



Report on the informal working group on cross-border cartels to the Ninth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

I. Background

The twenty-second session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held from 3 to 5 July 2024 in Geneva, decided the following: “welcomes the information exchanges and discussions on best practices to promote cooperation between competition authorities in dealing with cross-border cartel cases and common issues in the fight against bid rigging; and decides to renew the mandate of the informal working group on cross-border cartels, to highlight best practices, facilitate information exchanges, consultations and international cooperation, discuss tools and procedures and undertake other projects as agreed in the future, and to report to the Ninth United Nations Conference to Review All Aspects of the Set.”

The informal working group on cross-border cartels (WG on CBCs) is open to representatives of member States’ competition authorities and other relevant stakeholders, such as representatives of international and regional organizations and networks, academia, civil society organizations and practitioners.¹

II. Discussions in the Informal Working Group on Cross-border Cartels

Since the twenty-second session of the IGE on Competition Law and Policy, UN Trade and Development (UNCTAD) held three virtual meetings on 21 November 2024, 20 February 2025 and 10 April 2025. The minutes of these meetings were circulated to the participants after each of the sessions and made available on the dedicated UN Trade and Development webpage.

The meeting on 21 November 2024 was to kick-off the activities of the WG on CBCs and set the way forward for the next substantive meetings. Members of the WG on CBCs agreed to disseminate the information from the practical case studies of competition authorities in dealing with cross-border cartels and bid rigging and to promote cooperation between competition authorities. Professor Marek Martyniszyn of Queen’s University Belfast in the United Kingdom was appointed as the academic coordinator of the WG to enrich the discussion further.

The first substantive meeting on 20 February 2025 discussed three agenda items. Prof. Marek Martyniszyn, the academic coordinator of the WG on CBCs, presented his Chain of Enforcement Theory, emphasizing the importance of strengthening weak links in enforcement mechanisms. He also highlighted informal cooperation and information sharing opportunities between competition authorities. Prof. Frederic Jenny from Essex Business School presented on the Potash cartel and emphasized the need for stronger international enforcement cooperation such as organizing joint investigation teams among competition authorities. Mr. Daniel Favoretto, a competition lawyer and former United Nations Development Programme (UNDP) consultant, introduced Brazil’s anti-collusion policy and presented the alleged cartel case that provides AI-driven pricing algorithms for fuel retailers.

At the second substantive meeting on 10 April 2025, three cases were addressed. The Republic of Korea presented recent policies and cases on bid rigging in Korea. Specifically, the Korea Fair Trade Commission uses Bid Rigging Indicator Analysis System (BRIAS) to monitor bid rigging in the public sector based on

¹ The previous reports on the WG on CBCs from 2021 to 2024 can be accessed at the following URL: https://unctad.org/system/files/information-document/ccpb_IGECOMP2021_Report_WG_Cross_Border_Cartels_en.pdf; https://unctad.org/system/files/information-document/ccpb_IGECOM20_Report_WG_Cross_Border_Cartels_en.pdf; https://unctad.org/system/files/information-document/ccpb_IGECOM2023_Report_WG_CBCs_en.pdf; and https://unctad.org/system/files/information-document/Report_of_Working_Group_on_Cross-border_Cartels_to_IGE_2024.pdf.



collaboration with procurement authorities. Colombia introduced a transborder price fixing case in the tissues paper market. The Superintendence of Industry and Commerce of Colombia issued resolutions and fines on the companies that engaged in collusion, and the Tribunal for La Comunidad Andina upheld the competition authority's decision. Kenya presented a case study of the paint sector cartel conduct in Kenya. The Competition Authority of Kenya explained how the cross-border cartels can have specific challenges such as difficulty in prosecuting a cartel that exists in multiple countries, restriction from domestic legal obligations, as well as difficulties in cooperating with competition authorities with different levels of development. The UNCTAD Secretariat questioned how effective a MoU can be to assess and provide information for investigations. The CAK noted that the MoU is not legally binding, but that it smooths the process of cooperation or information sharing, especially with regards to issues of mergers, acquisitions, market inquiries, and advocacy.

III. Lessons Learnt

At the WG on CBCs meetings, member States and participants shared the challenges in regulating cross-border cartels and emphasized the importance of cooperation among competition authorities in addressing these issues. Prof. Martyniszyn demonstrated that weak links in the sequential process of enforcement, such as jurisdictional issues, differing legal frameworks, or under-explored informal cooperation opportunities can derail cases. The Potash cartel case presented by Prof. Jenny illustrated how, despite clear evidence of a cross-border cartel, effective enforcement may still fail to take place. In this regard, formal and informal cooperation and information sharing between competition authorities are very important to deal with cross-border enforcement.

As effective responses to cross-border cartels, the harmonization of legal standards among countries, coordinated enforcement strategies, and the role of regional bodies were also emphasized. The Colombian case demonstrated how national leniency programs and inter-agency cooperation can successfully expose regional collusion, while also revealing legal and evidentiary challenges in utilizing sensitive information across jurisdictions. The case also showed the importance of conducting economic analysis using company provided data and information collected during investigations. Similarly, Kenya's experience exposed the limitations of tackling cross-border cartels when neighboring countries lack mature competition laws or operational capacity. It also showed that the need for more legally grounded and defined forms of cooperation when dealing with confidential information.

Furthermore, member states and participants discussed how advancements in digital technologies are influencing both cartel behavior and the ways in which such conduct is regulated. Brazil's case involving algorithmic pricing collusion illustrated how digital algorithms can blur the line between independent pricing decisions and collusive behavior, posing new challenges for competition authorities. Meanwhile, Korea's bid rigging monitoring system has highlighted how the proper integration and analysis of information from multiple agencies can significantly contribute to the prevention and detection of collusion.

IV. Recommendations

Based on the recommendations in the previous reports on the WG on CBCs from 2021 to 2024, as well as the discussions held in the meetings mentioned above, the WG on CBCs agreed to propose to the 9th UN Conference on Competition and Consumer Protection that its mandate is renewed in the following terms.



Decides to renew the mandate of the informal working group on cross-border cartels to continue discussions on practical case studies provided by member States, not only cross-border cartels but bid rigging cases and disseminate the lessons learnt from those cases, and to promote international collaboration to effectively address cross-border cartels and bid rigging, by strengthening both formal and informal cooperation among competition authorities, through consensus building and advocacy initiatives conducted under the auspices of UNCTAD in collaboration with the competition authorities of member States. and to report to the intergovernmental group of experts on competition law and policy on its twenty-third session.

