

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-second 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 twenty-first session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held from 5 to 7 July 2023, the UN Trade and Development (UNCTAD) Secretariat has prepared this report to the twenty-second session of the IGE on Competition Law and Policy.

B. Dissemination of the GPP

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

Besides reporting on the implementation of the GPP to the IGEs on Competition Law and Policy, UN Trade and Development has made references to the GPP and its practical use at the different meetings from 2022 to 2024 of the working group on cross-border cartels as well as several technical assistance and capacity building activities for member States.

C. Questionnaire on contact points and competition legislations

Section III. 19 of the GPP states that “[t]he UNCTAD secretariat should maintain a list of contact persons who may facilitate international cooperation at each Member State’s authority, including where appropriate by identifying contacts for particular types of conduct (e.g. mergers and cartels) and identifying linguistic abilities among contacts”. Also, as the Section III. 18 of the GPP states that “[t]he UNCTAD secretariat can also assist authorities by providing publicly available legal texts and guidelines that are relevant to cooperation”, it is essential for UN Trade and Development (UNCTAD) to obtain accurate and updated information on competition laws around the world, in order to provide member States requesting for assistance with the necessary information and facilitate international cooperation. Against this background, UN Trade and Development (UNCTAD) carried out a

questionnaire on contact points of competition authorities and competition legislations in the member States (Annex 1). 44 competition authorities¹ responded to the questionnaire.

D. Review of the Appendix of the GPP

The Appendix of the GPP compiles guiding documents and other background information which facilitate cooperation. In agreement with Section III. 20 of the GPP, which states that “[t]he UNCTAD secretariat should periodically review and recommend changes to the list of works compiled by international and multilateral organizations provided in the appendix”, UN Trade and Development has reviewed the Appendix and proposes changes to include recent international documents on cooperation between competition authorities (Annex 2). Minor amendments in the language were also made.

E. Suggestions for future work

In its previous report on the GPP of 2021², UN Trade and Development 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 2022³, UN Trade and Development 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.

Furthermore, in its report on the GPP of 2023⁴, UN Trade and Development suggested (1) the organization of seminars on substantive and practical parts of the GPP, also providing detailed guidance on how member States’ competition authorities can refer to the document and (2) gathering and sharing of international and regional cooperation instruments.

In addition to these suggestions that are remained valid for this report in 2024, UN Trade and Development suggest the following:

1. Continuous survey and information update

Based on the text of the GPP, the survey on contact points and competition legislations, as well as the review of the list of international guidance documents and relevant background

¹ Argentina, Armenia, Azerbaijan, Barbados, Belgium, Botswana, Brazil, China, Costa Rica, Croatia, Curaçao, Cyprus, El Salvador, Ethiopia, Eurasian Economic Union, European Union, France, Germany, Indonesia, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lao People’s Democratic Republic, Madagascar, Malawi, Mexico, Nigeria, Panama, Paraguay, Poland, Portugal, Serbia, South Africa, Spain, Sweden, Trinidad and Tobago, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America, Bolivarian Republic of Venezuela, Viet Nam and Zimbabwe.

² https://unctad.org/system/files/information-document/ccpb_IGECOMP2021_Implementation_GPP_final_en.pdf.

³ https://unctad.org/system/files/non-official-document/ccpb_IGECOM2022_Implementation_GPP_en.pdf.

⁴ https://unctad.org/system/files/information-document/ccpb_IGECOM2023_Report_GPP_en.pdf.

information on international cooperation, should be continued. There are also significant Developments in regional cooperation initiatives by regional organisations and cooperation agreements between competition authorities. It would therefore be beneficial for the UN Trade and Development 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.

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

In order to encourage member States to use the GPP, it is essential that the UN Trade and Development Secretariat disseminate it more widely and raise further awareness of it. Many competition authorities in developing countries are not fully informed about how to make the best use of the GPP, while 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 UN Trade and Development 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 where the GPP is involved. UN Trade and Development can also coordinate with other international and regional organisations with competence over competition law and policy in this regard.

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-second session of the IGE on Competition Law and Policy and/or in future sessions.

Annex 1

Survey on competition legislation

Please complete the survey online or send the completed survey to the UNCTAD secretariat (jacqueline.bouvier@unctad.org) by 7 December 2023.

Your cooperation is highly appreciated.

1. Please provide the **name** and **date of enactment** of competition legislation in your jurisdiction. If the legislation is available online, please provide the link.

Name:
Date of enactment:
Website:

2. Please provide the **name** and **date of enactment** of the **latest amendment of competition legislation** in your jurisdiction. If the amendment is available online, please provide the link.

Name:
Date of enactment:
Website:

3. Please provide the contact information of your competition authority, in line with paragraph 19, section III 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.

Annex 2

Appendix

Section 1

Guidance from international organizations on how cooperation in particular cases can be made more effective

1. Organization for Economic Cooperation and Development, 2014. Recommendation of the OECD Council concerning International Cooperation on Competition Investigations and Proceedings. - Contains a mechanism allowing non-Organization for Economic Cooperation and Development members to adhere to the recommendation.
2. International Competition Network, 2015. Practical guide to international enforcement cooperation in mergers. - Provides practical guidance in the context of increased multijurisdictional mergers and multilateral cooperation.
3. International Competition Network, 2012. Framework for merger review cooperation. - Regularly updated. A useful tool on possible approaches for information exchange among case teams, including a framework for providing assurances of confidentiality.
4. International Competition Network, 2005. Waivers of confidentiality in merger investigations. - Identifies and discusses issues underlying the rationale, content and use of waivers, and presents several model waivers of confidentiality.
5. International Competition Network, 2016. Framework for the promotion of the sharing of non-confidential information for cartel enforcement. - Regularly updated. A useful tool for improving international enforcement cooperation by fostering “pick-up-the-phone relationships”.
6. International Competition Network, 2014. Waivers of confidentiality in cartel investigations. - Provides a definition of waivers of confidentiality in a cross-jurisdictional context and their purpose in information sharing. Outlines distinctions between waivers and other information exchange practices and provides templates for waivers of confidentiality.
7. International Competition Network, 2019. Merger cooperation and information exchange types of information.
8. International Competition Network, 2020. Guidance on enhancing cross-Border leniency cooperation.

Section 2

Other background information

1. UNCTAD, 2012. Cross-border anticompetitive practices: The challenges for developing countries and economies in transition (TD/B/C.I/CLP/16).
2. UNCTAD, 2013. Modalities and procedures for international cooperation in competition cases involving more than one country (TD/B/C.I/CLP/21).
3. UNCTAD, 2014. Informal cooperation among competition authorities in specific cases (TD/B/C.I/CLP/29).
4. UNCTAD, 2015. International cooperation in merger cases as a tool for effective enforcement of competition law (TD/RBP/CONF.8/4).
5. UNCTAD, 2017. Enhancing international cooperation in the investigation of competition cross-border cases: Tools and procedures (TD/B/C.I/CLP/44).
6. UNCTAD, 2018. Survey report on the obstacles to international cooperation. Discussion group on international cooperation.
7. International Competition Network, 2007. Cooperation Between Competition Agencies in Cartel Investigations. – Conducts a stocktaking of the various forms of cooperation between authorities in cartel investigations. Identifies some of the barriers to greater cooperation and proposes some avenues for exploration as to how those barriers might be lowered or removed.
8. Asia-Pacific Economic Cooperation, 2012. Survey on Information Exchange on Competition in APEC Region: Phase I.
9. Southern African Development Community, 2009. SADC Declaration on Regional Cooperation in Competition and Consumer Policies.
10. Organization for Economic Cooperation and Development, 2013. Secretariat report on the OECD/ ICN survey on international enforcement co-operation.
11. Organization for Economic Cooperation and Development, 2014. Challenges of international co-operation in competition law enforcement.
12. Organization for Economic Cooperation and Development and International Competition Network, 2021. OECD/ICN Report on international co-operation in competition enforcement.
13. Organization for Economic Cooperation and Development, 2022. International co-operation on competition investigations and proceedings: progress in implementing the 2014 OECD recommendation.

14. Organization for Economic Cooperation and Development, 2023. Competition enforcement co-operation database.

15. Organization for Economic Cooperation and Development. Inventory of international co-operation agreements on competition.
