



Report on the working group on cross-border cartels to the twenty-first session of the Intergovernmental Group of Experts on Competition Law and Policy

A. Background

The twentieth session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held from 20 to 22 July 2022, decided “to renew the mandate of the working group on cross-border cartels, open to member States on a voluntary basis, without any financial implications for the regular budget of the United Nations, to highlight best practices, facilitate information exchanges, consultations and international cooperation, discuss tools and procedures and undertake other projects as agreed in the future by the working group, with a view to further exploration and deeper understanding of the modalities and principles of cross-border cartel investigations, and to report to the twenty-first session of the Intergovernmental Group of Experts on Competition Law and Policy”.

The working group on cross-border cartels (WG on CBCs) opens to member States’ competition authorities’ representatives and other relevant stakeholders such as representatives of international organizations and networks, of academia, of civil society organizations and practitioners.

B. Discussions in the WG on CBCs

After the twentieth session of the IGE on Competition Law and Policy, UNCTAD held three virtual meetings on 28 October 2022, 28 February 2023, and 25 April 2023.

The meeting on 28 October 2022 was to kick-off the activities of the WG on CBCs and to agree on the way forward for the next substantive meetings. Members of the WG on CBCs agreed to continue with the presentation of cases that can underline how the practical difficulties and shortcoming competition authorities from developing countries may face.

The first substantive meeting on 28 February 2023 discussed two practical cases. The first case presented by Austria showed that the amicus curiae of foreign authorities on jurisprudence, such as double jeopardy, can be considered in depth even at the trial of the court. US-DOJ additionally noted that international cooperation between competition authorities can play a significant role in legislative as well as judicial proceedings. In the second case presented by South Africa, the difficulties regarding jurisdiction over conduct taking place abroad have brought attention to several authorities such as US and Armenia. Past case where the EU recognized its jurisdiction and prohibited the merger of companies outside its jurisdiction is also introduced. After the presentations, members agreed to continue practical case studies, take lessons



learnt from those cases, and discussed further dissemination and promotion of the use of the Guiding Policies and Procedures under Section F of the UN Set in upcoming meetings. The minutes of this meeting were circulated to the participants and made available on the dedicated UNCTAD webpage.

The second substantive meeting on 25 April 2023 discussed three practical cases. The case presented by Brazil highlighted the substantial role of informal cooperation between competition authorities monitoring markets affected by cartel conduct by global companies. The case of EU, similar to that of South Africa presented at the last meeting, provided a good opportunity to compare the handling of cases in different jurisdictions. The last case of Egypt highlighted that information sharing with other competition authorities can make a significant contribution to prove cartel conduct, and spurred discussion among other members on appropriate remedies to correct the effect of cartel conduct. The minutes of this meeting were also circulated to the participants and made available on the dedicated UNCTAD webpage.

C. Lessons learnt

The WG meetings has highlighted the practical difficulties faced by the competition authorities, especially younger ones, in investigating and remediating cross-border cartels. The case of South Africa presented at the 28 February meeting showed that the enforcing the competition law over conduct taking place abroad can still be raised as an important legal issue. On the other hand, the meetings have also developed the discussions on the significance of international cooperation to address them. The Austrian case at the 28 February meeting well illustrated that the opinions of other competition authorities can be given crucial consideration by courts only at the investigative process but at the trial process.

The case of Brazil and Egypt at the 25 April meeting revealed that informal cooperations with other competition authorities can play a key role in investigation. In particular, it suggested that the network among the staffs in each authority can play an important role in this kind of informal information-sharing.

The cases discussed at the meetings have informed that multijurisdictional cross-border cartels are being carried out in the areas of intangible property rights and online services beyond commodities. In this field, more in-depth research is required because international cartels can occur more easily in that transactions are made through online platforms.

D. Recommendations



Based on the recommendations in the previous reports on the WG on CBCs in 2021¹ and 2022², as well as the discussions in the meetings mentioned above, the Secretariat could suggest the followings:

1. Discussions on practical case studies provided by member States should continue and the lessons learnt from those cases should be disseminated.
2. Further work should be carried out to disseminate and raise awareness of the Guiding policies and procedures under section F of the United Nations Set on Competition (GPP).
3. International cooperation to deal with cross-border cartels, especially informal cooperation between competition authorities, should be enhanced through consensus building and advocacy activities carried out under the auspices of the Secretariat.

The Secretariat has received requests from multiple member States to request the IGE on Competition Law and Policy to renew the mandate of the WG on CBCs.

¹ https://unctad.org/system/files/information-document/ccpb_IGECOMP2021_Report_WG_Cross_Border_Cartels_en.pdf.

² https://unctad.org/system/files/information-document/ccpb_IGECOM20_Report_WG_Cross_Border_Cartels_en.pdf.