INTERGOVERNMENTAL GROUP OF EXPERTS ON

COMPETITION LAW AND POLICY

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UNITED NATIONS
UNCTAD

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Competition Law Enforcement Issues Raised by Monopsonies

Wednesday 5 July 2023
16:00-18:00, Room XIX

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1. Introduction

- Increasingly, anticompetitive practices in monopsonistic markets and discussions on the same are taking place in various *fora*
- Competition authorities are grappling with how to effectively address these issues when they arise
- Indeed, research indicates that the abuse of monopsony power can be as damaging as any other anticompetitive conduct
- Monopsonies raise concerns in labour markets regarding wage suppression and related actions
- Buyer power in the retail sector has also come into the debate, and the unbalanced power between small producers versus large suppliers reflected in abusive transaction terms and conditions
- The background note provides an overview of member States experiences and enforcement challenges in dealing with monopsony-related cases in both labour and product markets
- Proposes actions to curb abuse by monopsonies reflects areas for further work

2. Why monopsony power should be a concern to competition authorities?

- Research has indicated that monopsonies and monopolies are both harmful
- However, competition law has been applied less vigorously in labour markets than in product markets
- Other tools such as labour unions and laws on minimum wage, have not been proven to effectively curbed monopsony power and related practices in labour markets
- Competition authorities are increasingly becoming aware that it is important to examine labour and product market power and deal with associated monopsonistic violations

3. Enforcement experience among Member states

- Responses to the UNCTAD questionnaire indicate that competition authorities in both developing and developed States are taking action with regard to monopsony-related cases
- Monopsonistic practices are prohibited by competition laws in most jurisdictions in the general provisions
- ‘Monopsony’ may not appear in many competition laws, but existing provisions are sufficient, (e.g., those on monopolies, anticompetitive agreements and mergers)
- Japan’s competition law applies the same approach to both monopoly (by a seller) and monopsony (by a buyer)
- In the Republic of Korea, the competition law links a “market-dominant business entity” to a supplier or customer, which can be applied in both monopoly and monopsony-related cases

4. Enforcement challenges faced by competition authorities in monopsony-related cases

- Efforts are increasingly being made to understand the slow growth in monopsony-related case law
- Narrow interpretation of the consumer welfare standard and the evidence required to prove negative impacts on end consumers by an employer in a monopsony position
- Additional enforcement burden to agencies, particularly in cases where workers are harmed and, and not necessarily fitting as consumers
- Mitigating actions reported; legislative and regulatory reforms; advocacy initiatives; and collaboration with other sectoral regulators and public bodies

5. Conclusion and issues for further discussion

- Authorities in developed countries are more active in this area of monopsony, developing countries encounter similar cases both in product (superior buyer power) and labour markets to a lesser extent

Finally: delegates may wish to consider the following questions:

- (a) What justifies the emerging interest of competition authorities in regulating the behaviour of firms with monopsony power in both labour and product markets?
- (b) What measures should competition authorities take to overcome enforcement challenges when assessing monopsony-related cases?
- (c) What lessons can be learned from the current situation, to improve case law in dealing with monopsonistic conduct, particularly in developing countries?
- (d) What might be possible policy actions and areas for further research?

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Thank you

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