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**Report of the informal working group on cross-border cartels  
and  
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**

**Presentation**

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July 9, 16:30-17:00

The Eighth UN Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (hereinafter I will call it the "Eighth UN Conference"), which took place in October 2020, adopted a new 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".

The Guiding Policies and Procedures were the outcome of three years of intensive work initiated by the FAS Russia, with the support of international colleagues and the assistance of the UNCTAD Secretariat. A drafting committee, consisting of competition authorities from around the world, collaborated on the development of the document's text.

The document established the mechanisms for practical cooperation in law enforcement to counter cross-border competition violations. These mechanisms benefit most countries in the world, and are particularly useful for competition authorities in developing countries and agencies that have not yet established strong ties with foreign counterparts.

The Eighth UN Conference also requested the UNCTAD Secretariat to promote the widespread dissemination of the Guiding Policies and Procedures. In 2023, the Secretariat conducted a survey among competition authorities regarding the application of the document in practice. Thirty-six competition authorities from various countries responded to the survey. Several competition authorities noted that they have repeatedly used the Guidelines, including mechanisms such as sharing non-confidential information with other authorities and exchanging information on potential

cooperation at each stage of an investigation. Furthermore, they have relied on the Guidelines when applying the waiver mechanism.

The FAS Russia has also repeatedly applied the document in practice. Thus, we actively used the Guiding Policies and Procedures when reviewing a number of global transactions, sending requests for cooperation to foreign competition authorities or exchanging information on the basis of a waiver, as well as when considering cases against multinational corporations, including Google and Booking.com by exchanging non-confidential information and solutions.

The results of the survey conducted by the UNCTAD Secretariat and general statistics show the practical usefulness of this document. Cooperation based on Guiding Policies and Procedures has contributed to successful investigation of cases, evaluation of transactions, comprehensive market analysis, risk assessment, exchange of approaches, and information, as well as the adoption of legally balanced and consistent decisions by competition authorities.

At the same time, experience has shown that cooperation in investigating cross-border cartels, given their more complex nature, requires and continues to require improved interaction mechanisms and clearer guidelines for competition authorities, particularly in developing countries.

In this context, one of the key areas for the practical implementation and application of the Guidelines and Procedures is the enhancement of cooperation in tackling this type of particularly dangerous offenses.

In 2020, the outcome of the Eighth UN Conference established the Working Group on Cross-Border Cartels under the auspices of the UNCTAD to further examine the issue. The Working Group utilizes concrete examples to investigate the specific aspects of combating such violations and proposes practical solutions to enhance the effectiveness of competition authorities in addressing them.

The Working Group consists of more than 50 competition authorities, including both – countries with well-established cartel enforcement systems and those that are just starting to gain experience in this field.

Over the past five years, the Working Group has held 15 meetings and related ad-hoc events on combating cross-border cartels. More than 20 cases reviewed by competition authorities from different parts of the world were discussed. Using concrete examples, we were able to assess the specific aspects, procedures, and details of dealing with cross-border cartels, as well as to discuss applicable cooperation mechanisms.

At the Working Group meetings, substantive discussions facilitated the exchange of best practices and the enrichment of information. Detailed consultations were held to further explore and better understand the conditions and principles of investigating cross-border cartels. This was particularly relevant for competition authorities in developing countries or competition authorities with limited resources. Advanced regulators also benefited from the discussions, as they were able to learn something new.

At the same time, pitfalls faced by various authorities investigating cross-border cartels were discussed. These include lack of investigative and cooperation experience, lack of resources, differences in legal frameworks, review deadlines and mechanisms, as well as evidence collection capabilities. As the discussions of the Working Group have shown, cross-border cartels are widespread in modern globalized world and often cause great damage to countries with less close ties with foreign partners. Even the existence of bilateral agreements may not allow for an effective investigation in some cases. The report of the BRICS Competition Law and Policy Center serves as an important tool for investigating cartels today. It contains the same conclusions as those discussed in the Working Group.

In the past five years, we have learned a great deal and accomplished many important things. However, we still have one question: how can we continue

to apply what we have learned and what further actions can be taken by the Working Group?

First and foremost, as noted in the reports of the UNCTAD Secretariat on the activities of the Working Group in 2021-2023 and emphasized by the analytical coordinator of the Group, Mr. Marek Martinishin, it is essential to strengthen the work of the group by focusing on specific stages of the investigation and identifying the steps that competition authorities can take at each stage to solve problems related to cross-border enforcement and eliminate information gaps.

It is also worth noting the importance of paying special attention to cartels that emerge in an electronic environment, as processes in this area occur too quickly and can be difficult to track.

I hope the mandate of the Working Group will be extended, allowing us to take action next year.

In conclusion, I would like to answer the question of how to formalize the knowledge gained over the past five years and avoid losing the accumulated experience in the endless web of information. The FAS Russia has always supported and continues to support the formulation of the results of the Working Group's work, creating so-called "lessons learned" and global UN standards and guidelines that simply and clearly describe the tools for cooperation in investigating cross-border cartels. These global standards, which would be a logical extension of the Guidelines and Procedures, will meet the interests of most countries in the world and be particularly beneficial to competition authorities in developing countries that do not yet have strong contacts with their foreign counterparts.

Other competition authorities, including those from the CIS countries, BRICS, Africa, and the Asia-Pacific region, have repeatedly expressed this idea.

I am convinced that combining our efforts to utilize the positive experience gained while creating Guidelines and Procedures when working in new areas, such as countering cross-border cartels, will lead to significant results and ultimately contribute to enhancing and strengthening the capacities of competition authorities, saving national resources, and improving their efficiency.

Thank you for your attention.