

## **Ad Hoc Expert Group Meeting on Consumer Protection (22- 23 January 2015)**

*Salle XII, Palais des Nations, Geneva*

### **SUMMARY OF THE SUBSTANTIVE ISSUES**

**22 to 23 January 2015**

1. The Ad-Hoc Expert Meeting on Consumer Protection was attended by more than 130 participants from over 50 Member States, intergovernmental and non-governmental organizations. Experts exchanged views on the findings of the Report on the Modalities for the Revision of the United Nations Guidelines on Consumer Protection (UNGCP) and the Draft Resolution for consideration by the General Assembly (Draft Resolution) as prepared by the Secretariat, as part of the consultations leading up to the 7<sup>th</sup> United Nations Review Conference in July 2015.
2. The Secretariat recalled that the Ad Hoc Expert Group Meeting is a continuation of the work of the 1<sup>st</sup> Ad-hoc Expert Group Meeting, held in July 2012, and the 2<sup>nd</sup> Ad-hoc Expert Group Meeting, held in July 2013, and outlined that the mandate of the current meeting originated from the decision of the 6<sup>th</sup> Review conference, held in 2010, directing the Secretariat to hold three expert group meetings. The report of the Ad Hoc Meeting will be submitted, along with those of the previous meetings, to the 7<sup>th</sup> United Nations Review Conference. The statement mentioned that the process of the discussions would link up the interface between competition and consumer policies report and other emerging issues of interest to Member States.
3. The Secretariat referred to the findings of the Modalities for the Revision of the UNGCP Report (Modalities Report) and emphasized that the work of UNCTAD on consumer protection is guided by the UNGCP. The agenda was organized following the proposed Draft Resolution, which mirrored the findings of the Modalities Report, and was mainly composed of discussions on horizontal issues, e-commerce, financial services, other issues and implementation of the UNGCP. The Modalities Report is based on over eighty responses from Member States and relevant stakeholders. Taking stock of the work of other international organizations in this regard and any additional observations and comments was also important and useful to the discussions. The Draft Resolution systematizes the findings of the Modalities Report by proposing new additions to the existing text of the UNGCP. The Draft Resolution is composed of twenty three perambulatory and nine operative clauses, and includes an Annex containing the revised UNGCP.
4. During the first day of the Ad Hoc meeting, discussions were channelled through “structured sessions”, covering all new proposals contained in the Annex of the Draft Resolution (containing the revised UNGCP). The second day was devoted to discussing the results of the consultations carried out during the previous day, followed by discussions of the Draft Resolution as a whole.

#### **A. Opening Session: Modalities Report for the Revision of the UNGCP and Draft Resolution**

5. The 2<sup>nd</sup> Ad Hoc Expert Group Meeting asked UNCTAD to prepare a report on the Modalities for the Revision of the UNGCP. The Secretariat undertook a consultation process with Member States and other relevant stakeholders, through the circulation of extensive questionnaires and the constitution of four Working Groups on the issues discussed in the meeting, namely: e-commerce, financial services, other issues and implementation of the UNGCP. A draft report of the findings was circulated in August 2014, which received forty additional comments and contributions. The final Modalities Report was published on October 2014. Subsequently, the Secretariat prepared a Draft Resolution containing the findings of the

Modalities Report, which was circulated for comments in December 2014. With the permission of respondents, comments to the Draft Resolution have been made available on UNCTAD's webpage. The process of consultations for the Modalities Report included regional meetings (ICPEN in Sweden, OECD in Paris, the Iberoamerican Forum of Governmental Consumer Protection Agencies in Colombia, Consumers International's International Conference on Consumer Protection in Thailand, and various regional and national meetings). The Modalities Report finds that the UNGCP remain valid and useful, but require updates on various issues. There are new challenges such as e-commerce and financial services, as well as other issues such as data protection, energy, tourism, utilities services, and cross-border consumer protection matters, that merit further discussion. In particular, many experts called for the creation of international machinery within UNCTD to address consumer protection issues at the international level.

6. Many delegations praised the Modalities Report and the work of UNCTAD in proposing the Draft Resolution. Delegates welcomed the initiative as being timely and flexible enough to gather the interests and opinions of all Member States. The consumer market place has undergone profound developments since the last revision of the UNGCP in 1999, in particular the spread of internet, which has reinforced the trend of growing international trade to bear a direct impact on consumers. Also, the recent financial crisis and the growth of the financial sector in developing countries have focused efforts in strengthening the protection afforded to financial consumers. The consolidation of a global consumer marketplace has also placed emphasis on such issues as data privacy, tourism, energy, product safety and utilities services. Member States have called for strengthened cooperation across all of these issues and most experts called for the establishment of an international structure to address consumer protection at a global scale.
7. Most delegations stressed the relevance of creating international machinery to discuss consumer protection; as such forum does not yet exist at the international level. Several delegations were of the view that the international structure should be intergovernmental, similar to that of the Intergovernmental Group of Experts on Competition Law and Policy. Notwithstanding its importance, some delegations highlighted the need to consider the budgetary implications of the proposed body and asked for continued consultations to find the best institutional arrangement. One expert called for the creation of a United Nations Commission on Consumer Protection, similar to those on Social Development, or to Sustainable Development, while another expert asked for the international body to include consumer groups and independent experts.
8. Delegates praised the content of the Annex to the Draft Resolution, as it reflects the findings of the Modalities Report. One delegation found that the issue of data privacy was very wide and constantly evolving, and thus was ill-suited for inclusion in the revision of the UNGCP. Other delegations pointed out that data protection has an important impact on consumer protection and that many developing countries need to address it. The issue of consumer protection in financial services was also considered by many experts as highly relevant to the revision process.
9. On the implementation of the UNGCP, some delegations informed of their respective legislative and institutional developments. One expert highlighted that the national and international implementation of the UNGCP is key to the implementation of the upcoming Sustainable Development Goals.
10. One expert asked the United Nations to recognise the 15 of March as World Consumer Day.

## **B. Structured Session 1: Horizontal issues**

11. Ms Teresa Moreira, Director General for Consumer Protection of Portugal, moderated the session on horizontal issues. As in the Modalities Report, issues raised during consultations were separated into two categories: horizontal issues, which impact on all of the UNGCP, and vertical or sectoral ones such as: e-commerce, financial services, data protection, energy, tourism and utilities. This structured session addressed the first category, that is, the horizontal issues contained in the Annex of the Draft Resolution, while all other vertical or sectoral issues were discussed in subsequent sessions. The horizontal issues relate to: definitions and scope of application (Guidelines 2 to 4), principles for good business practices

(Guidelines 12) and redress provisions (Guidelines 63 to 60). In particular, the provisions on definitions and scope of application defined consumer protection policies and the concept of the "consumer" as such. Guideline 12 contained seven principles for good business practices, namely: (a) fair and equitable treatment; (b) behaviour and work ethic; (c) disclosure and transparency; (d) education and awareness; (e) protection of privacy; (f) complaints handling; (g) conflict of interests; and (h) compliance with consumer laws and regulations. The provisions on redress were divided in three sections: I. Dispute resolution and redress mechanisms (Guidelines 63 to 66); K. Private sector cooperation (Guidelines 67 and 68); and L. Dispute avoidance and awareness of resolution mechanisms. Ms Moreira asked participants to express their views and concerns on these issues.

12. Experts valued the proposal to include a section on definitions and scope of application. Some experts proposed to merge Guidelines 2 and 3, as both provisions deal with the same issue. Some experts asked to keep a flexible approach to the definition of "consumer" as national legislation may vary depending on the socioeconomic environment of consumer relations. One expert asked to ensure that State-provided goods and services are also covered in the scope of application of the Guidelines, while another expert asked to replace the word "buyer" with "consumer" as consumer relations are wider than individual transactions.
13. The ultimate goal of good business practices, as one expert pointed out, is to enable consumers to make informed decisions, and that this should be reflected in the Guidelines. On principle (a), various experts asked to delete the reference to "unnecessary detriment" as detriment should always be considered unnecessary. On principle (c), one expert proposed that businesses should faithfully orient consumers. One expert asked to rephrase principle (d) so education programmes are understood as an obligation for businesses, as well as a benefit to their trade. Experts also called for clarification on the information to be provided to consumers under (d) conflict of interest, particularly on the overall cost of financial transactions, and to ensure that the level of protection is even in all economic sectors. On principle (e), one delegation noted the various initiatives dealing with privacy and advised against duplication. On principle (f), one expert asked to add timely and speedy to the requirements of complaint handling procedures. Additionally, the leading principle on provision (g) should be to work in the best interest of consumers. On principle (h), experts asked to revise the wording to ensure that compliance with laws and regulations by businesses is mandatory, while compliance with best practices remains non-binding.
14. The sections relating to consumer redress were praised as helpful in updating and complementing the existing UNGCP. In general, experts advised in keeping an inclusive approach to all alternative dispute resolution mechanisms, including arbitration, conciliation and mediation. In this sense, experts cautioned against favouring private third party services, as they might not invariably work in the interest of consumers, and asked for collective redress mechanisms to be speedy and affordable. Most experts expressed the need to strengthen cross-border cooperation in this field, be that judicial or administrative. One expert asked to include redress mechanisms for bankruptcy cases.

### **C. Structured Session 2: E-commerce**

15. Ms Nathalie Homobono, Director General for Competition Policy, Consumer Affairs and Fraud Control of France, moderated the session on e-commerce. The issue of e-commerce was raised ever since the 1<sup>st</sup> Ad Hoc Expert Group Meeting on Consumer Protection as one of the main issues that currently affect consumer protection but that is not yet covered in the UNGCP. The proposed Draft Resolution devotes section M to e-commerce, reflecting the contributions made by Member States and stakeholders for the Modalities Report. In particular, Guideline 71 asks Member States to encourage the use of e-commerce while providing adequate protection to consumers, and stresses the need to revise domestic framework to address the unique aspects of e-commerce. Guideline 72 asks Member States to set up effective consumer protection mechanisms to limit unfair business practices, while Guideline 73 details the areas covered in optimal legislative and institutional frameworks: fair business, advertising and marketing practices; clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction; transparent processes for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable dispute resolution and redress; privacy and data security; and consumer and business education. Finally, Guideline 74 encourages Member States contemplating the adoption of e-

commerce regulations to study the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce of 1999 and their future revisions. Ms Homobono asked experts to share their views on the issues covered.

16. Experts welcomed section M on e-commerce as worthy of inclusion in the revision of the UNGCP. Some experts were of the opinion that the principles for an optimal consumer protection framework in e-commerce could be easily applicable to all areas of business, and might be moved to another section. Other experts asked for more contexts to be provided in this section, which could be found in the perambulatory clauses. Most experts agreed that one of the most important overreaching principles is that of a protection no less than that afforded in other forms of commerce, as contained in the OECD 1999 Guidelines. One delegation asked to fight collusion practices in e-commerce, while another asked for specific provisions for mobile commerce, digital content products and privacy in e-commerce. A proposal was presented to include the obligation for businesses to allow for the withdrawal and return of unwanted products in e-commerce. One expert highlighted the importance of providing consumers with timely information, particularly in mobile commerce, and advised for the inclusion of a principle to ensure a minimum level of protection across different e-payment mechanisms. Finally, experts called for strengthening cross-border cooperation in e-commerce cases.

#### **D. Structured Session 3: Financial Services**

17. Ms Choong Mei Kuen, Deputy Director of Consumer and Market Conduct Department of the Central Bank of Malaysia, moderated the session on financial services. As described in the Modalities Report, the rapid growth of the financial services industry since the last revision of the UNGCP and the enduring effects of the financial crises experienced across the globe since 2008 explain the interest from Member States for the current revision of the UNGCP. The Draft Resolution devotes section N to financial services, covering: the adoption and integration of financial consumer protection policies (Guideline 75); the provision of access to cost-effective proportionate and efficient redress for consumers (Guideline 76); the implementation of effective and proportionate financial consumer protection regimes (Guideline 77); reference to the OECD G20 High-level Principles on Financial Consumer Protection (Guideline 78); and on the need to establish or encourage financial consumer protection regulatory and enforcement frameworks; effective oversight bodies; fair treatment and proper disclosure; improved financial education; responsible business conduct; objective and adequate advice; protection of assets and data; competitive frameworks; and dynamic and relevant complaints handling and redress mechanisms (Guideline 79). Ms Choong opened the floor for experts to share their views and interests in this matter.
18. Some experts asked for more elaboration on remittances, responsible lending or product suitability, mobile payments, financial inclusion, and bank deposit guarantees, while others asked for clarification on the notion of competitive frameworks, or that of proportionality as contained in Guidelines 79 and 77, respectively. Most experts agreed on the importance of financial inclusion and the information obligations providers have vis-à-vis consumers (in particular proof of communications), be that contractual or pre-contractual. Some delegations asked for the reference to the OECD G20 High Level Principles to be used as a model for other references to international instruments throughout the UNGCP.

#### **E. Structured Session 4: Other Issues**

19. Ms Juliana Pereira, National Secretary of Consumer Affairs of Brazil, and Mr Rainer Metz, Deputy Director General Consumer Policy in Law and Economics of Germany, moderated the session on Other Issues. This structured session followed the proposal of the 2<sup>nd</sup> Ad Hoc Expert Group Meeting on Consumer Protection to undertake consultations on various substantive issues other than e-commerce or financial services. The consultations, described in the Modalities Report, concluded that there was interest in discussing some issues to include in the revision of the UNGCP, which were later incorporated in the proposed Draft Resolution. The relevant provisions for this working group are: general principle 6(j) on the protection of consumer's fundamental values of privacy, individual liberties and global free flow of information; Guideline 4(h) on education and information programmes and access to knowledge; Guideline 87 on energy; Guideline 88 on tourism and Guideline 89 on utilities.

20. On access to knowledge, some experts raised concerns on the intent of the provision and its link to education programmes. One expert clarified that access to knowledge is larger than education and that it relates more with e-commerce, particularly on digital content products; while another expert advised against overlaps with intellectual property law. One expert highlighted the need to protect the interests of illiterate consumers, those who cannot understand even when clear and adequate information is provided in written form.
21. Most experts praised the provision on energy, especially when dealing with the retail market. On tourism, most experts agreed on the content of the proposed text. One expert proposed to establish fast-track redress mechanisms for tourists and strengthened cross-border cooperation. One delegation asked for the provisions to also apply to "visitors" as well as tourists. Some experts weighed the pertinence of including reference to medical tourism in the UNGCP. Some delegations asked to limit the scope of the UNGCP to consumers of tourism and travel services. Finally, there was wide agreement on the provision on utilities. Most experts were of the view that State owned enterprises should also comply with consumer protection in the utilities sector, and one expert pointed out the need to ensure a minimum level of protection in all utilities contracts.

## **F. Structured Session 5: Implementation**

22. Mr Samuel Minko Mindong, of the Directorate General of Competition and Consumer Protection of the Ministry of Economy and Sustainable Development of Gabon, moderated the session on implementation. Following the proposal of the 2<sup>nd</sup> Ad Hoc Expert Group Meeting on Consumer Protection, the Modalities Report reflects the consultations on the national and international, existing and potential frameworks for ensuring successful implementation of the UNGCP. The proposed Draft Resolution contained various sections on these issues: H. Domestic Frameworks for consumer protection (Guidelines 60 to 61); I. Mechanisms for consumer protection enforcement (Guideline 62); new provisions in chapter IV International Cooperation (Guidelines 92 to 97); and new chapter VII on International Machinery, namely the creation of an Intergovernmental Group of Experts on Consumer Protection Law and Policy.
23. All delegations agreed that promoting effective compliance of the UNGCP is important, although the powers of consumer protection agencies vary from country to country. One delegation asked for agencies to hold the legal capacity and the required powers to engage in international cooperation, and recalled the OECD 2003 Guidelines for protecting consumers from fraudulent and deceptive cross-border commercial practices as a source of inspiration. Regarding H. domestic framework for consumer protection, one delegation asked for it to be grouped with the provisions on redress to ensure coherency, while another one noted that in some countries redress is reserved for the judiciary, so it should not be linked to the powers of consumer protection agencies.
24. The majority of delegations showed strong support for the creation of international machinery to address consumer protection issues at the international level. The Draft Resolution proposes to institute an Intergovernmental Group of Experts on Consumer Protection Law and Policy, which would mirror the existing one on Competition Law and Policy. Some delegations showed interest in this proposal and ask for further information on the legal nature, the periodic review of its mandate, and the budgetary implications it would bear upon UNCTAD. Other delegations were of the opinion that such machinery would overwhelm the needs of consumers and asked for the creation of a United Nations Commission on Consumer Protection.

## **G. Rereading of Structured Sessions**

25. Following the discussions carried out under the five structured sessions, the UNCTAD secretariat prepared a revised Draft Resolution for the consideration of the Expert Group Meeting. Each moderator presented the main changes to the original text and opened the floor for experts to express their views on them.

26. Experts valued the changes introduced to the Draft Resolution and asked for a new deadline in order to reply with more in-depth comments. One delegation pondered on the need to include the definition of "consumer," while others restated the need to keep this definition while allowing flexibility. Some delegations provided editorial corrections to the principles of good business practices. Regarding the session on other issues, some experts called for the inclusion of provisions on shelter and real estate, while others advised against it.

## **H. Discussion on the Draft Resolution**

27. The last session was devoted to the discussion of the Draft Resolution as a whole, i.e. the perambulatory and operative clauses along with any pending issues not yet discussed in the previous structured sessions. Most delegations voiced their support for operative clauses 7 and 8, which establish an Intergovernmental Group of Experts on Consumer Protection Law and Policy within an existing Trade and Development Board Commission of UNCTAD, although some delegations asked for further information on its budgetary implications. Some delegations preferred that periodic revisions of the UNGCP be conducted every ten years, instead of five as contained in the Draft Resolution. One expert highlighted the link between the fulfillment of the upcoming Sustainable Development Goals with the successful implementation of the UNGCP, both at the national and at the international level. Various delegations asked for the perambulatory part to be shortened, while others asked for its paragraphs to remain untouched.
28. The secretariat asked all experts to submit their written comments for a new revision of the Draft Resolution that was to be circulated after the meeting. The deadline for receiving further comments was set for 16 February 2015, and a revised Draft Resolution will then be circulated by 27 February 2015 to all experts and permanent missions in Geneva. A new meeting will be held back-to-back with UNCTAD's Expert Meeting on Cyberlaws and Regulations for Enhancing E-commerce, Including Case Studies and Lessons Learned, sometime between 25 and 27 March 2015, on a date to be confirmed. The result of these consultations will be submitted to the 7<sup>th</sup> United Nations Review Conference for consideration in July 2015.