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**IMPACT OF INTERNATIONAL INVESTMENT FLOWS ON DEVELOPMENT:
MERGERS AND ACQUISITIONS — POLICIES AIMED AT MAXIMIZING
THE POSITIVE AND MINIMIZING THE POSSIBLE NEGATIVE
IMPACT OF INTERNATIONAL INVESTMENT**

Draft agreed recommendations

1. In its deliberations on the impact of mergers and acquisitions (M&As), the Commission took note of the secretariat documents entitled “Impact of international investment flows on Development: Outcome of the Expert Meeting on Mergers and Acquisitions” (TD/B/COM.2/29); “Impact of cross-border mergers and acquisitions on development and policy issues for consideration” (TD/B/COM.2/EM.7/2); and “Report of the Expert Meeting on Mergers and Acquisitions: Policies Aimed at Maximizing the Positive and Minimizing the Possible Negative Impact of International Investment” (TD/B/COM.2/26).
2. The Commission noted that, in recent years, TNCs have made considerable use of M&As to invest in developed countries and countries with transition economies, and increasingly in developing countries as well. Cross-border M&As can have positive and negative effects in a host country economy, depending on many factors, notably the country’s level of development, the regulatory framework in place, and the circumstances under which cross-border M&As take place. In any event, the effects of cross-border M&As on development depend on the specific transaction and the

concrete circumstances that exist in individual host countries, including the national legal framework and the prevailing external environment.

3. The Commission accordingly called on member countries to put in place appropriate, transparent and predictable policy frameworks, notably to encourage the positive contribution of cross-border M&As to development and minimize any negative effects of such transactions with a view to advancing the mutual interests of host countries and transnational corporations. In this respect, the Commission made the recommendations set out below.

Governments

(a) Policies or guidelines on M&As should reflect a long-term developmental perspective, taking into account the circumstances under which M&As are undertaken and the level of development of host countries, as well as the impact on domestic enterprise development, and the interests of workers as expressed by their representatives.

(b) Measures should be considered to maximize the benefits and minimize the social cost of M&As. These measures may include social safety nets and responses to employment effects of M&As, including support to the training and retraining of workers who may be laid off.

(c) Attention needs to be paid to the adoption and implementation of competition laws. To that end, cooperation among competition authorities could be useful. In addition, special attention to the relevant market definitions, market performance and market structure is warranted.

International community

(a) Apart from national merger reviews, international cooperation should be strengthened in the area of competition policies at the bilateral, regional and multilateral levels. Cooperation could include the exchange of information, joint review mechanisms, coordination of time limits and collaboration among competition authorities.

(b) Consideration should be given to assisting developing countries, in particular the least developed countries (LDCs), in developing and implementing national and regional competition policies, including through support for technical assistance.

(c) Consideration should also be given to assisting developing countries, and in particular LDCs, in formulating policies and measures concerning cross-border M&As, including in dealing with their impact on employment and enhancing the ability to attract appropriate technology with a view to increasing the level of technology transfer.

(d) In this respect, cooperation among developing countries, in the exchange of national experiences for example on competition policy and measures to attract investment flows, should also be encouraged.

UNCTAD

(a) Bearing in mind the work programme set out by the Fourth United Nations Review Conference for the Control of Restrictive Business Practices and the mandate from UNCTAD X, UNCTAD should continue to report on, and analyse, trends in cross-border M&As and their share in FDI flows and related policy responses and their impact on development. In this regard, factors related to the competitiveness of the domestic enterprise sector, including SMEs, in the face of the internationalization of production also need to be studied.

(b) UNCTAD should undertake analytical work and, in the case of privatizations, elaborate guidelines, with a view to providing recommendations to deal, at the national and international levels, with the challenges posed by the impact of cross-border M&As on national market structures, level of employment and competition policy.