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**Nineteenth session**  
Geneva, 7–9 July 2021

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

Held at the Palais des Nations, Geneva, from 7 to 9 July 2021

### Contents

	<i>Page</i>
I. Agreed conclusions .....	2
II. Chair's summary .....	4
III. Organizational matters .....	12

### Annexes

I. Provisional agenda for the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy .....	14
II. Attendance.....	15



## 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 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 (Geneva, October 2020),<sup>1</sup>

*Taking note* of the decision of the fourteenth session of the United Nations Conference on Trade and Development (Nairobi, 2016) in paragraphs 69 and 76 (x) that “fair, sound and robust national competition and consumer protection laws and policies are also important, as is international cooperation, information exchange and capacity-building in these areas, particularly in light of the expansion of global markets, the increasing role of transnational companies, the need for enhanced transparency and accountability, the information and communications technology revolution and the emergence of electronic commerce (e-commerce)” and that UNCTAD should “continue to assist developing countries and countries with economies in transition to formulate and implement competition and consumer protection policies and laws, including through voluntary peer reviews and the sharing of best practices; as well as facilitating international cooperation among competition and consumer protection agencies together with other relevant international organizations, taking into account the revised United Nations guidelines for consumer protection”,<sup>2</sup>

*Reaffirming* the fundamental role that competition law and policy plays in the achievement of the 2030 Agenda for Sustainable Development, by promoting competitive, open and contestable markets and ensuring wider choice, better quality and lower prices of goods and services for consumers,

*Noting* that the 2030 Agenda for Sustainable Development and the outcomes of the fourteenth session of the United Nations Conference on Trade and Development focus on addressing the opportunities and challenges of globalization for development and poverty reduction,

*Welcoming* decisive measures and interventions taken by Governments in the field of competition through coordinated international, regional and bilateral actions to respond to the coronavirus disease 2019 (COVID-19) crisis and attempt to mitigate its negative impact on domestic markets and consumers’ welfare,

*Underlining* that competition law and policy is a key policy tool, to “build back better” in an inclusive and sustainable manner, including by maintaining open, competitive and accessible markets and enhancing trade and investment, resource mobilization and the harnessing of knowledge and by reducing poverty,

*Recognizing* that an effective enabling environment for competition and development should include both national competition policies and international cooperation to address competition issues associated with market concentration and to deal with cross-border anticompetitive practices,

*Recognizing further* the need to strengthen the work of UNCTAD in competition law and policy, to enhance its development impact and benefits for consumers and businesses,

*Noting with satisfaction* the important written and oral contributions from member States and their competition authorities and other participants, which contributed to a rich debate during its nineteenth session,

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<sup>1</sup> TD/RBP/CONF.9/9.

<sup>2</sup> TD/519/Add.2.

1. *Welcomes* the efforts of member States in implementing the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; and reaffirms the interest of competition authorities in exchanging experiences, best practices and challenges regarding competition law and policy;
2. *Welcomes* the hosting of the fifteenth session of the United Nations Conference on Trade and Development from 3 to 7 October 2021; and encourages member States to contribute to the alignment of competition policies with the 2030 Agenda for Sustainable Development;
3. *Encourages* the continuation of legislative, policy-related and regulatory actions and initiatives supported by competition authorities in response to and in the aftermath of the COVID-19 pandemic, as well as coordination and information-sharing at the international, regional and bilateral levels;
4. *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; and requests the UNCTAD secretariat to disseminate the summary of its discussions on these topics to all interested member States, including through technical assistance activities and peer reviews;
5. *Underlines* the importance of international cooperation as recognized in section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including informal collaboration among competition authorities; and calls upon UNCTAD to promote and support cooperation between Governments and competition authorities, as directed by the Accra Accord (paragraphs 103 and 211), the Nairobi Mafikiano (paragraphs 69 and 76 (x)) and the resolution adopted by 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 (paragraphs 3 and 22), as well as in the document titled “Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices”;
6. *Requests* the UNCTAD secretariat to continue the dissemination of the document titled “Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” and to encourage the utilization of it by member States;
7. *Emphasizes* the importance of regional cooperation in the enforcement of competition law and policy; and encourages competition authorities to strengthen their regional and bilateral cooperation;
8. *Recognizes* the benefits and challenges of the digital economy for consumers and businesses, the importance of competition for digital markets and innovation therein and that digital platforms are essential elements of today’s economy; and encourages competition authorities to address competition issues in digital markets through their enforcement practices and legislative and regulatory frameworks, to protect, restore and promote competition in the digital economy;
9. *Calls upon* UNCTAD to continue its work in the area of the digital economy, to ensure that all countries, in particular developing countries and the least developed countries, benefit from the innovation it brings;
10. *Calls upon* UNCTAD to continue to include advocacy as a core activity in its capacity-building and technical assistance for developing countries and countries with economies in transition, in particular considering their economic recovery efforts in the aftermath of the COVID-19 crisis;
11. *Decides* to renew the mandate of the working group on modalities of UNCTAD voluntary peer reviews of competition and consumer protection laws and policies, open to member States on a voluntary basis, without any financial implications for the regular budget of the United Nations, to further discuss and improve the existing procedures and methodology based on the possible improvements identified to date and to report to the

twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy in 2022;

12. *Decides* to renew the mandate of the working group on cross-border cartels, open to member States on a voluntary basis, without any financial implications for the regular budget of the United Nations, to highlight best practices, facilitate information exchanges, consultations and international cooperation and discuss tools and procedures, with a view to further exploration and deeper understanding of the modalities, principles and international standards of cross-border cartel investigations and to report to the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy;

13. *Expresses its appreciation* to the Government of Malawi for volunteering for a peer review of competition law and policy and for sharing its experiences and challenges with other competition authorities during the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy and to all Governments and regional groups participating in the review; and recognizes the progress achieved to date in the elaboration and enforcement of the competition law of Malawi;

14. *Decides* that UNCTAD should, considering experiences with voluntary peer reviews, continue to undertake peer reviews of competition law and policy following requests from member States and in accordance with available resources;

15. *Invites* all member States and competition authorities 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;

16. *Requests* the UNCTAD secretariat to prepare reports and studies as background documentation for the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy on the topic of rethinking competition law enforcement: lessons learned from the pandemic, particularly in socially important markets – challenges and opportunities for an effective response during the pandemic and economic recovery in the post-pandemic period;

17. *Requests* the UNCTAD secretariat to facilitate consultations and the exchange of views among member States on the topic of the role of competition law and policy in supporting microenterprises and small and medium-sized enterprises during economic recovery in the post-pandemic period;

18. *Requests* the UNCTAD secretariat to prepare, for the consideration of the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy, an updated review of capacity-building in and technical assistance on competition law and policy, including an impact assessment, based on information received from member States;

19. *Requests* the UNCTAD secretariat to rethink the status of the commentaries of the Model Law on Competition based on submissions to be received from member States;

20. *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 assistance activities by providing experts, training facilities and financial or other resources; and requests the UNCTAD secretariat to pursue capacity-building and technical assistance activities, including training, and, where possible, to focus such activities on maximizing their impact in all interested countries.

*Closing plenary*  
9 July 2021

## **II. Chair's summary**

### **A. Opening plenary**

1. The nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy was held at the Palais des Nations, Geneva, from 7 to 9 July 2021, in both

virtual and physical formats. Representatives from 77 countries and five intergovernmental organizations, including the heads of competition and consumer protection authorities, attended the high-level discussions.

2. In her opening remarks, the Acting Secretary-General of UNCTAD underlined the key role of competition policy in strengthening economic recovery at the international, regional and national levels. She noted that cross-border cooperation should be enhanced through regional competition frameworks, notably to prioritize competition policies focusing on small and medium-sized enterprises. Finally, she highlighted that the ongoing rise of digital platforms could lead to significantly concentrated markets originating in specific geographic areas. This should be addressed by competition authorities through advocacy for small and medium-sized enterprises, to prevent large platforms from abusing their dominant positions, coupled with regulatory and legislative changes, in particular to enable small and medium-sized enterprises to file complaints against large digital players.

## **B. Report on the implementation of the guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices**

(Agenda item 3)

3. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. The UNCTAD secretariat detailed progress made in the implementation of the guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and noted that this instrument had already been employed several times since its adoption in 2020.

4. During the ensuing discussion, all speakers who took the floor emphasized that strengthening cooperation was critical. One delegate underlined the importance of international cooperation in recovery strategies. The representatives of a few regional groups expressed their support for enhancing cooperation among regional competition authorities, targeting in particular regions that lacked experience. Another delegate stated that funding should be explored to conduct voluntary peer reviews of competition law and policy in the least developed countries. In response to a question from one delegate, the UNCTAD secretariat advised that peer reviews were followed up by activities to successfully implement recommendations and assess outcomes. In addition, the secretariat noted that it was necessary to address how section F could be used to support developing countries in receiving information and guaranteeing assistance, with UNCTAD acting as a facilitator.

## **C. Report of the working group on modalities of UNCTAD voluntary peer reviews of competition and consumer protection law and policy**

(Agenda item 4)

5. The UNCTAD secretariat presented the report of the working group.

## **D. Competition law, policy and regulation in the digital era**

(Agenda item 5)

6. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. In opening the discussion, the UNCTAD secretariat presented the background document on competition law and policy and regulation in the digital era (TD/B/C.I/CLP/57). The panel was composed of the Deputy Superintendent of the Administrative Council for Economic Defence, Brazil; the Chief Competition Economist of the Directorate General for Competition, European Commission; the Deputy Director General of the Antimonopoly Bureau, State Administration for Market Regulation, China; the Chair of the Competition Committee, Organisation for Economic

Co-operation and Development; and an assistant chief legal officer of the Federal Competition and Consumer Protection Commission, Nigeria. Some panellists advocated for a holistic approach to and cooperation between competition authorities and regulatory agencies, to ensure coherence among different rules and policies, and some other panellists emphasized the importance of international cooperation in exchanging knowledge and experience, to better address the challenges faced in digital markets.

7. The first panellist addressed the question of when and how to intervene in digital markets. She emphasized the importance of considering whether the remedy adequately addressed the competition concern and the ability to adequately and in a timely fashion monitor the remedies and ensure they were in harmony with those applied in other jurisdictions. In addition, the panellist referred to negotiated agreements as a policy choice that could be beneficial as they might help solve a competition problem more rapidly. For example, the Administrative Council for Economic Defence of Brazil had negotiated a cease-and-desist agreement with one of the largest retail banks in the country, which had been preventing clients from sharing financial data with another financial technology company, thereby hindering the development of the latter. The Council relied significantly on international cooperation to develop methodologies and tools to assess harm to competition and save resources by learning from others; and had compiled a review of reports on competition in digital markets that consolidated information from 22 reports and studies issued by 18 competition authorities and expert panels worldwide, issued through its website. Finally, the panellist underlined that international forums such as UNCTAD played an important role in promoting the exchange of knowledge and experience.

8. The second panellist detailed the new European Union regulations for digital platforms, namely, the Digital Services Act and the Digital Markets Act. The former aimed to improve online safety, protect fundamental rights and increase transparency. The latter aimed to ensure a level playing field for emerging competitors and the fair treatment of platform users, in particular business users, and was intended to complement competition policy. As an ex-ante regulation, the Act set out the ground rules for acceptable behaviour and the powers to investigate behaviour considered not acceptable and impose corrective remedies. Competition policy dealt with undertakings with market power and aimed to ensure that a dominant position was not facilitating conduct aimed at preserving or increasing such dominance by harming competition. By contrast, the Digital Markets Act applied to gatekeepers and did not refer to dominance; it targeted digital companies that were large enough in absolute terms to qualify as gatekeepers, even if they were not in a dominant position, and that had a pervasive influence on the economy, often across sectors.

9. The third panellist noted that great importance was given in China to antimonopoly regulation in the digital economy. As part of improving fair competition rules in the digital economy, the Antimonopoly Law was being revised, with a focus on the following three areas: encouraging innovation; strengthening competition policy as the foundation for regulation; and ensuring fair competition in the platform economy. The revision also targeted conduct that excluded and restricted competition through the abuse of administrative power; investigated parties would be required to cooperate with the competition authority during an investigation. The Antimonopoly Guidelines for the Platform Economy Sector, adopted in February 2021, set out the rules for the application of the Antimonopoly Law to the platform economy, criteria for assessing monopolistic acts in the platform economy and special provisions for problems reported by stakeholders, including collusion through algorithms and personalized pricing. The panellist noted that competition advocacy efforts with regard to the digital economy had been increased. The State Administration for Market Regulation had held a symposium on the platform economy in June 2020, at which 20 digital platforms had signed a commitment to maintain fair competition in the market; and, in April 2021, in partnership with the Central Cyberspace Affairs Commission and the State Taxation Administration, the State Administration for Market Regulation had convened an administrative guidance meeting for platforms, to discuss exclusive dealing agreements, and had required platforms to conduct comprehensive self-inspections and rectification. The Administration would continue to inform platforms of the Antimonopoly Guidelines for the Platform Economy Sector, as part of providing guidance on compliance. Finally, the Administration would

cooperate with other regulators in improving relevant rules, such as the Data Security Law and the Personal Information Protection Law.

10. The fourth panellist stated that traditional tools were not useful in competition cases related to digital markets. Data portability and interoperability might lower barriers, but the former might not work if consumers did not consider privacy as important and the latter might help to lower barriers yet have negative effects in that a standard would be required and this might lead to reduced innovation. The panellist highlighted challenges faced by competition authorities in small jurisdictions, namely, the high cost of bringing a case against a technology giant and the waste of resources if all jurisdictions involved brought the same case; cases involving digital platforms were generic and not country specific. In this regard, it would be useful to develop new protocols for competition and adopt and rely on the findings of other authorities that had investigated digital cases. In addition, competition authorities in small economies might be concerned about bringing cases against global digital platforms because the latter might threaten to leave their markets. The panellist proposed a solution involving collaboration between competition authorities in opening similar cases at the same time, since platforms that might have threatened to leave one market could not afford to leave many markets. Such collaboration could protect countries from the discontinuity of platform services.

11. The fifth panellist detailed recent work by the Federal Competition and Consumer Protection Commission, Nigeria, in developing guidelines for market definition, including a section on zero price and digital platforms. She stressed the importance of addressing barriers to entry, particularly with regard to access to data, and advocated for the democratization of data and data portability, given potential benefits to both competition and consumer protection in digital markets. The Nigerian Data Protection Regulation laid the foundation for this, providing for the right of consumers to own their data, the benefits of which were that data sets used by large digital platforms could be made available to other platforms if users chose to migrate. Access to data had the potential to level the playing field in digital markets and to help achieve open and accessible digital markets.

12. During the ensuing discussion, one delegate referred to challenges faced in Indonesia, the largest electronic commerce market in South-East Asia, including with regard to monopolization, predatory pricing and the lock-in of consumers by a small number of online platforms. A few delegates highlighted the usefulness of international cooperation, to benefit from the experiences of others and from successful cases involving the digital economy. A few delegates and representatives of regional groups detailed legislative developments in their jurisdictions. Finally, one delegate, noting that the competition legislation in Kazakhstan had been amended to incorporate new concepts such as network effects and a new competition analysis methodology for digital markets, expressed interest in international exchanges on developing appropriate methodologies for competition cases involving digital markets.

## **E. Competition advocacy during and in the aftermath of the COVID-19 crisis**

(Agenda item 6)

13. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. In opening the discussion, the UNCTAD secretariat presented the background document on competition advocacy during and in the aftermath of the COVID-19 crisis (TD/B/C.I/CLP/58). Competition advocacy increased awareness of the benefits of competition to society, including among other government entities, and promoted a competitive environment. Competition advocacy could be carried out when discussing different issues such as privatization, legislation and regulatory reform and competition culture. With regard to developing countries, the secretariat stressed that competition advocacy was key, in particular through maintaining a track record of cases to increase the credibility and reputation of authorities. Finally, the secretariat underlined challenges resulting from the pandemic, stating that competition should act as a guiding principle in the adoption of economic recovery measures. The panel was composed of the Chair of the Competition Authority, Egypt; the Superintendent of the Superintendency of

Industry and Commerce, Colombia; the Chair of the National Commission for Markets and Competition, Spain; and the Chair of the Competition Commission, India.

14. The first panellist detailed the competition policy advocacy efforts of the Competition Authority, Egypt, during the pandemic, including the issuance of a compliance toolkit and support for the most vulnerable pillar of the economy, namely, small and medium-sized enterprises, through the issuance of advice on how to report anticompetitive practices and how to avoid engaging in such practices. In addition, a simulation exercise had been conducted, aimed at raising awareness of competition among lawyers and economists. The panellist stressed the need to enhance cooperation, and detailed work carried out on enhancing tailored capacity-building programmes across the Middle East and North Africa, with training for Arab agencies. He noted that the recently established UNCTAD regional training centre was an essential step in enhancing competition advocacy in the region and in Africa by providing a platform for exchanging knowledge and enhancing capacity-building, not only among competition authorities but also regulators from different sectors.

15. The second panellist noted that free economic competition would be a key pillar of recovery, requiring quick responses from regulators. He stressed the important influence of innovation in markets and presented an artificial intelligence tool aimed at reporting on regulatory initiatives.

16. The third panellist detailed various advocacy instruments used to address the pandemic, such as the prioritization of public procurement and an analysis of State aid, as well as practical guidance to support an effective recovery. There was a need to avoid protecting “zombie” firms and to focus instead on supporting viable firms and new firms committed to environmental planning. The panellist stressed the need to support vulnerable consumers in connection with energy suppliers. From an advocacy perspective, the National Commission for Markets and Competition, Spain, was willing to engage in regulatory dialogue in the following three areas: State aid; public procurement; and the protection of efficient regulation.

17. The fourth panellist noted that competition was a key driver of economic growth and that support for the recovery of small and medium-sized enterprises, which played an important role in the economy of India, particularly in the manufacturing sector, was key. The panellist recommended that resources and efforts should be redirected to recovery efforts and take advantage of digitalization, to achieve recovery. Finally, he underlined the need for flexibility in the competition framework and the role of public procurement in triggering innovation and competitiveness.

18. During the ensuing discussion, one delegate detailed advocacy efforts in Indonesia during the pandemic. All panellists noted the important role of competition in economic recovery, in particular to support the survival and resurgence of small and medium-sized enterprises.

## **F. International experiences and best practices in competition law enforcement against cross-border cartels**

(Agenda item 7)

19. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. In opening the discussion, the UNCTAD secretariat presented lessons learned discussed at meetings held with member States and drew attention to the following key topics that had been highlighted: informal cooperation; leniency waivers; regional cross-border cooperation; trust; and cooperation with ministries in cross-border cartel cases. Specific recommendations had stressed the need for more concrete and practical guidance and recommendations, global standards and specific measures for developing countries. The panel was composed of the Chair of the Agency for the Protection and Development of Competition, Kazakhstan; the President of the National Institute for the Promotion of Competition, Nicaragua; the Deputy Head of the Federal Antimonopoly Service, Russian Federation; the Member of the Board and Minister in Charge of Competition and Antitrust Regulation, Eurasian Economic Commission; the

Acting Chief Executive Officer of the Competition Commission, Common Market for Eastern and Southern Africa; and a senior adviser at Bae, Kim and Lee, Republic of Korea.

20. The first panellist shared the experience of Kazakhstan in two ongoing cross-border cases and discussed the issue of compliance by companies regardless of the robustness of enforcement and legislation.

21. The second panellist noted that there were several cartelized sectors in Nicaragua, such as air transport, fertilizers and automotive parts, and detailed the recent prosecutions of 30 cartels in Latin America with significant political influences. There was a clear need to impose sanctions on cross-border and national cartels in order that national cartels did not become legitimized. With regard to the lack of a legal framework through which to share information, the panellist proposed an agreement along the lines of that of the International Criminal Police Organization, to allow for smoother exchanges of information between competition authorities.

22. The third panellist emphasized the need to consolidate the rules and procedures for international cooperation in combating cross-border cartels at the international level by drafting specific guidelines, facilitated through UNCTAD and supported by the BRICS [Brazil, Russian Federation, India, China, South Africa] Competition Law and Policy Centre. Many authorities had not yet integrated international cooperation tools, and digital technology could support them in doing so.

23. The fourth panellist stated that more memorandums of understanding were required to allow for exchanges of information, to understand the behaviour of companies and detect cartels. The working group on cross-border cartels could carry out specific practical action in this regard.

24. The fifth panellist stressed the lack of cooperation at the regional level and the need to focus on fostering on-the-ground cooperation, in particular in the least developed countries. Cooperation involved not only finance but also skills and practical cooperation.

25. The sixth panellist emphasized the need for enhanced participation in multilateral discussions, to build international agreements on transparency.

26. During the ensuing discussion, one delegate noted that it was important to help young competition enforcement authorities in tackling cross-border cartel cases and another delegate stressed the need for experience-sharing for and from young authorities. One delegate underlined the need for concrete recommendations useful for the least developed countries and another delegate stated that international cooperation on this issue was one of the priorities in Indonesia with regard to supporting emerging platform markets. Several delegates and representatives of regional groups supported the initiative to consolidate the rules and procedures for international cooperation in combating cross-border cartels. One delegate stressed that a platform would be needed to receive inputs and facilitate consultations on the initiative and another delegate noted that the initiative might be premature and that it might be better to consider the documents already available, for example, examining how section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices could be used to support developing countries. Another delegate suggested that the results of such an examination could help determine whether the initiative was required. Finally, another delegate proposed that the initiative be further extended by addressing practical steps and challenges to implementation, given existing barriers to collaboration.

## **G. Voluntary peer review of competition law and policy: Malawi**

(Agenda item 8)

27. The voluntary peer review opened with a statement by the Head of the Delegation of Malawi, who stressed the economic strength of Malawi in terms of exports although it was a landlocked country. The UNCTAD secretariat then presented the main findings and recommendations of the background report (TD/B/C.I/CLP/59). Several substantive competition law issues, including anticompetitive agreements, the abuse of dominance and the control of mergers and acquisitions, were addressed in the presentation, as well as

institutional issues related to enforcement structures and practices and challenges in connection with agency resources and caseloads. Recommendations included proposals for the amendment of the current competition law and with regard to technical assistance needs, as well as the placement of the competition and regulatory authorities under one central ministry, to avoid competing and conflicting policy objectives and the disjunction between, on the one hand, competition and economic regulation in Malawi and, on the other hand, economic regulation in Malawi and that of the Competition Commission of the Common Market for Eastern and Southern Africa.

28. The Acting Executive Director of the Competition and Fair Trading Commission, Malawi, stated that the investigation processes of the Commission had benefited from collaboration with the International Competition Network, the Southern African Development Community and UNCTAD. The Commission faced a number of challenges with regard to cartels and the lack of financial resources. The Acting Executive Director, welcoming the recommendations of the peer review in improving the work of the Commission, stated that they would be implemented in order to enhance the effectiveness of the Commission in regulating competition.

29. Representatives of the Governments of South Africa, the United States of America and Zambia acted as peer reviewers. The peer reviewers asked the delegation of Malawi about resources, cooperation, coordination with neighbours in cartel cases, the role of competition policy in the national strategy and whether the Commission was well equipped in terms of legal resources. The Acting Executive Director stated that most funding was received from the Government of Malawi, along with assistance from the European Union to cover increases in caseloads. There was a need to increase collaborative efforts at the regional level, particularly through the African Competition Forum. Finally, there had been an increase in cases related to the pandemic, and responses to abuses had included warnings and fines.

30. A few delegates related experiences in Mauritius with regard to peer reviews of competition law and policy and in the United Kingdom of Great Britain and Northern Ireland with regard to funeral markets. One delegate discussed challenges related to resources and inconsistencies due to concurrent jurisdictions and noted that the Competition Authority of Kenya had signed a memorandum of understanding with the Public Procurement Regulatory Authority to help clarify communications and strengthen cooperation between the two authorities. One delegate drew a parallel between the economy of Malawi and the economy of Algeria, noting the unique blend in the former, namely, an inquisitorial system that also included penal sanctions and, in this regard, the Acting Executive Director clarified that the Competition and Fair Trading Commission was a statutory body with quasi-judicial powers and that, with regard to monopolies, the competition law focused on the abuse of dominance. Finally, one delegate underlined that the peer review of the competition law and policy of Malawi was key for other developing countries, in particular as an example of how to enhance the legal framework and, in this regard, requested the conduct of a peer review of the competition law and policy of Botswana.

31. In his closing remarks, the Head of the Delegation of Malawi stressed the need to build the technical capacity of Commission staff, as well as financial capacity and cooperation at the international and local levels, including cross-border cooperation.

32. The UNCTAD secretariat presented a proposal for a technical assistance project to implement the peer review recommendations on the allocation of resources and the review of the Competition and Fair Trading Act. The project would aim, in particular, at improving the legal and institutional framework of competition law enforcement, to align it with on-the-ground practices and international best practices, and sensitizing key stakeholders in the economy.

## H. Review of capacity-building in and technical assistance on competition law and policy

(Agenda item 9)

33. Under the agenda item, the Intergovernmental Group of Experts on Competition Law and Policy held one round-table discussion. In opening the discussion, the UNCTAD secretariat presented the background document on the review of capacity-building in and technical assistance on competition and consumer protection laws and policies (TD/B/C.I/CPLP/25–TD/B/C.I/CLP/60). The secretariat referred to future activities to be conducted online and highlighted the focus areas selected by 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. The panel was composed of the President of the Competition and Consumer Tribunal, Botswana; a professor at the School of Management and Law, Zurich University of Applied Sciences, Switzerland; and the President of the National Commission for the Defence of Competition, Dominican Republic.

34. The first panellist noted that UNCTAD had provided capacity-building to the Competition and Consumer Authority, Botswana, throughout the development of the new Competition Act. The Tribunal had been established in 2019 after the voluntary peer review of competition law and policy had noted the need to separate adjudication from the Authority. As a new entity, the Tribunal would benefit from capacity-building and the sharing of best practices. The Tribunal had begun to deal with cases referred to it by the Authority, which had mostly concerned competition issues, such as abuse of dominance and appeals with regard to mergers. However, the Tribunal had yet to test consumer protection aspects and develop jurisprudence. Due to the increase in electronic commerce and the recently approved national strategy in this regard, the Tribunal needed capacity-building to ensure a proper foundation for future work in a digitally transforming State. The implementation of the African Continental Free Trade Area would increase competition across borders, intensifying the emergence of cartels and other anticompetitive conduct. The Tribunal required capacity-building to ensure that it was well equipped to face sophisticated cartels and impose the appropriate sanctions. The pandemic had led to new challenges involving unfair business practices that threatened consumer health, wealth and socioeconomic well-being, for example, sales of expired goods, increases in prices and shortages of essential goods. Expertise was required in this regard. In addition, the training of trainers and study visits were required, along with cooperation agreements with other tribunals. The panellist underlined the benefits of UNCTAD webinars on these topics and requested continued support, particularly in the recruitment of a substantive registrar. She concluded by noting the need to develop an advocacy programme, as well as an international forum for tribunals at which to network and exchange experiences.

35. The second panellist introduced a cooperation programme conducting an empirical analysis of compliance programmes among competition authorities in Central and South America and noted that UNCTAD was uniquely placed to provide support to competition authorities and regulators as it had launched the first regional technical cooperation project in Central and Latin America 20 years previously. The analysis had collected replies from 17 competition authorities in the region and the report detailed experiences with compliance programmes; best practices would be presented at the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy. Of the respondents, 77 per cent had supported the implementation of compliance programmes with a preventive effect, which should be attractive for businesses, as companies needed to know what was considered illegal and how compliance programmes could support them in complying with competition rules. The situation and responses in Latin America reflected situations worldwide, whereby some countries wished to adopt such programmes and mitigate the behaviour of businesses and others did not. In addition, the panellist highlighted that if a compliance authority assisted companies with such programmes, it should give the company the chance to consider the results. In the near future, based on the results of the empirical study, best practices would be elaborated on how to produce and deal with effective compliance programmes and whether it was effective to consider mitigation effects.

36. The third panellist detailed the Central American Competition Forum XIV, involving the network of competition authorities in Central America since 2012 and hosted in cooperation with UNCTAD. The panellist highlighted the challenges faced by competition authorities in developing countries during the pandemic and to be faced in the aftermath in pursuing economic recovery. The objective of the Forum had been to promote the exchange of experiences and it had been held virtually, with the agenda and topics adapted to cover the impact of the pandemic among competition authorities. The Dominican Republic had experienced increases in prices and shortages of essential products, which might have been a consequence of markets adapting to changes or the result of abusive practices; in this regard, the National Commission for the Defence of Competition had decided to conduct market studies in certain basic-product sectors and had closely followed public-private partnerships to detect potential anticompetitive conduct. The National Commission had coordinated with the regulator to monitor processes and had requested information from other agencies to determine whether there were signs showing a need for further investigation. An investigation by the National Commission of collusive practices in drug buying was ongoing. Finally, the National Commission had created a collaboration mailbox online to allow anyone to easily report on potential anticompetitive practices.

37. During the ensuing discussion, one delegate stated that technical assistance from UNCTAD had strengthened the capacities of the Competition Commission of Indonesia and had helped with integration with other competition authorities in member States of the Association of Southeast Asian Nations. More programmes to improve skills and prepare for the digital world were needed, and UNCTAD was well placed to assist in the regulation of a new competition model adjusted to the new landscape, given that the digital economy had accelerated by 40 per cent since 2015 and had represented \$180 billion in 2020. Digital platforms, telemedicine and marketing could lead to unfair competition, and the Commission faced new challenges, including with regard to comprehensive analysis in platform mergers and big data, as well as new cases involving, for example, electronic health platforms and streaming services. Effective regulation was imperative, to enhance the capacities of regulatory partners and improve knowledge and capacity to address innovation, and technical assistance was required.

## **I. Review of chapter XIII of the Model Law on Competition, part 2: Commentaries**

(Agenda item 10)

38. The UNCTAD secretariat presented the revisions made to the commentary on chapter XIII of the Model Law on Competition and alternative approaches in existing legislation, last revised in 2015 (TD/B/C.I/CLP/L.13). In recent years, member States, including through legislation at the level of the European Union, had incorporated procedural rules in regulations, to facilitate actions for damages that could be brought collectively or individually. The revision to the commentary included updates from developed country and developing country jurisdictions based on the evolution of jurisprudence, the transposition of regional norms, national standards and how individuals affected by anticompetitive practices could seek reparations.

## **III. Organizational matters**

### **A. Election of officers**

(Agenda item 1)

39. At its opening plenary meeting on 7 July 2021, the Intergovernmental Group of Experts on Competition Law and Policy elected Ms. Maimuna Kibenga Tarishi (United Republic of Tanzania) as its Chair and Ms. Maira Mariela Macdonal Alvarez (Plurinational State of Bolivia) as its Vice-Chair-cum-Rapporteur.

**B. Adoption of the agenda and organization of work**

(Agenda item 2)

40. Also at its opening plenary meeting, the Intergovernmental Group of Experts adopted the provisional agenda for the session (TD/B/C.I/CLP/56), as follows:

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Report on the implementation of the guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.
4. Report of the working group on modalities of UNCTAD voluntary peer reviews of competition and consumer protection law and policy.
5. Competition law, policy and regulation in the digital era.
6. Competition advocacy during and in the aftermath of the COVID-19 crisis.
7. International experiences and best practices in competition law enforcement against cross-border cartels.
8. Voluntary peer review of competition law and policy: Malawi.
9. Review of capacity-building in and technical assistance on competition law and policy.
10. Review of chapter XIII of the Model Law on Competition, part 2: Commentaries.
11. Provisional agenda for the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy.
12. Adoption of the report of the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy.

**C. Provisional agenda for the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy**

(Agenda item 11)

41. At its closing plenary meeting on 9 July 2021, the Intergovernmental Group of Experts approved the provisional agenda for the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy (annex I).

**D. Adoption of the report of the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy**

(Agenda item 12)

42. 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 twentieth 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. Report on the implementation of the guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.
4. Report of the working group on modalities of UNCTAD voluntary peer reviews of competition and consumer protection laws and policies.
5. Report of the working group on cross-border cartels.
6. The role of competition law and policy in supporting microenterprises and small and medium-sized enterprises during economic recovery in the post-pandemic period.
7. Rethinking competition law enforcement: Lessons learned from the pandemic, particularly in socially important markets – Challenges and opportunities for an effective response during the pandemic and economic recovery in the post-pandemic period.
8. Voluntary peer review of competition law and policy.\*
9. Review of capacity-building in and technical assistance on competition law and policy.
10. Provisional agenda for the twenty-first session of the Intergovernmental Group of Experts on Competition Law and Policy.
12. Adoption of the report of the twentieth session of the Intergovernmental Group of Experts on Competition Law and Policy.

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\* Member State to be determined.

## Annex II

### Attendance<sup>1</sup>

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

Afghanistan	Malawi
Albania	Malaysia
Algeria	Mauritius
Armenia	Mexico
Australia	Mongolia
Austria	Morocco
Azerbaijan	Myanmar
Bahrain	Namibia
Bangladesh	Nicaragua
Barbados	Nigeria
Belarus	Oman
Bolivia (Plurinational State of)	Pakistan
Botswana	Paraguay
Brazil	Peru
Burkina Faso	Philippines
China	Portugal
Colombia	Republic of Korea
Costa Rica	Republic of Moldova
Democratic Republic of the Congo	Russian Federation
Dominican Republic	Saudi Arabia
Ecuador	Serbia
Egypt	South Africa
El Salvador	Spain
Germany	State of Palestine
Honduras	Suriname
Hungary	Switzerland
India	Thailand
Indonesia	Trinidad and Tobago
Iran, Islamic Republic of	Turkey
Italy	United Kingdom of Great Britain and Northern Ireland
Jamaica	United Republic of Tanzania
Japan	United States of America
Kazakhstan	Uruguay
Kenya	Uzbekistan
Kyrgyzstan	Venezuela (Bolivarian Republic of)
Lao People's Democratic Republic	Viet Nam
Latvia	Zambia
Lithuania	Zimbabwe
Madagascar	

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

Caribbean Community  
Common Market for Eastern and Southern Africa  
Eurasian Economic Commission  
European Union  
West African Economic and Monetary Union

<sup>1</sup> This attendance list contains registered participants. For the list of participants, see TD/B/C.I/CLP/INF.11.

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

World Intellectual Property Organization  
World Trade Organization

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

*General category*

All India Association of Industries  
Consumer Unity and Trust Society International  
Consumers International  
Global Traders Conference  
International Federation of Pharmaceutical Manufacturers and Associations  
International Law Association  
International Network for Standardization of Higher Education Degrees

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