

## **Report of the UNCTAD Webinar: “Competition in times of COVID 19: is there a role for international cooperation?” (2-4pm CEST/ 3 June 2020)**

**By UNCTAD Secretariat**

### **Summary of discussion**

The UNCTAD Secretariat organised a webinar to discuss the role of international cooperation for competition law and policy in times of COVID19 with representatives of competition authorities from across the globe (Albania, Austria, Brazil, Indonesia, Japan, South Africa, Russian Federation and the United States of America). More than 500 participants registered to the webinar from more than 50 jurisdictions worldwide. Out of these registered participants, more than 60 questions were previously posed to the panelists and commentators of the webinar<sup>1</sup>.

The webinar was opened by the head of the UNCTAD’s Competition and Consumer Policies Branch (CCPB). The CCPB head set the scene of the webinar’s theme by presenting the work of UNCTAD in the area of international cooperation of competition authorities and the upcoming adoption of the UNCTAD Guiding Principles and Procedures under Section F of the UN Set on Competition (GPP) at the forthcoming 8th Review Conference of the UN Set on Competition (UNRC) to be held in October 2020. Furthermore, the CCPB Head stressed the role of UNCTAD as a platform to support countries, especially developing countries, in better tackling challenges from this unexpected crisis, and mentioned UNCTAD’s active involvement in providing responses to this crisis through technical assistance (4 requests) and through the participation of UNCTAD in three UN-wide projects in relation to SMEs, social protection and vulnerability. The Head also welcomed calls at multilateral level, and of regional economic organization, to act in coordinated manner and react collectively. Finally, she closed her remarks by highlighting the positive impact of the current crisis in fostering stronger international cooperation, and how UNCTAD can play a key role in this endeavor.

After the introductory remarks from the CCPB Head, representatives of competition authorities from developing countries and economies in transition spanning across four continents (Europe - Albania, Asia - Indonesia, Africa - South Africa and Latin America - Brazil) responded to two sets of questions. The first question focused on the health sector and how competition authorities tackled challenges that emerged from this sector through collaboration. The second question took a broader view and forward-looking perspective by looking at how international cooperation can help competition authorities during and post COVID19 crisis, and by considering how UNCTAD can contribute concretely to this end. This was then followed by a panel of commentators who engaged with the first panel’s presentations and responded to some questions out of the seventy-five given by the audience.

With regards to the first question that touched upon collaboration between competition authorities to resolve challenges in the health care sector, the Albanian Competition Authority (Legal Service Director, Ms. Laze) underlined the importance of preventing abuses of all undertakings, and reminded the need to be transparent in setting selling price of items. Albania brought their experience and the investigation antitrust procedures the agency is conducting in the COVID19 period but also the assessment conducted regarding the mergers and acquisitions. In a similar vein, CADE Brazil (Superintendent, Prof. Cordeiro) reminded the importance of understanding the impact of agreements between companies on both short, medium and long term to ensure competition stands strong, even in times of crisis. The South African Competition Commission (Deputy Commissioner, Mr. Ratshisusu) stressed how essential working together with other authorities at the regional and international level is, to tackle challenges and advocate for strong competition enforcement in this time of crisis. Echoing its South African counterpart, the Indonesian Competition Commission (Commissioner, Dr. Wibowo) highlighted the key role of discussing concerns, such as food prices, amongst regional partners to better address challenges post crisis.

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<sup>1</sup> The questions will be addressed and distributed to all registered participants in due course.

In relation to the second question which addressed the role of international cooperation during and post crisis as well as UNCTAD's concrete contribution, Albania and Brazil underlined how useful it is to bring in the experience of other agencies/authorities to handle cases. Albania stressed that the international cooperation is very crucial in sharing experience and information on similar antitrust cases. Brazil went further by stating that international cooperation is much more about relationships and trust than rules and MOUs, especially in times of crisis, during which it is essential to have closer relationships, exchange more experience and share public information among agencies/authorities. Indonesia pointed out that international cooperation may lead to conduct joint case handling for more productive results and suggested that UNCTAD facilitates cooperation not only to exchange information, but also cooperation in case handling. Finally, the counterpart from South Africa called for strengthening competition enforcement and work closely post COVID19, especially for smaller agencies, to break down barriers to entry, because future challenges will mostly emerge from large corporations and cross border challenges.

Following from the first panel, commentators of the second panel gave valuable inputs for strengthening international cooperation based on their domestic experience. The Austrian Competition Authority (Deputy Managing Director, Dr. Harsdorf) praised the collaborative efforts at the European Union level to cooperate, coordinate responses and demonstrate flexibility, and commended the work of the international community at large to engage collaboratively to share responses to this crisis. It stressed that international cooperation is much needed to respond to this crisis to counter unilateralism. Similarly, the United States Department of Justice (Counselor, Mrs. Imundo) discussed how the commonality of safeguards shared by the different agencies creates an opportunity for further cooperation and ensure enforcement efforts going forward. The United States Federal Trade Commission (Associate Director, Mr. Damtoft) pointed that more important types of cooperation are needed for competition policy cooperation due to agencies/authorities facing new challenges, noting for example that some actors have attempted to use the pandemic to argue for relaxation of competition law enforcement in the area of the failing firm defense, something the USFTC has stood firm against. The Russian Federation Federal Antimonopoly Service (Deputy Head, Mr. Tsyganov) stressed the key role of soft law, advocacy and international cooperation to facilitate sharing as well as harmonizing best practices among agencies. It stated that exchange of experiences is crucial to assess responses to crisis and analyze consequence at both national and global level. The Japan Fair Trade Commission (Deputy Secretary General, Mr. Suwazono) further mentioned that based on Japan's experience of witnessing several crises, the efforts of competition authorities responding to crisis situations could let people realize how important competition policy is, and then the authorities could take advantage of it to strengthen competition policy and enforcement tools.

When answering questions from the audience, Austria underlined that international cooperation could help in improving institutional framework. Japan argued that relaxing competition law or public fund injection should be temporary remedy, and competition authorities should show the public exit policy to restore competitive environments. It went further by suggesting that UNCTAD could analyze the issue of state aid during future IGE discussions. Russia stressed the importance of daily commodity price monitoring combined with advocacy for citizens and cooperation with other ministries as essential measures to tackle this crisis. The USFTC agreed, and further noted that guidance for businesses on what conduct might violate the law, such as in regard to labor markets, would be valuable to share. On a final note, the USDOJ reminded that historically in times of economic recession, cartels step forward. It also underlined the fact that hospitals and other public organizations are major purchasers of pharmaceutical equipment's which will lead to cartel enforcement overlapping with procurement law. The USDOJ has formed a strike force to focus on collusion in public contracting and has been sharing best practices internationally and expects to continue to do so going forward.

### **UNCTAD's takeaways and initiatives on international cooperation**

The crisis has underlined the importance of international cooperation. During times of the covid-19 crisis, and also the post crisis, there is an increasing need for competition authorities to reinforce advocacy efforts and law enforcement, which call for closer relationships with other authorities, more

exchanges of experience and sharing information. The key role of soft law, advocacy and international cooperation through the exchange of experiences as well as harmonizing best practices among authorities to assess responses to crisis and analyze consequence at both national and global level were highlighted.

In this regard, based on its takeaways from the webinar, the UNCTAD Secretariat resumes the following suggestions of work on international cooperation:

#### 1: International cooperation in case handling

The crisis has brought common interests in health and food sectors among authorities, and there is an interest in further exploring cooperation in case handling for more productive results. Interest has also been expressed regarding competition and public procurement, enhanced awareness being needed, namely in the health sector.

#### 2: Advocacy

There is a strong need for and an interest in promoting for a competitive business environment post crisis. Competition Authorities may expand and develop further actions to advocate for competition-driven new legislation and policymaking towards a more sustainable, resilient and healthier economic ecosystems across the world.

#### 3: State aid

With the large amounts of public money geared towards businesses bail outs and to support economic recovery, it is key to monitor carefully the use and impact of State Aid so that markets remain dynamic and opportunities are available for SMEs and entrepreneurs, This requires a strong role of Competition Authorities as Governments' advisors and close coordination with other public bodies and sectoral regulators to aim for a sound economic outcome.

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