. It was also pointed out that case handlers, who are not international officers, are not familiar with the GPP. Some respondents suggested that UNCTAD should use advocacy projects, workshops, and seminars, either periodic or ad hoc, to promote the understanding of the GPP. More general training and capacity-building activities improving the skills of officials to better cooperate and work with other competition authorities are also needed. Moreover, it would be beneficial to showcase and share successful and practical experiences of the utilisation and implementation of the GPP, lessons learnt, and the support UNCTAD has provided with member States. In this regard, it was suggested that UNCTAD might need more resources to deal with this work.

The need for more active participation in and commitment to the GPP by competition authorities in developed countries was also emphasised, despite its voluntary and non-legally binding nature. Activities to raise awareness of not only the GPP itself, but also the importance and benefits of international cooperation, would also be desirable.

Furthermore, it was suggested that a dedicated online platform where competition authorities can submit requests for cooperation and exchange information could be envisaged, as well as a case database where younger competition authorities can obtain knowledge and experiences from advanced competition authorities.

3. Possible improvements to the GPP

The questionnaire also asked how the GPP could be improved in order to better facilitate international cooperation, especially between advanced and younger competition authorities. The GPP should be improved based on the needs of competition authorities, and the needs of younger ones in particular need to be heard.

Some competition authorities suggested that the GPP should include actual case studies where the GPP was used and outline best practises of cooperation. Also, other respondents noted that the GPP already contained general tools for cooperation, but smaller and younger competition authorities would need the GPP to include more concrete and detailed instructions on matters such as step-by-step guidance on how to communicate with other competition authorities depending on the type of violation



and how to conduct simultaneous dawn raids, as well as templates for requests for assistance.

Moreover, in addition to reports on the implementation of the GPP such as this one, some competition authorities requested periodic reviews and evaluations of the GPP, including the appendix list of other guidance documents on international cooperation), to reflect the up-to-date situation and gather feedback from member States.

Many competition authorities are aware that obstacles for international cooperation still remain, particularly a lack of mutual trust and understanding of each other's legal systems, especially on information sharing and confidentiality. While the GPP can contribute to fostering relationships by providing communication format and legislative information, more dynamic discussions on legislative developments or bilateral or multilateral agreements that authorise more concrete and effective cooperation would be necessary. UNCTAD is in the best position to facilitate discussions on international cooperation in light of its mandates and neutrality towards member States, and there could be room for UNCTAD to consult with other international organisations and regional organisations as well.

D. Suggestions for future work

In its previous report on the GPP of 2021⁴, UNCTAD suggested two different areas to further promote the GPP: (1) design an advocacy plan for the GPP to be used in developing countries; and (2) gather and share a comprehensive list of international cooperation instruments and agreements in force to support competition authorities to better understand the existing mechanisms and reflect on the most suitable avenues to explore.

Also, in its report on the GPP of 2022⁵, UNCTAD suggested (1) the organization of regional virtual capacity building workshops on the substantive and practical aspects of the GPP and (2) gathering and sharing international cooperation instruments.

In addition to these suggestions that are remained valid for this report in 2023, the findings of the questionnaire explained above would lead to the following:

1. Continuous advocacy activities and guidance focusing on the utilisation of the GPP

The findings of the questionnaire show that it is essential to more widely disseminate and raise further awareness of the GPP. Many competition authorities in developing countries are not fully informed about how to make the best use of the GPP, while

⁴ https://unctad.org/system/files/information-document/ccpb_IGECOMP2021_Implementation_GPP_final_en.pdf.

⁵ https://unctad.org/system/files/non-official-document/ccpb_IGECOM2022_Implementation_GPP_en.pdf.



advanced competition authorities could better recognise the importance of this document.

Besides reporting on and making reference to the GPP at the IGEs on Competition Law and Policy and in other technical cooperation activities, the UNCTAD Secretariat, in cooperation with member States' competition authorities, should organise seminars on substantive and practical part of the GPP, and also provide detailed guidance on how member States' competition authorities can refer to the document in each step of their investigation, including by providing case studies on when the GPP has been used. UNCTAD can also coordinate with other international and regional organisations with competence over competition law and policy in this regard.

2. Gathering and sharing international and regional cooperation instruments

There have been significant developments in research and guiding documents for cooperation by international organisations, regional cooperation initiatives by regional organisations, and cooperation agreements between competition authorities since the adoption of the GPP in 2020. It would be beneficial for the UNCTAD Secretariat to gather and share relevant information about those cooperation instruments and agreements to support competition authorities to better understand the existing mechanisms and reflect on the most suitable avenues to explore.

3. Other initiatives

Other initiatives to improve of international cooperation in competition law enforcement and the use of the GPP may be suggested for consideration and discussed by member States' representatives during the twenty-first session of the IGE on Competition Law and Policy and/or in future sessions.



Annex

Questionnaire on the Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (GPP)

The Eighth 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 from 19 to 23 October 2020, adopted the document “Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” (GPP).

In accordance with the provisional agenda adopted by the twentieth session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy⁶, the UNCTAD secretariat will report on the implementation of the GPP to the twenty-first session of the IGE on Competition Law and Policy, which will take place from 5 to 7 July 2023.

In order to prepare the report, member States are invited to fill in the questionnaire below and send it to the UNCTAD secretariat (akari.yamamoto@unctad.org) before 31 May 2023.

1. Name and contact (email address)

2. Member States and Organisation

3. Have you ever consulted the GPP text in your particular case investigation?

This refers not only to the request for assistance of the UNCTAD Secretariat (“III. The role of UNCTAD in facilitating cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices”), but also to “I. Guiding principles” and “II. Toolkit for cooperation in competition cases”.

Yes

No

4. If you answered Yes to question 3., please specify the case and explain how you utilized the GPP and how it contributed to your case investigation.

5. If you answered No to question 3., please specify the reason why you did not use the GPP.

You used other instruments for international cooperation.

⁶ TD/B/C.I/CLP/66.



Please specify:

- You did not know the GPP.
- You were able to finalise the case without collaborating with other competition authorities.

- You had no cross-border case.
- Other reasons

Please specify:

6. How do you think the GPP can be better utilized in dealing with particular cross-border cases?

7. How do you think the GPP can be improved in order to better facilitate international cooperation, especially between advanced and younger competition authorities?
