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**Report of the Intergovernmental Group of Experts on
Competition Law and Policy on its seventeenth session**

Held at the Palais des Nations, Geneva, from 11 to 13 July 2018

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Introduction

The seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy was held at the Palais des Nations in Geneva, Switzerland, from 11 to 13 July 2018. Representatives of member States of UNCTAD, including government ministers and heads of competition authorities, and of many intergovernmental organizations attended the discussions of the session.

I. Agreed conclusions

The Intergovernmental Group of Experts on Competition Law and Policy,

Recalling the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Taking into account the resolution adopted by the Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (Geneva, July 2015),¹

Considering the provisions relating to competition issues adopted at the fourteenth session of the United Nations Conference on Trade and Development (UNCTAD XIV, Nairobi, July 2016), including the provisions in paragraphs 69 and 76 (x) of the Nairobi Maafikiano,²

Reaffirming the fundamental role of competition law and policy for sound economic development and the need to further promote implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Noting that the 2030 Agenda for Sustainable Development and the outcomes of UNCTAD XIV focus on addressing the opportunities and challenges of globalization for development and poverty reduction,

Underlining that competition law and policy is a key instrument for addressing globalization challenges and benefits, including by enhancing trade and investment, resource mobilization and the harnessing of knowledge and by reducing poverty,

Recognizing also the need to strengthen UNCTAD work on competition law and policy so as to enhance its development role and benefits for consumers and business,

Recognizing further the valuable UNCTAD work in the area of international maritime transport as covered, inter alia, in the *Review of Maritime Transport*,

Welcoming the contribution of Peru to the work of the Intergovernmental Group of Experts on Competition Law and Policy in the form of the UNCTAD virtual catalogue of international best practices in consumer protection and competition,

Noting with satisfaction the important written and oral contributions from competition authorities and other participants which contributed to a rich debate during the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy,

Taking note with appreciation of the documentation and of the peer review of Botswana facilitated by UNCTAD secretariat for its seventeenth session,

1. *Expresses appreciation* to the Government of Botswana for volunteering for peer review and for sharing its experience, best practices and challenges with other competition agencies during the seventeenth session of the Intergovernmental Group of Experts on Competition Law and Policy and with all Governments and regional groupings participating in the reviews, and recognizes the progress achieved so far in the elaboration and enforcement of the peer-reviewed country's competition law;

¹ TD/RBP/CONF.8/11, chapter I.

² TD/519/Add.2.

2. *Invites* all member Governments and competition agencies to assist UNCTAD, on a voluntary basis, by providing experts or other resources for future and follow-up activities in connection with voluntary peer reviews and their recommendations;

3. *Decides* that UNCTAD should, in light of the experiences with the voluntary peer reviews undertaken so far and, in accordance with available resources, undertake further voluntary peer reviews on competition law and policy of member States or regional groupings during the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy in July 2019;

4. *Underlines* the importance of international cooperation as recognized under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including informal collaboration among agencies, and calls upon UNCTAD to promote and support cooperation between competition authorities and Governments, as directed by the Accra Accord in paragraphs 103 and 211;

5. *Recognizes* the role of maritime transport in facilitating and promoting international trade, encourages competition authorities to follow developments in the container shipping sector to ensure fair competition and prevent anti-competitive practices in these markets, and urges competition authorities to cooperate with each other in dealing with cross-border anti-competitive practices, and even more so in the maritime transport sector, given its global nature;

6. *Calls upon* UNCTAD to continue its analytical work in the area of international maritime transport to include the monitoring and analysis of the effects of cooperative arrangements and mergers not only on freight rates but also on the frequency, efficiency, reliability and quality of services, as part of its work on the *Review of Maritime Transport*;

7. *Emphasizes* the importance of regional cooperation in the enforcement of competition law and policy, and invites competition authorities to strengthen their bilateral and regional cooperation;

8. *Underlines* the benefits of enhancing and strengthening enforcement capacities and promoting a competition culture in developing countries and countries with economies in transition through capacity-building and advocacy activities targeting all relevant stakeholders, requests the UNCTAD secretariat to disseminate the summary of the discussions of the Intergovernmental Group of Experts on Competition Law and Policy on this topic to all interested member States, including through its technical cooperation activities and peer reviews, and encourages member States to submit best practices to the newly created UNCTAD virtual catalogue of international best practices on competition and consumer protection policies;

9. *Calls upon* UNCTAD to promote and support cooperation between competition authorities and Governments in accordance with the Accra Accord (paragraphs 102 to 104), the Nairobi Maafikiano (paragraphs 69 and 76 (x)) and the resolution adopted by the Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (paragraphs 3 and 16);³

10. *Requests* the UNCTAD secretariat to prepare a study on competition issues in the digital economy for the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy, taking into account previous work conducted by member States on that matter, to facilitate consultations on a specific topic, chosen from among the clusters in the resolution adopted by the Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;

³ General Assembly resolution 70/186 on consumer protection, adopted on 22 December 2015, annex.

11. *Requests* the UNCTAD secretariat to facilitate a discussion on competition issues in the health sector, specifically looking into pharmaceuticals and health-care services at the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy;

12. *Expresses its appreciation* for the report prepared by the UNCTAD secretariat on the work carried out within the discussion group on international cooperation which was established at the sixteenth session of the Intergovernmental Group of Experts with the aim of pursuing the exchange of information and debate on the modalities for implementing section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, takes note of the survey report on obstacles to international cooperation as well as the proposals by member States on enhancing international cooperation, and calls for the extension of the mandate of the discussion group on international cooperation for another year so as to continue the work of discussion group on international cooperation members on a voluntary basis and report on its activities to the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy;

13. *Decides* to further consider the issue of international cooperation of competition authorities in the fight against cross-border anti-competitive practices and mergers during its eighteenth session in 2019 as a separate agenda item;

14. *Requests* the UNCTAD secretariat to prepare, for the consideration of the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy, an updated review of capacity-building and technical assistance activities, taking into account information to be received from member States no later than 28 February 2019;

15. *Requests* the UNCTAD secretariat to revise and update the commentaries of chapters IX and X of the Model Law on Competition on the basis of submissions to be received from member States no later than 28 February 2019;

16. *Notes with appreciation* the voluntary financial and other contributions received from member States, invites member States to continue to assist UNCTAD on a voluntary basis in its capacity-building and technical cooperation activities by providing experts, training facilities or financial resources, and requests the UNCTAD secretariat to pursue and, where possible, focus its capacity-building and technical cooperation activities, including training, on maximizing their impact in all interested countries.

Closing plenary
13 July 2018

II. Chair's summary

A. Opening plenary

1. In his opening remarks, the Secretary-General of UNCTAD recalled how competition issues entered the United Nations dialogue over 70 years earlier. Since then, the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices had remained the only global instrument that guided member States in the design and implementation of effective competition laws and policies, thus contributing to attainment of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals. UNCTAD was proud to host and be the convener of international intergovernmental deliberations on competition at a time when economic growth and inclusive development increasingly depended on the success of competition enforcement in markets. Market concentration, especially in digital markets, could only be effectively addressed through international cooperation. Governments needed to make markets fairer and development more equitable. UNCTAD was delivering technical assistance and capacity-building at the regional level, in Latin America, Central and Western Africa and the Middle East and Northern Africa, and at the national level, such as

in Ethiopia and Zimbabwe. There was a shared responsibility to promote competition and contribute to achievement of the Sustainable Development Goals.

2. One delegate regretted that anticipated growth had not materialized in developing countries because of anti-competitive practices in markets. Her country's priority was to ensure inclusive industrialization, economic growth and development, including women and youth empowerment through competition law and enforcement. One participant noted that, for example, bid-rigging could increase prices up to 20 per cent in developed countries and 35 per cent in developing countries. Another delegate presented the latest developments of his country's competition authority, which had been operational for two years. A new law reflected international best practices, as a result of advisory services provided by UNCTAD.

3. The keynote speaker addressed the contribution of competition policy to achievement of the Sustainable Development Goals. She stated that competition was currently underrecognized as a policy vital to empowering people to engage in markets and for delivering goods and services to vulnerable and disadvantaged consumers. It was the task of competition authorities to provide evidence that markets worked for the benefit of all. She reviewed various national examples of competition law enforcement that had led to significant gains for consumers.

4. Competition authorities needed to be very clear when communicating their priorities, stating when public interests were taken into consideration, along with competition concerns. It was important for competition authorities to think in regional terms when launching cases, as the worst anti-competitive practices might have a cross-border component requiring coordinated action.

B. Challenges faced by developing countries in competition and regulation in the maritime transport sector

(Agenda item 3 (a) (i))

5. The UNCTAD secretariat provided an overview of the maritime transport and liner shipping industry and the existing legal and regulatory framework for competition law in the sector, as well as challenges faced by developing countries and policy options (TD/B/C.I/CLP/49).

6. A panel discussion, led by the Chair of the session, included the following experts: the Chief of Trade Logistics Branch of the UNCTAD Division on Technology and Logistics; the Legal Counsel of the World Shipping Council; the Deputy Chief Executive of Freight Transport Association of the United Kingdom of Great Britain and Northern Ireland and Board member of the Global Shippers Council; the Commissioner of the Administrative Council for Economic Defence of Brazil; the Senior Executive Director of the Competition Commission of Hong Kong, China; and the Head of Unit of the Directorate General for Competition of the European Commission.

7. One panellist noted that containerization had greater impact and had been more important for global trade than for globalization. The liner shipping sector had been undergoing a consolidation process through mergers and alliances. The top 10 carriers accounted for 83 per cent of the market; the number of liner shipping companies per country had decreased by 40 per cent. Overall, in most markets, there were still many companies, fierce competition and low freight rates. In smaller markets, small island States and remote regions, a reduced number of providers did impact on freight rates and the choice of shippers.

8. On most routes, carriers operated within global alliances that allowed for improved operations and more connections and increased frequency for shippers. Among the potential challenges of alliances was the pooling of services when they negotiated with ports. The development of vertical integration also meant that some carriers had their own terminals and port infrastructure, which could pose challenges for ports.

9. Another panellist said that vessel-sharing agreements were a win-win situation for carriers and shippers. Vessel-sharing agreements had pro-competitive effects by reducing barriers to entry to smaller and medium-sized carriers. Cost saving, through deployment of larger ships was another externality of vessel-sharing agreements, which led to saving in fuel costs. The industry was still competitive. There was a need for clear and consistent competition policy for vessel-sharing agreements. He underscored that exemption of vessel-sharing agreements from competition law was the norm and remained critical. Carriers needed flexibility to be able to modify cooperative arrangements to continue providing regularly scheduled services and react to changes in the market.

10. The third panellist said that consolidation reduced the number of entities with which to negotiate, limited choice and ensured great leverage by service providers. Operational decisions of consolidated actors could have accumulative effects. Rearrangement of a collection of ports could have consequential costs, which could pose challenges for port infrastructure and put pressure on port hauling infrastructure, resulting in deterioration of service and longer clearance time. The imposition of surcharges was an industry feature during acute periods of fuel inflation. Cost recovery from surcharges, which were announced at short notice, put shippers in a difficult situation. By contrast, the aviation industry did not react to fuel pricing through short notice surcharges. Monitoring market conditions was essential to furnish evidence on which transparent decisions could be taken. The question of whether there was still a need for exemption from competition law in the maritime sector should be assessed.

11. Another panellist stated that vessel-sharing agreements were exempted from competition law in his jurisdiction. However, voluntary-discussion agreements were information-sharing agreements, including sharing of price information. Applicants for a voluntary-discussion agreement exemption based their requests on potential efficiencies, such as rate stability. Freight rates could be stable under voluntary-discussion agreements but higher than market rates. The Competition Commission did not see rate stability as an efficiency. Applicants also emphasized service stability and the possibility of making long-term investments with voluntary-discussion agreements, which implied that service was reliable due to high rates and that efficiencies would not be passed on to shippers but rather used to invest. Another positive aspect of voluntary-discussion agreements was freight rate and surcharge transparency, which could make price coordination easier, thereby harming competition. Competition authorities needed to make reasoned and evidence-based decisions in an open and transparent manner, as only then would a decision be better accepted by the parties affected.

12. Another panellist discussed mergers and alliances in the liner shipping industry. The European Commission's merger analysis focused on market shares in relevant market and barriers to entry. No prohibition had been granted to date. However, remedies were designed to ensure that other market participants remained competitors to merging entities. In the European Union, alliances needed to make a self-assessment of whether their conduct raised competition concerns. With regard to block exemptions covering consortiums, carriers that fell within the scope of exemptions had legal certainty guaranteeing that their conduct would not be challenged. There had been a recent cartel case in the maritime transport of cars. Prohibiting liner conferences and exempting consortiums from competition law was a good balance.

13. The final panellist reported that in the last five years the Administrative Council for Economic Defence had analysed and cleared eight transactions in the sector. In its analysis, the Administrative Council focused on the level of capacity in the industry and the risks of having joint operations among competitors. In Brazil, vessel-sharing agreements should be notified because consortium members jointly decided on routes, schedules, ports and exchange of slots. Brazil was a good example for ex ante analysis of those contracts. Competition authorities in developing countries needed to ensure that efficiencies resulting from cooperative agreements were achieved and passed on to shippers and consumers.

14. Some delegates also reported on the challenges faced in maritime transport in their respective countries and shared experiences on exemptions and competition in the sector.

C. Competition issues in the sale of audiovisual rights for major sporting events

(Agenda item 3 (a) (ii))

15. The UNCTAD secretariat introduced the topic dealt of the round table, highlighting the importance of sport in its economic, social and cultural dimensions and of television for the financing of sports, as well as competition problems that had arisen in the sale of audiovisual rights to broadcasting operators (TD/B/C.I/CLP/50). The need to adapt the approach to enforcement of competition law in the area due to the entry of new over-the-top operators was also stressed.

16. The round-table panellists were the keynote speaker, a Professor of the Football Business Academy and expert on sports media; the President of the Professional Football League of Spain; the Head of Marketing and Legal Services of the Union of European Football Associations; the Head of Unit of Antitrust, Media, at the Directorate General for Competition of the European Commission; a member of the Board of the Portuguese Competition Authority; and the Head of Media Legal and Business Affairs of the International Olympic Committee.

17. The keynote speaker presented a report on sports media that analysed the impact of the audiovisual sector on professional sports. She highlighted sports with larger audiences and the importance of television, which generated more than \$90 billion a year globally. The trend in the visualization of sports was changing and most young people preferred to use their phones or computers to watch sporting events.

18. Another panellist addressed two questions posed by the Chair on the promotion of competition. He explained that the International Olympic Committee owned global broadcast rights for each game and appointed the Olympic Broadcast Services as host broadcaster. As a result and based on rule 48 of the obligations of the Olympic Charter, competition was ensured by securing full text coverage via different media and the widest possible audience in the world for the Olympic Games. Promoting competition involved a market-by-market approach to the supply of audiovisual rights as per the 2018 Olympic Games in Pyeongchang, Republic of Korea. Furthermore, there were several factors to consider, such as location, separation of free and pay rights, value of exclusivity and listed events/anti-siphoning laws. He also noted some advantages of over-the-top media services related to quantity, adaptability and personalization, lower barriers to entry for providers, data and ease of customer acquisition and/or delivery.

19. Another panellist explained the measures to promote competition as a regional association of football associations in Europe. One of those measures was choosing to foster joint-selling models, which had been adopted as a standard model in Europe, rather than former models based on individual-club negotiations. He provided insights on territorial exclusivity which was recognized as a way forward on incentives for owners of audiovisual rights and consumers. Self-regulation was the best approach to promote competition in the market in order to maximize choices for consumers rather than profits. The digital landscape was disruptive for sports, though it could not change sports were presented live, whereas virtual data was based on non-live content. The Union of European Football Associations did not foresee that the Internet would disrupt live broadcasts of sports events in the next five years as the Internet as a platform was complementary to live broadcasts.

20. The next panellist shared points of European Union jurisprudence on the provision of audiovisual rights in Europe starting from 2003 in Italy. The European Union Commission had looked at exclusivity clauses between the Union of European Football Associations and football clubs. He also noted some commitments decisions in collective-selling agreements of the Union of European Football Associations, the English Premier League and the German Bundesliga, primarily made by European national competition authorities, such as the English Competition Authority. Consumer welfare was an important consideration in dealing with competition cases.

21. Another panellist stressed the importance of consumers and how rights were being purchased. Until 2015, competition was distorted significantly in Spain, as each football club provided audiovisual rights to different broadcasters and there were economic imbalances among the clubs. Those types of agreements generated important restrictions on competition and significant differences in the distribution of money obtained from broadcasting operators. As of 2015 and following the Italian model since 2010, the Professional Football League of Spain followed the collective sale (centralized sales) model of other European national leagues (Cyprus and Portugal were notable exceptions to the model). In the collective sale model, the League was responsible for commercializing rights through the collective work of different Spanish football clubs, with specific standards followed by the national football clubs. Television broadcasters in fact were not intermediaries between the Professional Football League and consumers and hence they were responsible for IP data relevant to consumers. Consumption trends provided information on consumers. In Spain, in the last two decades, paid television had been on the rise and in football those trends had been mirrored.

22. The final panellist provided a detailed account of national jurisprudence on competition issues for Portugal. The country was one of few that maintained an individual sales model and that generated many competition problems. It would be important to modify the negotiation model in Portugal as other European territories had done.

23. Some participants also provided highlights of national jurisprudence in Pakistan and India related to cricket premier leagues, referring to competition problems such as increasing market concentrations and the disruptive role of new technologies that would be limited to live media events.

D. Voluntary peer review of competition law and policy of Botswana (Agenda item 3 (b))

24. Under the agenda item, the Intergovernmental Group of Experts undertook a voluntary peer review of competition law and policy of Botswana. The Minister of Investment, Trade and Industry of Botswana headed her country's delegation. The peer reviewers were the Deputy Commissioner of the Competition Commission of South Africa, the Director General of the Competition Authority of Kenya and the former Chair of the Federal Trade Commission of the United States of America and currently Professor at George Washington University.

25. The Minister of Botswana presented her country's priorities regarding investment, trade and industry: development of small and medium-sized enterprises, investment promotion and export development. They could not be achieved without the complementary role of competition law in ensuring that the playing field was levelled through removal of restrictive business practices. Botswana adopted a national competition policy in 2005 and established a competition authority in 2011. Since then, bid-rigging cases accounted for almost 40 per cent, including cartels which constituted 30 per cent, of the cases assessed. Recently, Botswana had enacted the merger of competition and consumer protection issues under a new entity called the Competition and Consumer Authority. Furthermore, Botswana had created a specialized competition tribunal, which was expected to foster competition legal jurisprudence and help stir competition culture in the country. The Minister appealed to other authorities and development partners to work together to uplift the young competition agency.

26. Representatives of the UNCTAD presented the peer review report (UNCTAD/DITC/CLP/2018/1) and its overview (TD/B/C.I/CLP/50), outlining the legal and institutional frameworks for competition. The Competition Commission has adjudicative and policy-making functions. The Competition Act of 2011 (revised on November 2017) tackled restrictive trade practices, including per se and rule of reason prohibited agreements and abuse of dominant position. The recommendation to the Government was to increase the financial and human resources of the Commission, to promote coexistence between sector economic regulation authorities and the Commission and to uphold the Commission's functional independence, while preserving the ministerial

functions of policy coordination. Recommendations to the Commission included a review the institutional set-up and enforcement, building capacities in competition and consumer protection, convening annual advocacy conferences, development of a curriculum on competition and consumer protection for universities, development of advocacy programmes for specific target groups and design of a road map for the institutional merger of competition and consumer protection.

27. The Chief Executive Officer of the Competition Authority of Botswana presented emerging issues arising from the recently revised Competition Act. Criminal prosecution of competition breaches required a new line of cooperation between the Commission and the public prosecutor. The Authority would also need to develop institutional and substantive subordinate legislation on consumer protection, including a greater presence in the whole territory to address the needs of the population at large and improve the standards of living of the people of Botswana.

28. During the question-and-answer session, in response to a question from a peer reviewer on regional cartels and cross-border anti-competitive conduct in the country, the delegation of Botswana said that the 2010 Act allowed cooperation with foreign authorities on a reciprocal basis. The new Act contained a provision allowing the disclosure and sharing of confidential information to tackle cross-border cartels. The Authority cooperated by sharing information and conducting joint dawn raids with other countries. The peer reviewer also asked about possible conflict of interests between the enforcement and adjudicative functions at the Commission. The new law foresaw the setting up of a specialized tribunal to address the issue. A final question from the peer reviewer raised the issue of financial resources for the specialized tribunal, which was to be equivalent to that of the High Court of Botswana. A representative of the Competition Commission responded that the necessary arrangements had been made to devote and ensure the necessary resources were allocated and called for UNCTAD to support the raising of capacities of members of the tribunal.

29. Another peer reviewer asked whether Botswana had adequate regulation on consumer protection. The delegation of Botswana responded that the fact that the Commission had powers over adjudication and enforcement served consumer protection better, as the Commission was better placed to receive complaints and ensure redress. Regarding merger revocation by the Commission, though the Act allowed for that possibility, the practicalities of putting it in place had impaired its full implementation. The peer reviewer praised country's provision allowing for a definition of dominance through market share threshold as it made enforcement easier.

30. The last peer reviewer asked what kind of technical assistance had been made available in the past and which would be necessary. The delegation of Botswana responded that the country was active in the International Competition Network, the Organization for Economic Cooperation and Development and the Africa Competition Forum. The Competition Commission had sponsored internal and external trainings for its staff to raise technical capacities. The peer reviewer asked how the Authority intended to engage with the judiciary. In view of the new mandate on consumer protection, he also inquired how the Authority intended to improve the prioritization of tasks. The delegation of Botswana responded that, though judges were independent, Botswana had been able to organize training of judges, in cooperation with the Southern African Development Community, with mixed results. Judges would be included in the stakeholder engagement strategy of the Authority. Botswana would also need to include the new mandate on consumer protection in its strategy and market intervention, improve knowledge management and raise capacities of staff.

31. During the interactive session, the Chair of the Competition Commission of Botswana asked the peer reviewers and other delegates questions. One delegate shared the experience of the United States of America in requesting courts to enforce the competition authority's decision, which happened regularly and whose failure to comply implied contempt of court. Another delegate explained how the United Republic of Tanzania used both turnover and market share as criteria to evaluate dominance. He also shared the positive impact of placing competition and regulated sectors under the same ministry. Another delegate shared how Zambia held media addresses twice a year to raise awareness

of the work of the competition authority. Another delegate shared the experience of Zimbabwe in competition cases involving intellectual property rights, which had entailed consultations between competent authorities. Another delegate said that the Competition Act of South Africa applied to all areas of commerce, giving the competition authority exclusive jurisdiction on competition issues including State-owned enterprises and regulated sectors, which had been confirmed by the Supreme Court. Another delegate noted that Eswatini was considering criminalizing competition law.

32. The UNCTAD secretariat subsequently presented a technical assistance project proposal for implementation of the recommendations of Botswana peer review. The secretariat also launched a project entitled “Virtual catalogue of international best practices on competition and consumer protection”. The virtual catalogue aimed at serving as an interactive tool for exchanges among member States. Information was to be fed by national authorities and UNCTAD would administer a website.⁴ The project was developed and donated by the National Institute for the Defence of Free Competition and the Protection of Intellectual Property of Peru. The delegate from Peru presented results of the pilot project containing best practices from 12 member States and called on delegations to feed information into the virtual catalogue.

E. Report of work on capacity-building in and technical assistance on competition law and policy

(Agenda item 3 (c))

33. The UNCTAD secretariat presented an updated review of capacity-building and technical assistance on consumer protection law and policy carried out over the past year (TD/B/C.I/CPLP/14). A panel discussion followed, with the following discussants: the Minister and member of the Board in charge of competition and antitrust regulation of the Eurasian Economic Commission; Director of Trade and Competition of the Central African Economic and Monetary Community; Director of the Competition Directorate of the Ministry of Industry, Trade and Supply of Jordan; and Administrator of the Authority on Consumer Protection and Competition Defence of Panama.

34. The secretariat provided an overview of its recent technical assistance programmes included information on institutional support, capacity-building and advocacy, digital trade and market studies and South–South cooperation. In addition to having undertaken 26 voluntary peer reviews since 2005, the secretariat had more recently been implementing regional projects in Latin America, the Middle East and North Africa, Central Africa and the Association of Southeast Asian Nations.

35. One discussant shared ongoing cooperation between the Eurasian Economic Commission and UNCTAD, which was in the form of an expert review analysing Eurasian and European Union competition law from the standpoint of compliance with the world’s best practices and experiences in antitrust regulation.

36. Another discussant described an ongoing capacity-building project in the Central African Economic and Monetary Community and expressed appreciation for the implementation efforts of UNCTAD. She mentioned that, since 2017, support from the European Union enabled the launch of an UNCTAD regional programme for members of the Community aimed at developing and consolidating the legal and institutional framework for promoting competition and consumer protection in the region. The countries covered included Cameroon, the Central African Republic, Chad, the Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon and Sao Tome and Principe.

37. Another discussant shared the experience of the competition authority of Panama, which was dedicated primarily to protecting and assuring the rights of consumers as well as the process of free economic competition to maintain the supreme interest of the consumer. He highlighted that the Authority on Consumer Protection and Competition Defence had

⁴ <http://ccpcatalog.unctad.org/>.

been empowered by law to provide advice to economic agents, associations, academia and other civil society organizations and the public sector on competition matters.

38. The final discussant highlighted the work of the Middle East and North Africa programme in Jordan in terms of preparation and implementation of awareness activities in competition law and policy.

39. Some discussants shared their experiences with the UNCTAD Middle East and North Africa and Competition and Consumer Protection for Latin America programmes, respectively, expressing appreciation for opportunities for enhanced cooperation, including on information and data exchange on competition policy matters.

F. Report of the discussion group on international cooperation (Agenda item 3 (e))

40. The UNCTAD secretariat highlighted the work of the discussion group on international cooperation,⁵ which included a survey report on the obstacles to international cooperation as well as proposals by member countries on enhancing international, such as a toolkit on combatting restrictive business practices from the Russian Federation and the proposal by Mexico to strengthen international cooperation. Members of the discussion group provided further information on specific issues.

41. One discussion group member noted that the toolkit of the Russian Federation was a set of instruments that can facilitate the detection of cross-border anti-competitive practices. He expressed appreciation for the comments from various competition authorities in the course of four virtual meetings held between October 2017 and June 2018. The toolkit could serve as the basis for a proposal to reform the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, taking into account changes that had occurred since 1980 and results of development of the digital economy. The toolkit complemented other efforts, such as those of the Organization for Economic Cooperation and Development and the International Competition Network. The discussion group should continue and propose a reform of the Set at 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, to be held in 2020.

42. Another discussion group member expressed appreciation for the effort of developing the toolkit, which highlighted legal obstacles, resource constraints and confidentiality issues standing in the way of international cooperation. He urged the meeting to make use of existing tools first and cautioned against duplication, referring to work undertaken, for example, by the Merger Working Group of the International Competition Network. The role of UNCTAD would be to provide a platform for consolidation and dissemination of good practices, particularly to younger agencies.

43. Another discussion group member emphasized that international cooperation was high on the agenda of the Organization for Economic Cooperation and Development and several recommendations had already been developed. The recommended practices of the Organization for Economic Cooperation and Development, put forward in 2014, covered a range of traditional forms of cooperation, such as notification and exchange of non-confidential information. A new framework on confidential information as well as investigative assistance was also included. However, the work of the discussion group on international cooperation would still be relevant and particularly useful to reach out beyond member countries of the Organization for Economic Cooperation and Development, which planned to survey its members in 2019 to assess actual application of the recommendations.

44. A fourth member of the discussion group drew attention to a review undertaken in May 2018 and called for a flexible approach to international cooperation, building on formats developed by UNCTAD, the Organization for Economic Cooperation and Development and the International Competition Network, and recognizing the value of

⁵ See agreed conclusions of the sixteenth session of the Intergovernmental Group of Experts on Competition Law and Policy (see TD/B/C.I/CLP/47, chapter I).

informal cooperation. She highlighted the importance of forging relationships through staff-level communication across jurisdictions, as well as the role of UNCTAD in knowledge management and facilitating networking. UNCTAD could disseminate all available information to its members in the form of a publicly available repository. A knowledge-gathering and dissemination strategy should be developed and new networks, promoted, through regional groupings. It would be important to avoid overlaps, encourage participation on a voluntary basis and ensure that the autonomy of agencies would not be compromised.

45. Another member of the discussion group underlined the importance of international cooperation from the perspective of a small jurisdiction with a globally connected economy. The proposal prepared by Mexico was much appreciated, particularly as it specified tools needed for international cooperation that could also be useful for younger agencies. There was a need for a pragmatic, yet non-binding and needs-based approach, with a focus on dissemination of best practices and through the continued work of the discussion group.

46. Another discussion group member commended the productive work of the discussion group and reiterated that there were different views on the kinds of instruments to be adopted and degree of formality or prescriptiveness to be agreed upon. As experience had shown, much depended on agency-to-agency consultations, as younger agencies in particular often faced resource constraints. She encouraged increased participation of younger agencies and proposed development of guiding principles for international cooperation.

47. Another member of the discussion group provided a historic overview of multiple platforms over the years and noted examples of investigations into cross-border anti-competitive conduct that were available, e.g. shipping liners, technology giants, recent mega mergers and the like. The proposed toolkit constituted a step in the direction of effective international cooperation, to reinforce inter-agency rather than State-to-State engagement. He suggested a phased approach to implementation, starting at the bilateral rather than the multilateral level.

48. Another discussion group member commended the UNCTAD survey as it was complementary to existing tools from the Organization for Economic Cooperation and Development and the International Competition Network, shedding light on why international cooperation did not take place. While there might not be full consensus on another international agreement, he suggested that, as a way forward, the toolkit could be refocused, shifting from a normative to an educational/advisory document, which could be incorporated into the future work plan of the Intergovernmental Group of Experts.

49. An interactive discussion ensued. Comments from some member States were mostly supportive of the Russian toolkit. One delegate called for modernization of mechanisms for practical and effective cooperation, while another delegate emphasized the timeliness of the discussion group. Many delegates called for continuation of the discussion group for another year and considering the possibility of updates to existing UNCTAD guidance documents. One delegate stressed the importance of proceeding realistically.

50. A representative of the private sector commended the discussion group's practical suggestions and addressed the complementarity between the proposals, with the Russian toolkit focusing on procedural issues and Mexican proposal concentrating on practical and substantive considerations. Going forward, he suggested development of a practical guide on what international cooperation was, how it worked and contacts, as well as adding the topics of fairness and due process, in relation to protection of information that was shared and waivers.

III. Organizational matters

A. Election of officers

(Agenda item 1)

51. At its opening plenary, on 11 July 2018, the Intergovernmental Group of Experts on Competition Law and Policy elected Ms. Vadiyya Khalil (Pakistan) as its Chair and Ms. Juliana Latifi (Albania) as its Vice-Chair-cum-Rapporteur.

B. Adoption of the agenda and organization of work

(Agenda item 2)

52. Also at its opening plenary, the Intergovernmental Group of Experts on Competition Law and Policy adopted its provisional agenda, as contained in document TD/B/C.I/CLP/48. The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Work programme, including capacity-building in and technical assistance on competition law and policy:
 - (a) Studies related to the provisions of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:
 - (i) Challenges faced by developing countries in competition and regulation in the maritime transport sector
 - (ii) Competition issues in the sale of audiovisual rights for major sporting events
 - (b) Voluntary peer review of competition law and policy of Botswana
 - (c) Report of work on capacity-building in and technical assistance on competition law and policy
 - (d) Review of chapters V and VI of the Model Law on Competition
 - (e) Report of the discussion group on international cooperation
4. Provisional agenda for the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy.

C. Review of chapters V and VI of the Model Law on Competition

(Agenda item 3 (d))

53. At an informal session prior to the closing plenary, the UNCTAD secretariat presented the revisions made to chapters 5 and 6 of the Model Law on Competition, including updated information on existing examples from various jurisdictions and the addition of new examples from other jurisdictions. Chapter 5, on notification of agreements, currently included a revised comparison of ex ante and ex post notification regimes with their respective advantages and disadvantages, especially for young competition agencies. The revisions to chapter 5 also included updated information on competition legislation and authorities of jurisdiction, with a new table on types of notification regimes in Albania, Australia, Italy, Singapore, Turkey and the Common Market for Eastern and Southern Africa. The commentaries to chapter 6 currently included updated information to reflect changes in competition legislation or institutions in relevant jurisdictions as well as additional examples on jurisdictional thresholds in voluntary merger control regimes from Hong Kong (China) and Mauritius; in mandatory merger control

regimes from Canada, Chile and Israel; substantive assessment criteria from Costa Rica and India; and remedies from the Russian Federation.

D. Provisional agenda for the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy

(Agenda item 4)

54. At its closing plenary meeting, on 13 July 2018, the Intergovernmental Group of Experts approved the provisional agenda for its eighteenth session (annex I).

E. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy

(Agenda item 5)

55. Also at its closing plenary meeting, the Intergovernmental Group of Experts authorized the Vice-Chair-cum-Rapporteur to finalize the report after the conclusion of the session.

Annex I

Provisional agenda for the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy

1. Election of officers
2. Adoption of the agenda and organization of work
3. Work programme on competition law and policy:
 - (a) Report of the work undertaken by the discussion group on international cooperation
 - (b) Competition issues in the digital economy
 - (c) Competition issues in the health sector, specifically looking into pharmaceuticals and health-care services
 - (d) International cooperation of competition authorities in the fight against cross-border anticompetitive practices and mergers
 - (e) Voluntary peer review of competition law and policy
 - (f) Report of work on capacity-building in and technical assistance on competition law and policy
 - (g) Review of chapters IX and X of the Model Law on Competition
4. Provisional agenda for 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
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy

Annex II

Attendance*

1. Representatives of the following States members of UNCTAD attended the session:

Albania	Mexico
Algeria	Morocco
Argentina	Myanmar
Armenia	Namibia
Austria	Nepal
Belarus	Nicaragua
Botswana	Nigeria
Brazil	Oman
Burkina Faso	Pakistan
Cambodia	Panama
Chad	Peru
China	Philippines
Congo	Portugal
Democratic Republic of the Congo	Qatar
Dominican Republic	Republic of Korea
Egypt	Romania
El Salvador	Russian Federation
Eswatini	Saudi Arabia
Ethiopia	Senegal
France	Serbia
Georgia	Seychelles
Germany	South Africa
Guatemala	Spain
Hungary	Sri Lanka
India	Sudan
Iraq	Suriname
Italy	Switzerland
Japan	Thailand
Jordan	Trinidad and Tobago
Kazakhstan	Tunisia
Kenya	Turkey
Kuwait	United Kingdom of Great Britain and
Kyrgyzstan	Northern Ireland
Lao People's Democratic Republic	United Republic of Tanzania
Latvia	United States of America
Lebanon	Viet Nam
Malawi	Yemen
Malaysia	Zambia
Mauritius	Zimbabwe

2. Representatives of the following members of the Conference attended the session:

State of Palestine

3. The following intergovernmental organizations were represented at the session:

African, Caribbean and Pacific Group of States
 Common Market for Eastern and Southern Africa
 Economic Community of West African States
 Economic and Monetary Community of Central African States

* This attendance list contains registered participants. For the list of participants, see TD/B/C.I/CLP/INF.8.

Eurasian Economic Commission
European Union
Organization for Economic Cooperation and Development
West African Economic and Monetary Union

4. The following United Nations organs, bodies and programmes were represented at the session:

International Trade Centre

5. The following specialized agencies and related organizations were represented at the session:

World Trade Organization

6. The following non-governmental organizations were represented at the session:

General category

Consumer Unity and Trust Society International
Global Traders Conference
International Law Association

Special category

International Chamber of Shipping
