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FIFTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Antalya, Turkey, 14–18 November 2005
Agenda item 6

**REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL
OF RESTRICTIVE BUSINESS PRACTICES**

Draft resolution

The Fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Recalling that General Assembly resolution 55/182 of 20 December 2000 reaffirmed the role of competition law and policy for sound economic development, took note of the important and useful work of the United Nations Conference on Trade and Development in this field, and, in this regard, decided to convene in 2005 a fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, under the auspices of the United Nations Conference on Trade and Development,

Having reviewed all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 25 years after its adoption,

Recognizing the role that competition policy plays in promoting competitiveness, building entrepreneurship, facilitating market access and entry, enhancing the equity of the

international trading system and ensuring that trade liberalization brings about development gains,

Reaffirming the benefits that derive from competition policy for consumers, in the light of the UN Guidelines for Consumer Protection,

Reaffirming further the role which competition policy can play in facilitating market entry by small and medium-sized firms and the informal sector, in promoting a dynamic enterprise sector and in enhancing competitiveness in national and international markets,

Convinced of the need to disseminate the culture of competition,

Noting the continuing prevalence of anticompetitive practices at the national and international levels,

Noting further the continuing adoption, application or reform of national competition laws and policies and the increase in relevant bilateral and regional agreements and in international cooperation in this area,

Taking note of the provisions relating to competition issues adopted by UNCTAD XI in the São Paulo Consensus (TD/410), including the provisions in paragraphs 89, 95 and 104 of the São Paulo Consensus,

Taking into account the agreed conclusions adopted by the Intergovernmental Group of Experts on Competition Law and Policy at its sixth session (TD/B/COM.2/48),

Recognizing the positive contribution made by the Set and by UNCTAD to the promotion of competition policy as a tool for assuring successful economic reform conducive to sustainable development and the need to further promote the implementation of the Set of Principles and Rules,

Recognizing further the need for effective competition law enforcement,

1. *Reaffirms* the fundamental role of competition law and policy for sound economic development and the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;
2. *Calls* upon all member States to make every effort to implement fully the provisions of the Set;
3. *Calls upon* States to increase cooperation between their competition authorities and Governments for the mutual benefit of all countries in order to strengthen effective international action against anticompetitive practices as covered by the Set, especially when these occur at the international level; such cooperation is particularly important for developing countries and economies in transition;

4. *Notes with appreciation* the voluntary financial and other contributions received for capacity building and technical cooperation, and *invites* all member States to assist UNCTAD on a voluntary basis in its technical cooperation by providing experts, training facilities or resources;

5. *Recommends* that the General Assembly convene a Sixth United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices under UNCTAD auspices in 2010;

6. *Decides* that, in the light of the São Paulo Consensus (TD/410) as it relates to competition issues, UNCTAD should continue to work as appropriate on the subjects indicated by the Fourth UN Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and should also work on the following additional subjects, within existing resources, in a manner which takes into account interlinkages among different subjects in this area and within the framework laid down below:

- (a) Monitoring of trends and developments in the competition law and policy area at the national and international levels, including the prevalence of anticompetitive practices or concentrated market structures, as well as measures taken by Governments to address these;
- (b) Assisting developing countries in their efforts to adopt competition laws and policies, establish competition authorities, tailor the laws and policies to their development needs and objectives, as well as their capacity constraints, and implement them effectively, including by studying *inter alia*:
 - (i) The role of competition law and policy in facilitating market entry by small and medium-sized firms and in promoting economic development, and the relationship between competition policy and the informal sector;
 - (ii) The links between competition policy and consumer welfare and protection;
 - (iii) Competition policy treatment of cartels, abuse of dominance/monopolization, abuse of buyer power and the exercise of intellectual property rights;
 - (iv) Competition at national and international levels in specific sectors of interest to developing countries;
 - (v) Techniques for gathering evidence on cartels;
 - (vi) Difficulties of developing countries in enforcing competition laws, including in cases with international elements, and the application of competition laws to cross- border anticompetitive practices;

- (vii) The long-term economic benefits of an effective competition policy, in particular its contribution to the growth and export competitiveness of developing countries;
 - (viii) Competition law and policy and its benefits for the alleviation of poverty;
 - (ix) The interaction between economic policy and control of market concentration;
 - (x) Evaluation of the effectiveness of leniency programmes;
- (c) Facilitating stronger international cooperation in this area, including by:
- (i) Identifying how competition rules in bilateral and regional agreements might be further developed and might appropriately address developing countries' development needs, national policy objectives and capacity constraints;
 - (ii) Promoting wider participation in international cooperation and more cooperation among developing countries in the competition policy area; and
 - (iii) Further efforts to enhance the implementation of the provisions of the Set of Principles and Rules, in particular Parts E and F.
- (d) Technical assistance, advisory and training services, and information and advocacy;
- (e) Periodic revision of the commentary to the Model Law in the light of legislative developments and comments made by member States, and wide dissemination of the Model Law and its commentary as revised, it being understood that these do not affect the discretion of countries to choose competition laws and policies considered appropriate for themselves;

7. *Underlines* the value of the voluntary peer review process in UNCTAD as a useful tool for exchange of experiences and cooperation, it being understood that this should not affect the discretion of countries to choose competition laws and policies considered appropriate for themselves; *expresses appreciation* to the Governments of Jamaica and Kenya for volunteering for peer reviews during the Fifth Review Conference and to all Governments participating in the review; *invites* all member States to assist UNCTAD on a voluntary basis by providing experts or other resources for future activities in connection with voluntary peer reviews; and *decides* that UNCTAD should undertake, in the light of the experiences with the voluntary peer reviews undertaken during the Fifth Review Conference and in accordance with available resources:

- (a) Further voluntary peer reviews on competition law and policy of member States or regional groupings of States, back-to-back with sessions of the Intergovernmental Group of Experts on Competition Law and Policy;

- (b) Arrangements whenever appropriate for conduct of voluntary peer reviews back-to-back with the investment policy reviews conducted by UNCTAD, so as to identify linkages between the competition and investment policies of the country or region being reviewed;
- (c) Deliberations on the scope, criteria and conduct of such voluntary peer reviews in the light of their objectives and available financial and human resources; and
- (d) Periodic assessment and synthesis of the main types of issues, including relevant experiences with international cooperation, encountered by countries or regions reviewed in the process of developing and implementing their competition laws and policies in the light of their development needs, national policy objectives and capacity constraints;

8. *Recommends* the continuation and strengthening of the important and useful work programme within UNCTAD's secretariat and intergovernmental machinery that addresses competition law and policy issues and proceeds with the active support and participation of competition law and policy authorities of member States;

9. *Takes note* of concerns that United Nations documentation is not always made available in a timely manner in all official languages;

10. *Takes note* with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference, and *requests* the secretariat to revise documents, including TD/RBP/CONF.6/3, TD/RBP/CONF.6/9 and TD/RBP/CONF.6/11, in the light of comments by member States made at the Conference or to be sent in writing by 31 January 2006 for submission to the next session of the Intergovernmental Group of Experts on Competition Law and Policy, and make them available through UNCTAD's website;

11. *Further requests* the UNCTAD secretariat to continue publishing the following documents:

- (a) Further issues of the Handbook on Competition Legislation, including bilateral, regional and international instruments, which should be complemented with a summary of the main provisions of the competition laws or of the instruments, on the basis of inputs to be submitted by member States parties to these instruments or competent institutions set up under such instruments, as appropriate;
- (b) An updated version of the Directory of Competition Authorities; and
- (c) An information note on recent important competition cases, with special reference to competition cases involving more than one country, and taking into account information to be received from member States;

12. *Decides* that the 2006 session of the Intergovernmental Group of Experts on Competition Law and Policy will consider the following issues for better implementation of the Set:

- (a) The relationship between competition authorities and sectoral regulators, particularly with respect to abuse of dominant positions;
 - (b) International cooperation in investigating and prosecuting hard-core cartels affecting developing countries;
 - (c) Analysis of cooperation and dispute settlement mechanisms relating to competition policy in regional free trade agreements, taking into account issues of particular concern to small and developing countries;
 - (d) Relationship between competition law and policy and subsidies.
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