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Review of capacity-building in and technical assistance on competition and consumer protection law and policy

Note by the UNCTAD secretariat

Summary

UNCTAD provides capacity-building in and technical assistance on competition and consumer protection laws and policies to developing and least developed countries, as well as to economies in transition, in accordance with requests received, the needs of the countries and economies concerned and available resources. This includes both national and regional assistance in drafting laws and policy guidelines, as well as in capacity-building activities on the implementation of policies for competition and consumer protection, with a long-term perspective, in line with the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, the United Nations Guidelines on Consumer Protection and the requests made 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. This note consolidates the annual reviews of the capacity-building and technical cooperation activities of the UNCTAD secretariat that were submitted to the meetings of the Intergovernmental Group of Experts on Competition and on Consumer Protection Laws and Policies held between 2016 and 2019. The final chapter of this note deals with the outlook for technical cooperation activities based on a new UNCTAD strategy in the area of competition and consumer protection.



I. Introduction

1. In the resolution of 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, held in July 2015, the UNCTAD secretariat was requested to continue technical cooperation work in response to the needs of developing countries, particularly small island developing States; landlocked developing countries and other structurally weak, vulnerable and small economies; and economies in transition.¹

2. The UNCTAD secretariat was also requested to conduct a review of technical cooperation activities; target cost-effectiveness, complementarity and collaboration among providers and recipients; identify priority areas and issues of competition law and policy; and widen the search for potential donors and mobilizing resources.²

3. A workplan on competition policies, endorsed by the Seventh United Nations Review Conference, was derived from the experience gained by UNCTAD in implementing technical assistance and capacity-building activities in developing countries. All activities are planned and implemented with the active involvement of the competition and consumer protection agencies and other national, regional and global networks, where appropriate, of beneficiary countries to ensure buy-in and commitment. Competition and consumer protection policies are cross-cutting topics for markets and intended to contribute to the promotion of stable economic conditions, strengthen competitiveness, support trade diversification, mobilize domestic and foreign investment and improve basic infrastructure. Emphasis is placed on private sector development as a tool for promoting growth and reducing poverty.

4. In recent years, there has been a growing concern regarding the impact of the digital economy on international trade and development. New market trends point to a remarkable development in electronic commerce (e-commerce) and an increasingly important presence of large digital platforms. UNCTAD attaches special importance to these new business models, characterized by their rapid expansion and technological evolution. In the coming years, the digital economy will be one of the main topics that UNCTAD will address in capacity-building and technical assistance activities.³

5. In this report, the technical assistance activities of the UNCTAD secretariat from 2015 to 2020 are summarized and analysed; then a new UNCTAD strategy on technical assistance and capacity-building in the area of competition and consumer protection is proposed for the next five years, in light of the review of those previous activities.

II. Capacity-building and technical assistance framework

A. UNCTAD mandate on competition law and policy

6. The UNCTAD mandate on competition law and policy dates back to the adoption in 1980 of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.⁴ The United Nations Set plays an important role in encouraging the adoption and strengthening of laws and policies in this area at both the national and regional levels.

¹ TD/RBP/CONF.8/11, chapter I, paragraph 10.

² *Ibid.*, paragraph 11.

³ See, for example, TD/B/C.I/CLP/54 and UNCTAD, 2019, *Digital Economy Report 2019: Value Creation and Capture – Implications for Developing Countries* (United Nations publication, Sales No. E.19.II.D.17, Geneva).

⁴ TD/RBP/CONF/10/Rev.2.

7. This was confirmed in the Nairobi Maafikiano, adopted at the fourteenth session of the United Nations Conference on Trade and Development in July 2016.⁵

B. UNCTAD mandate on consumer protection law and policy

8. The General Assembly, in its resolution 70/186 of 22 December 2015, adopted the revised United Nations guidelines for consumer protection, expanding the scope to new areas, and establishing an intergovernmental group of experts on consumer protection law and policy within the framework of an existing commission of the Trade and Development Board of UNCTAD to serve as the international institutional machinery for the guidelines. It conferred UNCTAD a formal mandate in this area. Section VI (A/RES/70/186, annex, paragraphs 79 to 94) of the revised guidelines extensively addresses international cooperation, recommending that Member States should cooperate, promote and facilitate capacity-building.

III. Review of the activities implemented between 2015 and 2020

9. In accordance with the above-mentioned mandates, UNCTAD provides a wide range of technical assistance services, such as assisting in the preparation, adoption, revision and/or implementation of competition and consumer protection laws and policies, and building institutional capacity for the effective enforcement of competition and consumer protection laws, as well as raising competition and consumer protection awareness among stakeholders. UNCTAD technical assistance is also provided as a follow-up to the implementation of recommendations deriving from voluntary peer reviews on competition and consumer protection laws and policies.

10. This chapter briefly describes the UNCTAD technical assistance and capacity-building activities delivered from 2015 to 2020 at the national and regional levels, including an impact assessment of those activities.

11. One important point to be noted here is that technical assistance activities should be provided continuously and comprehensively, in alignment with the stage of development, as well as on an ad hoc basis. Advisory services of a legal and economic nature should always be complemented by seminars or workshops to discuss them. The recommendations of voluntary peer reviews should be presented and discussed in seminars and workshops, and later lead to an assessment of compliance with them by the countries reviewed. Some examples of these activities are provided further below in this document.

A. National level activities

12. At the national level, UNCTAD provided assistance in the drafting, revising and implementing competition and consumer protection laws in the following jurisdictions: Albania (2016), Argentina (2017), Barbados (2019), Belarus (2019), Bhutan (2019), Cabo Verde (2018), Cambodia (2018), Côte d'Ivoire (2016), Ethiopia (2016), Georgia (2017), Guatemala (2019), Namibia (2015), Paraguay (2015), Peru (2019), Dominican Republic (2018), Uruguay (2018), Viet Nam (2016), Zimbabwe (2016) and the West African Economic and Monetary Union (2019), on competition law; and Argentina (2019), Bhutan (2019), Cambodia (2018), Indonesia (2019), Morocco (2019), Paraguay (2015) and Peru (2019), on consumer protection law.

13. UNCTAD supported the development of competition policy even from early stages. Box 1 presents some examples of UNCTAD technical assistance activities at the national level, which are aimed at developing and strengthening the competition frameworks of developing countries.

⁵ See TD/519/Add.2, paragraphs 69 and 76 (x).

Box 1

Examples of UNCTAD activities at the national level

UNCTAD undertook the legal assessment of the competition laws in **Belarus** based on the UNCTAD Model Law on Competition and international best practices on competition law and policy from more experienced jurisdictions. The assessment provided recommendations that may improve the legal and institutional frameworks in this jurisdiction.

In **Cambodia**, UNCTAD held a bilateral consultation in 2016 with the ministry in charge of drafting Cambodian competition law, together with the Japan Fair Trade Commission. Then, in 2018, UNCTAD compiled a report in which the draft competition law was analysed and held consultations with the draft competition bill team at the Ministry of Commerce. The competition law in Cambodia is expected to be enacted in 2020.

Continuous and comprehensive UNCTAD technical assistance

In 2015–2016, UNCTAD compiled a report on the status of competition policy in **Ethiopia**, including recommendations on possible actions and measures to remove regulatory barriers to competition, which raised the competition awareness of government authorities and other stakeholders to improve the legal frameworks and reinforce policy coherence and coordination among them. Also, UNCTAD assisted in drafting a series of guidelines and manuals in order to facilitate the better implementation of competition and consumer protection laws in Ethiopia. (The guidelines were on mergers and abuse of dominance, market analysis and definition of relevant markets, regulation of unfair commercial practices; an investigation manual was for case handlers.) The development of the guidelines and manuals was complemented by training workshops not only for competition officials but also for judges and prosecutors. These aimed at validating the guidelines and manuals, enhancing capacities in actual case analysis and handlings and familiarizing officials with economic and legal concepts underpinning competition laws.

In the case of **Peru**, UNCTAD provided technical assistance for the elaboration of a new merger control law that was approved in November 2019.

UNCTAD also assisted **Paraguay** in establishing its competition authority in 2015 and collaborated in awareness raising.

14. UNCTAD organized and delivered several seminars and workshops on specific topics targeting competition and consumer protection experts and other stakeholders, including government ministries, business and consumer representatives and academia. Competition advocacy is also one of the key goals of those activities. In this regard, UNCTAD has organized various awareness-raising events on the importance of developing a coherent competition policy to promote increased economic growth and improve business productivity and competitiveness. For example, activities aimed at parliamentarians, academics and representatives from private sector in Paraguay (2015), Colombia (2015), Philippine (2015), Albania (2016), Uruguay (2017), Peru (2017, 2018 and 2019), El Salvador (2017 and 2018) and Guatemala (2019). Topics related to the digital economy have received considerable attention across the world, namely from authorities in developing countries, due to the current challenges which they face. For example, seminars on topics such as competition and consumer protection issues in the digital economy, data protection and sharing economy have been organized in the academic field in Albania (2017), Uruguay (2017), Algeria (2019) and Turkey (2019).

B. Regional level activities

15. At the regional level, UNCTAD activities encompassed Latin American and the Caribbean, the Middle East and North Africa (MENA), Asia and the Pacific, the Commonwealth of Independent States, Central Africa and the Balkans. UNCTAD assisted in the drafting and implementation of regional competition legislation, addressing the

relation between regional and national rules when needed. It also organized several conferences, seminars and workshops aimed at fostering regional coordination and integration through competition and consumer protection law and policies.

1. Competition and Consumer Protection for Latin America Programme

16. The UNCTAD Competition and Consumer Protection Policies for Latin American Programme (COMPAL),⁶ from 2015 to 2018, funded by the State Secretariat for Economic Affairs of Switzerland has been the most successful programme at a regional level. Through the COMPAL programme, training, exchange of best practices and policy tools to competition authorities and consumer protection agencies were provided, enabling all COMPAL beneficiary countries to adopt and modernize a competition law and to create an enforcement agency (except Guatemala, which is in the process of approving competition legislation). In the field of consumer protection, the network of authorities in the region has been consolidated through the UNCTAD–COMPAL International Consumer Forum, which gathers all the consumer protection authorities of Latin America annually, back to back with meetings of the Ibero-American Forum of Government Consumer Protection Agencies. It remains the only international high-level event in the field. The forum is of great importance for authorities as it allows the exchange of knowledge and experience in dealing with substantive issues that affect them on a daily basis. The forum continues to be held annually with the financing of the participating countries.

17. During the phase III of the COMPAL programme, the activities carried out have focused on strengthening regional cooperation among beneficiary countries. For this purpose, meetings and seminars have been organized on specific topics of interest for the competition and consumer protection agencies in which all beneficiaries participated. As a novelty to underline, a Latin American forum for judges in both disciplines has been created. UNCTAD signed an agreement with the Academy of the Magistracy of Peru, in October 2016, to organize an annual course for judges from all COMPAL countries on competition or consumer protection laws, and a course has been organized every year. Finally, the dynamic has been generated to strengthen relations between agencies, through the awarding of scholarships for the exchange of staff of different member States' authorities.

18. The main activities notable for their relevance and impact were as follows:

(a) Workshops on competition and consumer protection issues, with participation by both competition and consumer protection authorities from each of the 16 COMPAL beneficiary countries. The workshops aimed at policy and enforcement coherence in competition and consumer protection among and within members. The topics covered included investigation techniques, competition and consumer protection in regulated sectors and the digital market.

(b) National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI)–COMPAL school, Peru. According to an internal survey, 98 per cent of participants valued the experience as excellent, and overall knowledge in these issues in agencies (including participating and non-participating staff) increased by 64 per cent. Such one-week, high-level intensive courses were offered to case handlers of COMPAL member agencies and respond to capacity needs identified by the agencies. They were later replicated in the respective national agencies of case handlers, resulting in a total of 2,400 trained participants.

⁶ The COMPAL network, in phase III of the programme (COMPAL III), is composed of the following members: Argentina, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and the Andean Community.

(c) Annual meetings of the working group on trade and competition in cooperation with the Latin American and Caribbean Economic System.⁷ The Latin American and Caribbean Economic System is the only forum worldwide where trade and competition authorities debate on issues that have a special impact on both areas. Meetings took place in Punta Cana, the Dominican Republic, in 2015; Manta, Ecuador, in 2016; Roataán, Honduras, in 2017; and Brasilia, in October 2018. The most recent meeting, at which the interaction between competition and innovation was discussed, was held in Asunción in October 2019, with the collaboration of the National Competition Commission of Paraguay and the School of Management and Law of the Zurich University of Applied Sciences.

(d) Latin American forum of judges in competition and in consumer protection law workshops, for judges of all beneficiary countries. The most recent workshop was a three-day course on merger control, held in Lima in May 2019, with the collaboration of the Academy of the Magistracy of Peru and the General Council of the Judiciary of Spain.

(e) International consumer protection annual forum, the only forum in Latin America to showcase best practices for policymaking in agency effectiveness, educational campaigns and alternative dispute settlement, with participants from government agencies, consumer associations and the private sector. The forum was held in Cusco, Peru, in October 2015; Guanacaste, Costa Rica, in September 2016; Mendoza, Argentina, in 2017; Guadalajara, Mexico, in October 2018; and San Salvador, in October 2019.

19. During this three-year phase, 100 per cent of planned activities of the COMPAL programme were implemented; activities covered the exchange of good practices, consensus-building and capacity-building.

20. Appreciation of the COMPAL programme by its members grew year by year, and a trend towards regional convergence regarding competition and consumer protection policies became evident. This was demonstrated by several bilateral cooperation agreements and memorandums of understanding among members; for instance, 22 new memorandums of understanding among COMPAL member States were concluded between 2015 and 2017. In addition, beneficiaries considered that the programme had strengthened ties between countries, and they expressed satisfaction with the quality and content of the activities undertaken. Finally, the implementation of a website that serves as a platform for knowledge-sharing and information-sharing was an important asset for the work of beneficiaries. At the annual closing meeting of the programme in June 2018, representatives of competition and consumer protection agencies signed a declaration (Declaration of Santo Domingo), recognizing the programme's positive results and the intention to seek its continuation.

21. Since 2018, UNCTAD has continued to develop some stand-alone activities that have obtained the technical collaboration and financial support of some public and private institutions.

2. Middle East and North Africa programme

22. UNCTAD, with the support of the Swedish International Development Cooperation Agency and funding by Sweden, developed the MENA regional technical cooperation programme, launched in 2015, which aimed to promote regional economic integration through improved competition and consumer protection policies in the MENA region. The beneficiaries were Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and the State of Palestine.

⁷ The Latin American and Caribbean Economic System is a regional intergovernmental organization that groups 26 Latin American and Caribbean countries. With its headquarters in Caracas, the Latin American and Caribbean Economic System was established on 17 October 1975 by the Panama Convention establishing the Latin American Economic System. Its current membership includes Argentina, the Bahamas, Barbados, Belize, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and the Bolivarian Republic of Venezuela.

23. The programme had four broad objectives as follows:
- (a) Improved competition and consumer protection laws and policies as tools for regional economic integration in the MENA region.
 - (b) Creating an enabling regional environment for private sector development through competition and consumer protection laws and policies.
 - (c) Dissemination and increased awareness of competition neutrality principles.
 - (d) Expanded regional focus (including relevant stakeholders).
24. The achievements of the MENA programme were the following:
- (a) In advisory services: drafting of the competition law of the State of Palestine; revising the competition law of Algeria.
 - (b) Competition guidelines and reports: competition glossary; good governance; independence and transparency of competition authorities; competition agency structure and effectiveness; competition business compliance; leniency programmes; competitive neutrality and competition and gender.
 - (c) Consumer protection guidelines and reports: consumer protection agency structure and effectiveness; consumer protection business engagement; consumer associations; consumer complaints handling; consumer product safety; e-commerce investigations; unfair commercial practices and misleading advertising; and consumer protection and gender.
 - (d) Creation of regional training centres in Tunisia (2016) and Egypt (2018) for competition issues and in Lebanon (2017) and Egypt (2018) for consumer protection issues.
 - (e) Workshops of national scope to raise awareness on the drafting and/or revising of competition and consumer protection legislation: State of Palestine (2016); Lebanon (2016); Algeria (2017); and Jordan (2017).
 - (f) Workshops of regional scope on both topics: competition law enforcement and investigative tools related to cartels, abuse of dominant position and merger control (2016); competitive neutrality dissemination and case studies on the definition of relevant market and market power (2017); agency structure and business compliance, competition and public procurement (2018); e-commerce and complaints handling (2016); United Nations guidelines for consumer protection, the use of standards for consumer protection, consumer protection competences of telecommunication and financial sector regulators (2017); consumer protection agency structure and effectiveness, business engagement, consumer associations (2018); and complaints handling and dispute resolution, e-commerce, product safety and risk management and consumer protection and gender (2018).
 - (g) Increased participation/intervention of MENA representatives in the international competition gatherings: Euro-Mediterranean Competition Forum; Arab League competition meetings; African Competition Forum; meetings of UNCTAD intergovernmental group of experts and joint Japan Fair Trade Commission training workshop for competition case handlers.
 - (h) Participation of MENA competition authority beneficiaries in the Course in International Competition Law and Compliance of the School of Management and Law of the Zurich University of Applied Sciences, Certificate of Advanced Studies, in Geneva and at the Cairo Training Centre (2018).
 - (i) MENA programme web platform, used for sharing competition and consumer protection information and best practices, training modules and decisions/rulings databases (<https://unctad.mena.org>).
 - (j) Train-the-trainers modules on competition law and policy and on key topics in consumer protection.
 - (k) A cooperation instrument between universities of MENA countries for teaching, training and disseminating competition and consumer protection research.

25. The four-year UNCTAD programme for the MENA region, completed in 2018, enabled the adoption and/or modernization of competition and consumer protection legal and institutional frameworks in the beneficiary countries. Notwithstanding differences in national models and levels of experience, the programme also fostered cooperation between the beneficiary countries' competition authorities and consumer protection agencies, bringing together experts and officials as well as civil society representatives (consumer associations and business organizations) and encouraging information exchanges, bilateral/regional contacts and coordinated actions.

3. Association of Southeast Asian Nations programme

26. UNCTAD has been working closely with the secretariat of the Association of Southeast Asian Nations and its member States for several years, in partnership with the German Agency for International Cooperation and the Japan International Cooperation Agency, through the cooperation with Japan Fair Trade Commission. UNCTAD has shared experience on international best practices in competition and consumer protection laws and policies, facilitating training workshops and seminars, supporting new initiatives and providing substantive inputs to new instruments. Among these, the virtual Competition Research Centre of the Association of Southeast Asian Nations, which contains a repository and database of competition related materials and researchers, and the Association's consumer empowerment index, measuring consumer knowledge and empowerment, can be cited as examples of work products stemming from cooperation. Also, UNCTAD cooperated with the Japan Fair Trade Commission and the Japan International Cooperation Agency in conducting a study to assess competition in the market for six agricultural products and compiling a study report for the Indonesian competition authority.

4. Central African Economic and Monetary Community programme

27. The regional programme for Central Africa,⁸ launched in 2017, aimed at developing and consolidating the legal and institutional framework for the promotion of competition and consumer protection policies in the region, particularly in member States of the Central African Economic and Monetary Community, the Democratic Republic of the Congo and Sao Tome and Principe. It was also aimed at strengthening the capacity of the Community's oversight body to update and monitor the application of regional competition and consumer protection rules, with a view to supporting national competition structures that promote economic efficiency and consumer interests through increased institutional capacity.

28. During its two years (2017–2019), legislation and studies/reports were drafted on economic analysis in competition and consumer protection law enforcement. Also, training and awareness activities were carried out in the eight beneficiary countries so that national institutions could become aware of the need to develop efficient policies to favour economic development.

29. The most important achievements of the programme were the approval in April 2019 by the Council of Ministers of the Central African Economic and Monetary Community of two new legislative texts on competition and consumer protection. Indeed, the approval of a regional competition regulation and a regional consumer protection directive led to modern regional legal frameworks in both matters that will allow regional and national institutions to more successfully implement policies. A new competition law for the Democratic Republic of the Congo, which is not part of the Central African Economic and Monetary Community, was also approved by the National Parliament in 2018.

30. Effective implementation of these legal frameworks will contribute to improving the business environment in Central Africa and thus to building a competitive subregional economy that is well integrated with the world.

⁸ Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.

5. Sofia Competition Forum

31. UNCTAD assists Balkan competition authorities in adopting and enforcing competition laws through the Sofia Competition Forum, which was established in November 2012 as a joint initiative of UNCTAD and the Commission on Protection of Competition of Bulgaria. The Forum played a role as a platform for technical assistance, exchange of experience and consultations in the field of competition policy and enforcement among Balkan competition authorities. The Sofia Competition Forum was held four times between 2015 and 2018 and addressed a variety of competition issues.⁹ Beneficiary economies¹⁰ are committed to furthering cooperation among each other and contributing to the activities and initiatives of the Forum.

6. Activities in the Commonwealth of Independent States

32. As well as the legal assessment of Belarus (mentioned in section 3.1 above), UNCTAD assessed the competition law of the Eurasian Economic Union in 2019, in response to the request from the minister of the Eurasian Economic Commission in charge of competition and regulation. This assessment also provided recommendations which may improve the enforcement of the competition law of the Eurasian Economic Commission.

IV. The voluntary peer reviews between 2015 and 2020

33. UNCTAD launched voluntary peer reviews on competition law and policy in 2005 at 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; 2020 will mark the fifteenth year that voluntary peer reviews are conducted. It should be noted that, during the Seventh United Nations Review Conference, two (external and internal) reports were presented that made recommendations aimed at improving the process of conducting peer reviews. In particular, the recommendations were aimed at improving coordination with other international organizations (e.g. the Organization for Economic Cooperation and Development) and improving the implementation phase of recommendations made to the countries examined.¹¹

34. Also, the approval of the revised United Nations guidelines for consumer protection by the General Assembly in December 2015 has allowed UNCTAD to carry out peer reviews on consumer protection law and policy;¹² UNCTAD is the only international entity conducting such exercises.

35. Since 2015, three voluntary peer reviews in the field of competition law and policy have been undertaken: Uruguay (2016), Argentina (2017) and Botswana (2018). The first-ever voluntary peer review on consumer protection law and policy was carried out for Morocco in 2018, which was followed by Indonesia in 2019. In 2020, during 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, voluntary peer reviews of competition law and policy of the West African Economic and Monetary Union and of consumer protection law and policy of Peru will take place. It is important to note that this will be the second time that the competition law and policy of the West African Economic and Monetary Union will be reviewed under this framework (the previous review was conducted in 2007). The objective of this second peer review is to analyse the consequences of the recommendations made in the previous report and, where appropriate, to update them.

⁹ Sanctioning in competition cases and leniency policy (7 November 2015), remedies and commitments (8 June 2016), pricing abuses of dominance in energy and telecommunications (9 November 2016) and information exchange between competitors (10 October 2017).

¹⁰ Albania, Bosnia and Herzegovina, Croatia, Georgia, Montenegro, North Macedonia, Serbia and Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)).

¹¹ UNCTAD, 2015, *External Evaluation of UNCTAD Peer Reviews on Competition Policy* (United Nations publication, New York and Geneva).

¹² A/RES/70/186; see also <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>.

36. Importantly, UNCTAD also provides training workshops and seminars as a follow-up to voluntary peer reviews, within the appropriate technical cooperation projects that ensue. Box 2 illustrates the work carried out by UNCTAD to promote the implementation of recommendations made in peer reviews, focusing on the examples of Albania and Zimbabwe.

Box 2

Examples of UNCTAD follow-up activities to voluntary peer reviews

After the voluntary peer review of **Albania** in 2015, which included recommendations for more effective competition policy, UNCTAD organized an advocacy seminar for parliamentarians and training courses targeting judges and case handlers. In order to implement the recommendation, it was necessary to increase the competition culture and awareness in Albania, given that some amendments of the Albanian competition law and further cooperation with sector regulators had been recommended.¹³

Also, following the tripartite peer review on competition law and policy in the United Republic of Tanzania, Zambia and **Zimbabwe** in 2012, UNCTAD organized activities to assist in the implementation of peer review recommendations in Zimbabwe, funded by the European Union. Activities included several advocacy seminars and workshops for parliamentarians, sector regulators, judiciary, business representatives, lawyers and academia during 2015 and 2016 to create awareness and understanding on the benefits of competition, in order to facilitate the adoption of a new competition law and policy by the parliament of Zimbabwe. Other examples of activities were the development of a competition assessment toolkit used by sector regulators, an online complaint filing system for easier access by complainants and a competition law curriculum for the Faculty of Law of the University of Zimbabwe. As an outcome of those outputs, competition issues were considered within the overall macroeconomic policy of the Government of Zimbabwe.

A. Peer reviews in the field of competition law and policy

37. **Uruguay** (2016).¹⁴ The voluntary peer review report included several recommendations for legal and institutional reform, including a review of the scope of the Competition Act in order to broaden it, amendment of provisions on anticompetitive practices and mergers and a clear distinction between horizontal and vertical agreements. On mergers, a review of notification thresholds was suggested to promote an efficient use of available resources. The report also recommended that the Commission on the Promotion and Defence of Competition develop the necessary case-handling skills and, in particular, enforcement capabilities in the area of anticompetitive practices and mergers. There was a need for greater autonomy and independence in budgetary and decision-making aspects, including a review of appeals by the Government. The report also recommended that the Commission improve knowledge-management capacities regarding the exchange of case information and records of staff activities, among other issues.

38. In May 2017, a mission to Montevideo was carried out to disseminate the results of the peer review to authorities and the private sector. In particular, the UNCTAD delegation met with the parliamentary economic commission, minister of economy, chamber of commerce and business associations. A bill is currently being processed that provides for important modifications, following the recommendations of UNCTAD.

39. **Argentina** (2017).¹⁵ The report included several recommendations for legal and institutional reform, including to: limit political pressure on competition enforcement; increase the competition authority budget; establish a tribunal for the defence of competition; strengthen the roll-out of anti-cartel activity; enhance the efficiency of

¹³ TD/B/C.I/CLP/43.

¹⁴ TD/B/C.I/CLP/41.

¹⁵ TD/B/C.I/CLP/46.

investigations; review current notification arrangements; continue advocacy efforts; broaden the functions of the competition authority in regulated sectors; increase thresholds for the notification of concentration operations; regulate the suspension effects of notification; reduce time periods for the processing of cases; implement a leniency programme; and encourage private enforcement of competition law.

40. In 2018, the parliament of Argentina approved a major reform of the competition law, which included addressing a significant part of the recommendations made by UNCTAD.¹⁶

41. **Botswana** (2018).¹⁷ The Minister of Investment, Trade and Industry of Botswana participated in the session of the Intergovernmental Group of Experts on Competition Law and Policy in 2018 that considered the country's voluntary peer review and recognized the importance of competition policy. She stated that Botswana welcomed the peer review recommendations and recognized competition policy as catalyst for economic development, which has direct impact on economic growth and, as a developing nation, one of the country's key strategies for sustained growth had been to open markets and liberalize the economy.

42. The voluntary peer review contributed to legislative reform in Botswana, which led to the expansion of the competition authority's mandate to include consumer protection under a new law enacted in 2018. Some of the peer review's recommendations, which were based on the former law, have already been addressed by the new law.¹⁸

43. UNCTAD used the findings and policy recommendations of the Botswana voluntary peer review report to a design bespoke technical assistance project to reinforce the effectiveness of competition law enforcement in the country. Development partners and donors have been invited to support the project.

B. Peer reviews in the field of consumer protection law and policy

44. **Morocco** (2018).¹⁹ The first-ever voluntary peer review in this field was presented at the third session of UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy.

45. In the voluntary peer review report, UNCTAD outlined the legal and institutional framework for consumer protection of Morocco, a country with a rich tradition of providing consumer protection throughout its history; thus, its current framework was well established and fully operational.

46. Several recommendations were aimed to improve and modernize its legal and institutional framework: issuing principles for unfair commercial practices; deepening consumer protection in e-commerce and in financial services and improving access to justice, through enhanced dispute resolution and redress. In addition, the report suggested that the Directorate of Consumer Protection, Market Surveillance and Quality be recognized as the focal point among all authorities responsible for consumer protection and that the Directorate's enforcement powers, capacities and public profile be strengthened. The Directorate is required to build its capacities and further participate in international gatherings and networks to benefit from experience sharing and to continue supporting the development of independent consumer groups.

47. UNCTAD secretariat outlined a tailor-made technical assistance project for the implementation of the peer review recommendations and invited other authorities and development partners to assist Morocco in improving policies, enhancing enforcement

¹⁶ Law 27442, published in the Official Bulletin of 15 May 2018, No. 33870, page 3.

¹⁷ UNCTAD, 2018, *Voluntary Peer Review of Competition Law and Policy: Botswana* (United Nations publication, New York and Geneva).

¹⁸ Botswana, Government Gazette, Vol. LVI, No. 24, 20 April 2018, available at <https://www.competitionauthority.co.bw/sites/default/files/Competition%20Act%202018.pdf>.

¹⁹ TD/B/C.I/CPLP/13.

capacities and developing a consumer protection culture. As a result, two member States said they would be willing to undergo a voluntary peer review.

48. **Indonesia** (2019).²⁰ The second voluntary peer review on consumer protection law and policy was presented at the fourth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy. Indonesia has a comparatively long history of consumer protection; the first consumer association was established in 1973 and the general consumer protection law was enacted in 1999. The implementation of actions related to consumer protection in Indonesia relied on a complex system of authorities, including various sectoral ministries, specialized agencies and sectoral regulators, as well as entities under local governments.

49. The report identified key challenges, especially due to fragmented enforcement at the sectoral level, with varying degrees of effectiveness, and suggested several recommendations. These ranged from refining the scope of the application of Law No. 8 on Consumer Protection with sectoral provisions, to enhancing and expanding the mandate of the National Consumer Protection Agency and consumer dispute-settlement bodies to more effectively address consumer complaints at both the national and subnational levels.

50. The intention of UNCTAD is to carry out the dissemination of the peer review recommendations in 2021, bringing together the main stakeholders of the country.

V. **New UNCTAD strategy on capacity-building and technical assistance in the area of competition and consumer protection for the next five years**

51. Chapters III and IV above reviewed UNCTAD technical assistance activities during the period from 2015 to 2020 and highlighted the impact those activities had on competition and consumer protection laws and policies in the jurisdictions assisted.

52. UNCTAD technical cooperation is based on the axes that guide the activities carried out in beneficiary countries: demand-driven and embracing country ownership; and based on principle of transparency, efficiency, effectiveness and accountability and geographically balanced implementation.²¹

53. The internationally agreed Busan Partnership for Effective Development Cooperation²² lays out a set of common principles for all development actors that are key to making development cooperation effective, namely:

(a) Ownership of development priorities by developing countries: countries should define the development model that they want to implement.

(b) A focus on results: having a sustainable impact should be the driving force behind investments and efforts in development policymaking

(c) Partnerships for development: development depends on the participation of all actors and recognizes the diversity and complementarity of their functions.

(d) Transparency and shared responsibility: development cooperation must be transparent and accountable to all citizens.

54. UNCTAD recognizes the importance of following these common principles when implementing technical cooperation projects so as to ensure positive results.

55. Effective and efficient technical assistance activities should be tailor-made and based on the recipients' needs. National-level activities have been designed exclusively for each country in accordance with the status and level of development of the country's

²⁰ UNCTAD, 2019, *Voluntary Peer Review of Competition Law and Policy: Indonesia* (United Nations publication, Geneva).

²¹ See https://unctad.org/en/Pages/TC/TC_Mandates.aspx.

²² Outcome document of the Fourth High-level Forum on Aid Effectiveness (2011); see https://www.undp.org/content/dam/uspc/docs/OUTCOME_DOCUMENT_-_FINAL_EN.pdf

competition or consumer protection laws and policies, while regional-level activities have offered coherent programmes to member countries, which usually have similar legal frameworks, common interests and close relationships with each other.

56. In this regard, UNCTAD conducted a survey of the competition and consumer protection authorities of member States in 2019, in order to better identify the concerns, needs and priorities on which UNCTAD technical assistance activities should focus, in both the competition and consumer protection fields.²³ Responses received from member States indicated that new information technologies are a significant challenge for competition and consumer protection authorities, especially in developing countries.

57. More precisely, in the field of competition, member States pointed to digital issues, such as how competition rules can deal with data protection and e-commerce. There was also interest expressed in competition-related issues in the area of financial technology and in new blockchain technology. As for the field of consumer protection, concerns regarding the effects of the digital economy on markets were emphasized, as well as international cooperation between consumer protection authorities.

58. Another important indication from the survey is that both competition and consumer protection authorities considered almost unanimously that the activities and support of UNCTAD should be maintained and should further develop a multi-stakeholder approach, promoting competition and consumer protection advocacy for a broad range of representatives from sectoral regulators, the judiciary, the private sector and academia. Indeed, the importance of advocacy activities targeting a variety of different stakeholders is supported by many of the recipients so far. It is also important that activities carried out should be connected with achieving the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.²⁴

59. Taking into account all of the above factors, for the next five years, UNCTAD technical assistance in the area of competition and consumer protection will focus on the areas described below.

A. Interface of competition, consumer protection and data protection policies in the digital economy

60. Efficient markets are indispensable for the successful implementation of the 2030 Agenda for Sustainable Development. Competition and consumer protection are two disciplines that directly affect consumer welfare and play a direct and important role in promoting sustainable and inclusive economic growth and reducing poverty.

61. Competition stimulates innovation, productivity and competitiveness, contributing to a vibrant business environment. It creates opportunities for small and medium-sized enterprises, removes barriers that protect entrenched monopolies and reduces corruption. Competition therefore increases a country's attractiveness as a business location, triggering national and foreign investment and generating economic growth and employment. Competition also delivers benefits for consumers through lower prices, better quality, improved services and greater choice. In this sense, competition increases consumer welfare.

62. Consumer protection benefits all consumers by ensuring their right of access to non-hazardous products, adequate information to enable informed choices according to their individual wishes and needs, and effective dispute resolution and redress. Consumers who know their rights and assert them are thus empowered and subject to fewer abuses. This directly improves their welfare. It also contributes to creating a level playing field for businesses that are subject to a high-level set of standards, promoting competition.

63. Consumers and businesses are therefore the ultimate beneficiaries of the two policies, which underlines a need for complementarity in their design and application. UNCTAD works in both disciplines and consequently has a broad global vision of the

²³ TD/B/C.I/CPLP/19.

²⁴ A/RES/70/1.

scope and the effects that a coordinated application of both policies can generate. At the institutional level there is a growing trend to centralize law enforcement in both areas, although at the moment this is far from being the general rule.

64. For UNCTAD, it is important to continue to promote synergies between both policies in order to create a competitive business environment that benefit both consumers and businesses. The rapid growth of e-commerce and the development of new business models powered by large digital platforms are dramatically changing market structure and impacting on consumption patterns at a rapid pace. In addition, considering the reliance of these new business models on data, there is a strong need to take into account all relevant aspects, including competition, consumer protection and data protection in developing policies and designing measures for an inclusive and competitive digital economy.

65. UNCTAD may assist countries in developing the appropriate policy and legal frameworks, which would allow them to benefit from the digital economy while dealing effectively with its challenges. UNCTAD may also facilitate the sharing of international best practices between its member States in the areas of competition and consumer protection.

B. Stronger focus on advocacy: how authorities can approach different stakeholders (regulators, the judiciary, private sector, public opinion)

66. The advocacy or promotion of competition and consumer protection is one of the functions of competition authorities and consumer protection agencies that has been developing in the last years. It is the responsibility of these authorities to sensitize politicians, governmental bodies, the judiciary, businessmen and citizens in general about the virtues of competition and consumer protection.

67. The aim of advocacy is to foster a climate and a culture that implies a general acceptance of competition and of consumer protection as valuable and essential instruments to promote economic growth and sustainable development of countries. In this sense, authorities must establish an adequate internal planning so that this activity is carried out in the most effective way to reach positive results.

68. UNCTAD has prepared documents in this regard and organized workshops in different countries and regions, for example in the COMPAL school in Peru in 2016,²⁵ to promote this activity.

C. Priority setting: how young authorities with limited resource should prioritize their work strategy, depending on the level of development

69. Efficiency is one of the values that must prevail in every organization. In the functioning of the competition and consumer protection authorities of developing countries, two factors often occur, the lack of experience and the lack of human and financial resources. These challenges must be taken into consideration when designing a work strategy so that the best allocation and use of scarce resources is achieved.

70. For this, it is necessary that the competition or the consumer protection frameworks including institutional structures and legal provisions are based on the circumstances of each jurisdiction in terms of independence, competencies to assume and the resources available. In addition, in the operation of the new or reformed authorities, it will be necessary to establish priorities in the activities to be carried out to achieve effective objectives in order to improve the functioning of the markets.

71. UNCTAD proposes to work in this area to offer its technical assistance to countries that wish to establish newly created competition authorities or to those who wish to improve the internal structure of their authorities so that they are more efficient in their implementation of competition and consumer protection laws and policies.

²⁵ See <https://unctadcompal.org/3569-2/>.

D. International cooperation, especially bearing in mind the role of UNCTAD in the guiding policies and procedures in implementing international measures under section F of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

72. Anticompetitive conduct and mergers have been becoming increasingly cross-border with the current progress of globalization and digitalization of the economy. This calls for more enhanced cooperation among competition authorities in the law enforcement carried out. However, international cooperation still does not happen frequently. Responding to the circumstances, within UNCTAD, competition authorities of member States developed a document, titled “Guiding policies and procedures in implementing international measures under section F of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices”,²⁶ as a tool to enhance international cooperation in investigation of cross-border competition cases, based on two years of discussions focused on the challenges faced especially by young and small competition authorities of developing countries. The guiding policies and procedures were endorsed by member State representatives at the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy, held in July 2019, and are expected to be considered for approval at the Eighth Review Conference.²⁷

73. At the same time, member States also requested the UNCTAD secretariat to disseminate the guiding policies and procedures across regions, involving business and academia, during the preparatory year before the Eighth Review Conference. The UNCTAD secretariat has proactively done so in order for the guiding policies and procedures to be widely known and recognized among member States, involving business and academia. Most importantly, however, the guiding policies and procedures should be followed by all member States and utilized in actual cases after its adoption.

74. In fact, the guiding policies and procedures prescribe the role of UNCTAD to facilitate and improve the level of cooperation in competition cases, especially by assisting competition authorities in developing countries that wish to request cooperation from other (experienced) competition authorities. UNCTAD may hence assist the development of confidentiality provisions and promote mutual trust among competition authorities²⁸ and provide publicly available information, including work products compiled by international and multilateral organizations which are relevant to cooperation,²⁹ as well as offer specific support upon request.³⁰

75. Therefore, one of the UNCTAD focus areas in its technical assistance activities during next five years would be the guiding policies and procedures; specifically, UNCTAD will keep disseminating the guiding policies and procedures, ensure that competition authorities especially those in developing countries understand how to use the guiding policies and procedures in actual cases, and present the practical benefits of the guiding policies and procedures. UNCTAD will also assist the development of confidentiality provisions, when requested, and promote mutual trust among competition authorities, which are the key requisites of successful cooperation in cross-border competition cases.

76. International cooperation in the area of consumer protection is also becoming more important and will be the focus of UNCTAD technical assistance activities in future. Cross-border enforcement cooperation among consumer protection authorities has been discussed at the Intergovernmental Group of Experts on Consumer Protection Law and Policy since 2017. Recommendation proposals on cross-border enforcement cooperation are being discussed and will be submitted to the Eighth Review Conference for consideration and

²⁶ See TD/B/C.I/CLP/55 and TD/B/C.I/CLP/55/Add.1.

²⁷ See TD/B/C.I/CLP/55, chapter I.

²⁸ TD/B/C.I/CLP/55/Add.1, paragraph 24.

²⁹ Ibid., paragraphs 25 and 27.

³⁰ Ibid., paragraph 28.

adoption. Thus, UNCTAD expects to devote technical assistance activities to this topic in the following years.

VI. Topics to discuss at the round table on capacity-building and technical assistance in the area of competition and consumer protection

77. Technical assistance is an important pillar of the work of UNCTAD. Indeed, the work that has been done is essential for developing countries due to its complexity and the policies' objectives of preserving competitive markets and avoiding abusive behaviours by companies that (jointly or individually) hold market power.

78. The goal and the commitment of UNCTAD is to offer the best technical cooperation to the countries that demand it, adapting this assistance to the specific needs and circumstances of each requesting country.

79. Based on the experience acquired and on the evolution of the markets and the economies, UNCTAD proposes to work in certain areas to have a greater impact on the implementation of measures and policies that serve developing countries to prevent problems that have already been tackled by more developed economies and that will undoubtedly affect weaker economies in the future.

80. It is crucial to assist countries in preventing and preparing for the impact of foreseen changes, especially disruptive ones, taking into account measures successfully undertaken in advanced countries.

81. At the round table, it would be desirable for panellists to offer their vision of what technical assistance should be, of what subjects and recipients UNCTAD should focus on and how activities could best be implemented. In this regard, it is important to underline that UNCTAD works in partnership with national, regional and international organizations and institutions to combine knowledge, technical and financial support so that these activities are carried out in the most efficient way and produce tangible results.
