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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, 19–23 October 2020

Report of 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

Held at the Palais des Nations, Geneva, from 19 to 23 October 2020



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Introduction

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 was held at the Palais des Nations, Geneva, from 19 to 23 October 2020, in both virtual and physical formats.

I. Action taken by the Conference

A. Resolution A

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,

Having reviewed all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 40 years after its adoption, and recognizing the positive contribution made through the Set and by the Intergovernmental Group of Experts on Competition Law and Policy in promoting the adoption and implementation of competition law and policy as a competition culture,

Having reviewed the implementation of the United Nations guidelines for consumer protection, 35 years after the adoption and 5 years since the last revision¹ of the guidelines, and recognizing the positive contribution made by the guidelines and by the Intergovernmental Group of Experts on Consumer Protection Law and Policy in promoting the adoption and implementation of consumer protection law and policy as a consumer protection culture,

Reaffirming the resolutions on strengthening the implementation of the Set adopted by the previous seven United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Taking note of the decision taken at 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”,²

Considering the exceptional circumstances of the coronavirus disease of 2019 (COVID-19) pandemic, which has severely affected developed and developing countries, with devastating consequences on the global economy and international trade, resulting from a disruption of global supply chains and markets, and long-lasting and uncertain implications,

Stressing the United Nations General Assembly call for global solidarity (A/RES/74/270), which led to launch a special project (“A United Nations framework for

¹ See A/RES/70/186, annex.

² TD/519/Add.2, Nairobi Maafikiano.

the immediate socioeconomic response to COVID-19”) to put into practice the United Nations Secretary-General’s report, “Shared responsibility, global solidarity: Responding to the socioeconomic impacts of COVID-19”,

Welcoming decisive measures and interventions taken by Governments in the field of competition and consumer protection through coordinated international, regional and multilateral actions to respond to the crisis and attempt to mitigate the negative impact on domestic markets and consumers’ welfare,

Emphasizing the importance of international cooperation to tackle the crisis, as stressed by the General Assembly (A/RES/74/274) and the United Nations Secretary-General, and to foster a prompt post-crisis recovery through coordinated actions at the regional and international levels among Governments, policymakers, society and business representatives and competition authorities and agencies,

Stressing that the COVID-19 pandemic is exposing deep inequalities and failures that are addressed in the 2030 Agenda for Sustainable Development, which can be leveraged for a more sustainable and inclusive economy that works for both people and the planet,

Reaffirming the fundamental role that competition and consumer protection laws and policies play in the achievement of the Sustainable Development Goals, by promoting competitive, open and contestable markets, ensuring access by consumers to essential goods and services, empowering and protecting consumers from fraudulent and deceptive commercial practices and boosting consumer education to ensure more informed choices,

Recognizing that effective policies that prevent trade in hazardous consumer products and fraudulent and deceptive commercial practices can improve consumer confidence and provide more favourable conditions for sustainable economic development,

Fundamental role of competition and consumer protection laws and policies

1. *Reaffirms* the fundamental role of competition and consumer protection laws and policies for sustainable and inclusive economic development, and recommends the continuation of the relevant work programme within the UNCTAD intergovernmental machinery that addresses competition and consumer protection laws and policies and proceeds with the active engagement and participation of competition and consumer protection authorities of Member States;

2. *Calls upon* Member States to strive to efficiently implement the provisions of the Set and the guidelines, given that effective application of competition and consumer protection policies is important to guarantee well-functioning markets and respect for consumer rights;

3. *Calls also upon* Member States to facilitate international cooperation among competition authorities in order to strengthen the effectiveness and efficiency of law enforcement against cross-border anticompetitive business practices (with a focus on cross-border cartels), in accordance with section F of the Set, and among consumer protection authorities in order to strengthen the effectiveness and efficiency of law enforcement against cross-border fraudulent and deceptive commercial practices, in accordance with section VI of the guidelines;

UNCTAD work programme support

4. *Recommends* the strengthening of the work programme within the UNCTAD secretariat and intergovernmental machinery that addresses competition and consumer protection law and policy issues;

5. *Invites* Member States in a position to do so to support the implementation of the activities outlined in this resolution and, in this respect, expresses its appreciation and gratitude to those Member States and organizations that have provided financial contributions;

6. *Invites also* intergovernmental organizations and financing programmes and agencies to provide resources for the activities mentioned in this resolution;

Documentation

7. *Takes note with appreciation* of the documentation prepared by the UNCTAD secretariat for the Conference: TD/RBP/CONF.9/1, TD/RBP/CONF.9/2, TD/RBP/CONF.9/3, TD/RBP/CONF.9/4, TD/RBP/CONF.9/5, TD/RBP/CONF.9/6, TD/RBP/CONF.9/7, TD/RBP/CONF.9/8, TD/RBP/CONF.9/8/Corr.1, TD/RBP/CONF.9/L.1 and TD/RBP/CONF.9/L.2;

8. *Takes note with appreciation also* of Member States' contributions to the UNCTAD secretariat background documentation and the facilitation of round tables, and of the written and oral contributions from Member States and other participants that enriched the debate during the Conference;

9. *Calls upon* Member States to ensure effective consumer protection, and promote and protect competition in the digital economy, and to facilitate international cooperation between consumer protection and competition authorities to deal more effectively with fraudulent and deceptive commercial practices and anticompetitive business practices in digital markets, respectively;

10. *Calls also upon* Member States to intensify their efforts to protect consumers and markets from the negative economic and social effects of the COVID-19 pandemic, through the robust application and enforcement of competition and consumer protection laws and policies;

Interactive consumer protection and competition tools

11. *Encourages* the continuation of the information-gathering process on the legal and institutional framework for consumer protection, in particular through the UNCTAD world consumer protection map, and invites all Member States to participate in completing and updating it;

12. *Invites* Member States to continue sharing experiences and best practices regarding the protection of vulnerable and disadvantaged consumers, including through the UNCTAD virtual catalogue on international best practices on consumer protection and competition policies;

UNCTAD voluntary peer reviews of competition and consumer protection laws and policies

13. *Congratulates* the Government of Peru and the West African Economic and Monetary Union for their voluntary peer reviews on consumer protection law and policy and competition law and policy, respectively, looks forward to the successful implementation of their policy recommendations with the support of the UNCTAD secretariat, and encourages interested Member States to volunteer for future peer reviews on consumer protection and competition laws and policies, including as peer reviewers;

14. *Underlines* the value of the UNCTAD voluntary peer reviews as a useful tool for the exchange of experiences and cooperation, at both the national and regional levels, and invites Member States to assist UNCTAD on a voluntary basis by providing experts and financial resources, as national laws and policies allow, for future activities in connection with these reviews;

15. *Welcomes* the initiative of the Governments of Chile and Malawi to volunteer for UNCTAD peer reviews on consumer protection law and policy and on competition law and policy, respectively, in 2021;

16. *Decides* that UNCTAD should:

(a) Undertake further voluntary peer reviews of competition and consumer protection laws and policies in Member States or regional economic organizations, strengthening these reviews alongside sessions of the intergovernmental groups of experts;

(b) Establish a working group on modalities of UNCTAD voluntary peer review exercises, open to Member States on a voluntary basis, without any financial implications for the regular budget of the United Nations, to discuss and improve existing procedures and methodology, to report respectively to the nineteenth and fifth sessions of the

Intergovernmental Groups of Experts on Competition Law and Policy and on Consumer Protection Law and Policy;

Technical cooperation: competition and consumer protection policies and frameworks

17. *Underlines* the essential role of UNCTAD in providing technical assistance and capacity-building in the fields of competition and consumer protection through close cooperation with beneficiary countries and by employing a multi-stakeholder approach to foster a culture of competition and consumer protection and raise awareness among consumers and businesses;

18. *Requests* UNCTAD, under its technical cooperation pillar, to:

(a) Conduct follow-up and an impact assessment of technical cooperation activities to improve and better adjust them to beneficiaries' needs and priorities;

(b) Further explore and develop joint and complementary work with other international and regional organizations for more effective and stronger assistance to developing countries and transition economies;

Model Law on Competition

19. *Takes note of* the revised Model Law commentary as an important guide to the economic development and competition approaches on various points followed by different countries;

20. *Requests* the UNCTAD secretariat to continue to revise periodically the commentary to the Model Law, part 2, in light of legislative developments and comments made by Member States, for consideration by future sessions of the Intergovernmental Group of Experts on Competition Law and Policy, and to disseminate widely the Model Law on Competition and commentary, as revised;

UNCTAD Research Partnership Platform on Competition and Consumer Protection

21. *Recognizes* the useful role of the platform in strengthening UNCTAD research and policy analysis capacities and linking research findings to the UNCTAD technical cooperation pillar and the extensive growth of the platform, in terms of projects and participants, since its establishment in 2010;

International cooperation on competition law enforcement

22. *Underlines* the importance of international cooperation as recognized by section F of the Set, including informal collaboration among authorities, and calls upon UNCTAD to continue to promote and support cooperation among competition authorities, as underlined in paragraphs 3 and 16 of 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;

23. *Welcomes*, and decides to adopt 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, agreed upon at the eighteenth session of the Intergovernmental Group of Experts on Competition Law and Policy (TD/B/C.I/CLP/55/Add.1);

24. *Requests* the UNCTAD secretariat to continue the dissemination 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;

25. *Requests also* the Trade and Development Board of UNCTAD to take note 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;

Product safety

26. *Emphasizes* the importance of strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health and safety, recognizing that collecting and processing key injury data and assessing risks are necessary to improve consumer product safety around the world;

27. *Decides* to adopt the recommendation on preventing cross-border distribution of known unsafe consumer products;

28. *Requests* the Trade and Development Board of UNCTAD to take note of the recommendation on preventing cross-border distribution of known unsafe consumer products;

Renewal of mandates for the Working Groups of the Intergovernmental Group of Experts on Consumer Protection Law and Policy

29. *Decides* to renew the mandate of the Working Group on Consumer Protection in E-commerce to continue the work on misleading and unfair practices, consumer education and business guidance and cross-border enforcement cooperation, in light of guidelines 63 to 65, to facilitate the exchange of information and best practices among Member States' consumer protection authorities in these areas and report to the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy;

30. *Decides* to renew the mandate of the Working Group on Consumer Product Safety to continue the work on strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health and safety, recommend policy options for addressing challenges faced by consumer protection authorities in this area and report to the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy;

Establishment of a working group on cross-border cartels

31. *Decides* to establish a working group on cross-border cartels, open to Member States on a voluntary basis, without financial implications for the regular budget of the United Nations, to highlight best practices, facilitate information exchange and consultations and report to the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy;

Informal consultations for future sessions of the Intergovernmental Groups of Experts on Competition Law and Policy and on Consumer Protection Law and Policy

32. *Reaffirms* that future sessions of the Intergovernmental Groups of Experts on Competition Law and Policy and on Consumer Protection Law and Policy should include four clusters of issues for informal consultations, namely:

(a) Competition and consumer protection policies' contribution to the achievement of inclusive and sustainable development;

(b) The role of competition and consumer protection policies with regard to e-commerce and digital markets;

(c) Competition and consumer protection laws and policies and government interventions in the economic recovery of markets in the post-COVID-19 period;

(d) International cooperation between competition authorities against cross-border anticompetitive practices (including cross-border cartels) and between consumer protection authorities against fraudulent and deceptive commercial practices and unsafe consumer products;

33. *Requests* the UNCTAD secretariat to prepare reports and studies as background documentation on the following topics for proposed informal consultations during the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy:

- (a) Competition law, policy and regulation in the digital era;
- (b) Competition advocacy during and in the aftermath of the COVID-19 crisis.

34. *Requests* the UNCTAD secretariat to prepare reports and studies as background documentation on the following topics for proposed informal consultations during the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy:

- (a) Consumer protection needs of vulnerable and disadvantaged consumers in connection with public utilities;
- (b) Consumer law, policy and regulatory actions in response to and in the aftermath of the COVID-19 pandemic;

Further review of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

35. *Recommends* that the General Assembly convene a Ninth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, to be held under the auspices of UNCTAD in 2025.

*Closing plenary meeting
23 October 2020*

B. Resolution B

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

Recognizing the importance of cooperation³ among competition authorities⁴ in addressing anticompetitive practices and reviewing mergers which may affect international trade and development,

Recognizing also the increasing interconnection of economies and the importance of addressing Member States' calls for practical guidance on enforcement cooperation related to potential anticompetitive practices and mergers having cross-border effects,

Recognizing also that many authorities, especially from developing countries and countries with economies in transition, face challenges in international cooperation and would benefit from effective assistance that would allow them to better realize the benefits of cooperation on competition cases,

Recognizing further that cooperation depends on mutual trust and assurance of appropriate confidentiality protection established between the authorities involved and that cooperation should be exercised to the extent consistent with the laws and regulations in force in their respective Member States, their respective important interests and within their reasonably available resources,

³ Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices states that "collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices". Since the Set was adopted, work in the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy and other international bodies, including the International Competition Network and the Competition Committee of the Organization for Economic Cooperation and Development, has further developed understanding of the importance of international cooperation on a broader level, including collaboration, coordination and other types of international cooperation. These concepts are referred to collectively hereinafter as "cooperation".

⁴ As used herein, the term "authorities" includes regional authorities that have been empowered by Member States to apply regional competition rules or legislation, as well as national authorities.

Considering the desire to catalogue existing practical guidance for authorities seeking to engage in cooperation related to enforcement activities, such as investigations of suspected anticompetitive conduct and merger review, and for subjects of such enforcement activities (“parties”) and for others seeking to facilitate cooperation whose interests may be affected or affect such enforcement activities (“third parties”),

Considering the importance of utilizing the framework of cooperation provided in section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (hereinafter “the Set”), especially for authorities from developing countries and countries with economies in transition, by expanding and clarifying procedures for such cooperation,

Considering the importance of utilizing the assistance of the Competition and Consumer Policy Branch, Division on International Trade and Commodities of the UNCTAD secretariat (hereinafter “UNCTAD secretariat”) in maintaining points of contact, disseminating related information, facilitating consultations and assisting cooperation in competition enforcement in order to better achieve the goals of section F of the Set,

Recommends to Member States the guiding principles and procedures in implementing international measures under section F of the Set, on the premise that these are non-binding and that adherence to them by each Member State is voluntary.⁵

*Closing plenary meeting
23 October 2020*

C. Recommendation on preventing cross-border distribution of known unsafe consumer products

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

Recalling General Assembly resolution 70/186 of 22 December 2015, on consumer protection, adopting the revised United Nations guidelines for consumer protection,

Recalling also that consumers should have the right to safe products and to be protected against negative consequences involving unsafe products,

Recognizing that appropriate policies that promote trade in safe consumer products can improve consumer confidence and provide more favourable conditions for sustainable economic development,

Recalling that Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, technical standards, risk assessment best practices and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use,

Reaffirming that measures to ensure the health and safety of consumers should not create unnecessary obstacles to trade or be more trade restrictive than necessary, consistent with the rules of the World Trade Organization,

Reaffirming also that Member States should develop or strengthen information sharing regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products,

Reaffirming further that Member States should work towards a high level of safety for consumer products globally and, similarly, availability of safety information relating to unsafe products in order to avoid detrimental effects for consumers,

Recognizing that instances of unsafe consumer products being distributed in national markets can be reduced globally as international cooperation is strengthened,

⁵ See TD/RBP/CONF.9/9, annex I.

Recognizing also that consumers everywhere may benefit when the manufacture and cross-border distribution of unsafe consumer products is reduced,

Recognizing also that there may be variation in Member States' product safety requirements and risk assessment approaches,

Recognizing further that many Member States are still developing effective consumer product safety policies and measures and, as a result, may have difficulty preventing unsafe consumer products from being brought to national markets,

Recognizing further that many Member States, where unsafe consumer products have been identified and withdrawn or blocked from commerce, may not be able to prevent the export of those products,

Considering that steps by Member States to discourage the cross-border distribution of known, unsafe consumer products would be mutually beneficial to the health and safety of consumers everywhere,

Recognizing that the Working Group on Consumer Product Safety, established at the third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, under the auspices of the United Nations Conference on Trade and Development,⁶ aims at strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health and recommending policy options for addressing challenges faced by consumer protection authorities in this area,⁷

Noting that the Working Group has focused its efforts on "consumer products", understood to mean the category of products intended for and or likely to be used by consumers but without including food, drugs and medical devices, as these products are often subject to specific risk assessment and risk management in distinct regulatory frameworks,

Noting that the term "cross-border distribution" used in this recommendation is understood to refer to the circulation of consumer products between consumer product safety jurisdictions,

1. *Recommends* that Member States pursue policies, consistent with World Trade Organization rules, aimed at preventing cross-border distribution of consumer products known in their own jurisdictions to be unsafe;

2. *Calls on* Member States to raise awareness among businesses responsible for bringing goods to the market on the potential harms of cross-border distribution of unsafe consumer products;

3. *Calls also on* Member States to raise awareness among consumers on the risks to their physical safety posed by unsafe products, especially when engaging in cross-border online transactions;

4. *Recommends* that Member States regularly exchange information on national policies and measures on product safety recalls and safety requirements;

5. *Requests* that the United Nations Conference on Trade and Development continue to assist Member States in improving national and regional consumer product safety frameworks in order to better protect consumers and to prevent cross-border distribution of unsafe consumer products;

6. *Requests also* that the secretariat of the United Nations Conference on Trade and Development propose modalities for the implementation of the present recommendation following its adoption;

⁶ TD/B/C.I/CPLP/15.

⁷ TD/B/C.I/CPLP/20.

7. *Requests further* that the secretariat of the United Nations Conference on Trade and Development exchange information on progress and experiences, review that information and report to the General Assembly on this subject on the occasion of the Ninth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

*Closing plenary meeting
23 October 2020*

D. Other action taken by the Conference

1. At its closing plenary meeting, on 23 October 2020, 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 adopted a resolution as contained in a non-paper dated 23 October 2020 (see chapter I, section A above).

2. Also at its closing plenary meeting, 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 adopted a draft resolution and guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, as contained in document TD/B7C.I/CLP/55/Add.1 (see, respectively, chapter I, section B above, and annex I).

3. Also at its closing plenary meeting, 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 adopted a draft recommendation on preventing cross-border distribution of known unsafe consumer products, proposed by Colombia and co-sponsored by Australia at the opening plenary meeting and circulated on 19 October 2020.

Model Law on Competition

4. At its closing plenary meeting, on 23 October 2020, the President of the Conference stated that the UNCTAD secretariat would continue to update the commentaries to the UNCTAD Model Law on Competition (part 2), as required.

5. In its presentation, the UNCTAD secretariat noted that the commentaries in part 2 of the Model Law were revised regularly based on contributions from Member States. For the current Conference, the secretariat had revised the commentaries to chapters 3 and 4 of the Model Law, which contained updates of some anticompetitive practices (tacit collusion, price maintenance and so on) from various jurisdictions and both experienced and young competition regimes.

II. President's summary

A. Opening plenary meeting

Opening statements

6. The Secretary-General of UNCTAD and the representative of Colombia made opening statements.

7. The Secretary-General emphasized the work of UNCTAD on competition and consumer protection in response to the economic, social and health crisis induced by the coronavirus disease of 2019 (COVID-19), particularly through the provision of advisory services and technical assistance to developing countries and facilitation of exchange of experiences and best practices.

8. The representative of Colombia presented a proposal, co-sponsored by the delegation of Australia, consisting of a draft recommendation on preventing the cross-border distribution of known unsafe consumer products for adoption by the Conference.

High-level segment

9. In his statement, the keynote speaker presented some recommendations for a context after the COVID-19 crisis. Governments should be receptive to competition authorities' advice when planning market interventions. Competition authorities in developing countries should target price gouging; bid rigging on public procurement; and anticompetitive practices for goods and services disproportionately consumed by vulnerable and disadvantaged consumers, small and medium-sized enterprises and farmers.

10. A five-member panel underlined the role of UNCTAD in providing a forum for dialogue and international cooperation and identifying challenges and common solutions. One panellist highlighted the need for efficient and fair markets. Another panellist referred to the experience of Botswana as a beneficiary of UNCTAD technical cooperation since 2002. Another panellist stressed the importance of balancing consumer protection and business development, while another panellist called for stepping up technical cooperation in consumer protection. The final panellist emphasized the importance of situating individual persons as the legitimate owners of their personal data.

B. Implementation of the United Nations guidelines for consumer protection and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

(Agenda item 6)

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

11. A three-member panel presented experiences in implementation. One panellist emphasized the importance of cooperation between competition authorities, especially coordination within the Interstate Council for Antimonopoly Policy of the member States of the Commonwealth of Independent States.

12. Another panellist introduced cooperation initiatives of competition authorities in the South-East Asian region, which were vital as markets of the Association of Southeast Asian Nations became more integrated. Another panellist explained the Eurasian Economic Commission's objectives and referred to regional improvements, following a legal assessment conducted by UNCTAD, and suggested discussing the efficiency and challenges of regional organizations.

Implementation of the United Nations guidelines for consumer protection

13. The discussants shared experiences in implementing the United Nations guidelines for consumer protection on emerging areas, including electronic commerce (e-commerce), good business practices, financial services, consumer education and information sharing.

14. Regarding future work on the United Nations guidelines for consumer protection and the role of UNCTAD, the discussants identified the areas of vulnerable consumers, sustainable consumption, international cooperation and capacity-building in the digital economy.

C. Strengthening consumer protection and competition in the digital economy

(Agenda item 7)

15. The UNCTAD secretariat presented a background note on strengthening effective consumer protection and competition in the digital economy (TD/RBP/CONF.9/4), followed by presentations from 11 panellists.

16. One panellist underlined the complementarity of competition and consumer protection laws and policies. Many panellists referred to the fact that measures related to COVID-19 had led to a remarkable increase in online activity.

17. One panellist said there was a need for consumer protection rules fit for the digital age, which worked for citizens and were fair and transparent. Initiatives needed to be complemented by up-to-date competition enforcement tools to ensure fairness in the practices of gatekeeper platforms.

18. Some panellists noted that consumers could play an important role in dealing with unfair commercial practices, by reporting such conduct to consumer protection authorities. The growth in e-commerce, especially during the pandemic, had led consumer authorities in some countries to develop digital tools, such as a website containing useful consumer information, WhatsApp number, email address and online platform to facilitate complaint filing for consumers, while another panellist noted the creation of a public online dispute resolution platform to enable consumers to address their problems remotely.

19. One panellist said that competition authorities were central to addressing problems in the digital economy, through strong enforcement and market studies. Some panellists said that market studies were a useful tool to uncover harm to competition and understand emerging issues, and for policy formulation, legislative process and development of a code of conduct for platforms. Many panellists suggested variously, for effective competition in the digital economy, platform-specific ex ante regulations, stimulating internal capacity-building and taking a collaborative approach to regulating the digital economy by engaging competition, consumer protection, data protection and telecommunications authorities. One panellist called for attributing supplementary powers to competition agencies.

20. Many panellists stressed the importance of international cooperation, especially for small developing economies, which had greater enforcement challenges.

21. Some representatives of civil society called for multilateral rules on competition, recognizing the role of civil society and supporting it financially.

D. International enforcement cooperation among consumer protection authorities in electronic commerce

(Agenda item 8)

22. The four discussants of a round table on the agenda item represented Colombia, Kenya, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The discussants highlighted cross-border e-commerce as one main challenge facing international cooperation between enforcement agencies. One discussant identified diverse legal and information-sharing practices between countries and the need for effective enforcement and human capacity as prerequisites to cooperation.

23. Some discussants emphasized the importance of consumer redress and the need to institute dispute-resolution mechanisms to assist online consumers as necessary, while another discussant underscored the ability to share and receive evidence from foreign counterparts as required.

24. Several discussants stressed the role of UNCTAD in providing a forum and guidance for member States, through the United Nations guidelines for consumer protection, on harmonization of laws and identification of obstacles to cross-border cooperation. All discussants upheld that member States should build on synergies in the work of UNCTAD, the International Consumer Protection and Enforcement Network, Organization for Economic Cooperation and Development, European Consumer Protection Network, African Consumer Dialogue and academia in pursuing cross-border cooperation.

25. Some discussants highlighted the role of international organizations, and UNCTAD, as a platform for interaction for the betterment of consumers globally and repository of information and advice to member States on international cooperation in e-commerce.

E. International cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices: Adoption of the guiding policies and procedures

(Agenda item 9)

26. The secretariat presented the background information on UNCTAD work in the area, including the drafting of the guiding policies and procedures and activities after 2020. Four panellists representing competition authorities from Australia, the Gambia, Peru, the Russian Federation and the United States then spoke.

27. One panellist explained the need for young competition authorities to adopt the guiding policies and procedures, saying that section F of the Set did not currently have a specific mechanism for holding consultations.

28. Another panellist stated that, in international cooperation, a more regional approach needed to be adopted and that, with the proliferation of regional competition systems, there was scope for promoting cooperation among members of the same regional groupings, referring to the Economic Community of West African States, African Continental Free Trade Area and African Competition Forum.

29. Another panellist welcomed the adoption of the guiding policies and procedures, while pointing out that putting them into practice would be more important.

30. The last panellist introduced the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities, the latest cooperation agreement between the competition authorities of five countries, and stated that it would facilitate confidential evidence sharing and informal cooperation given that the participating authorities shared similar systems and had strong informal cooperation relationships.

31. During the discussion, many delegates expressed their support for the adoption of the guiding policies and procedures.

F. Improving consumer product safety worldwide: Good data for good policy

(Agenda item 10)

32. A round table on the agenda item was facilitated by a representative of the United States and moderated by a representative of South Africa. The discussants were from the Governments of the Dominican Republic, Sweden and the United States and from a private company of the United States.

33. Overall, members of the round table considered some examples concerning injury data collection and other data that could be useful for policymaking in product safety, and emphasized that Governments should look at as many sources of data as possible, including reports by manufacturers, health and hospital authorities, and national and local governments. Collaboration from the private sector was paramount to collect good quality injury data that could inform public policy.

34. Consultations then followed on a recommendation on preventing cross-border distribution of known unsafe consumer products. The secretariat presented the effort as an output of the UNCTAD Working Group on Consumer Product Safety. All participants expressed support for the recommendation, which was submitted to the Conference for adoption.⁸

⁸ See chapter I, section C above.

G. Competitive neutrality

(Agenda item 11)

35. The moderator of a round-table discussion on the topic noted that competition policy provided a level playing field for all commercial actors, underscoring the importance placed by the competition authority of Austria on maintaining competitive neutrality especially in times of health and economic crisis. Four other round-table members represented competition authorities or related government bodies from Australia, Mexico, Morocco and the Philippines.

36. One discussant stated that competitive neutrality had been a key concern. In 2018, the Government of the Philippines had adopted an action plan that included competitive neutrality as a priority.

37. Another discussant also highlighted the need to maintain competitive neutrality in a period of economic crisis, where the State took a leading role in the economic recovery process.

38. Another discussant noted the commitment of the competition authority of Mexico to maintain competitive neutrality in markets and mentioned a case in the electricity generation sector where the advocacy work of the competition authority was decisive.

39. The final discussant stated that the formal competitive neutrality policy of Australia aimed at ensuring a level playing field between public and private businesses. The Government of Australia had agreed not to introduce restrictions on competition and took into account the opinion of the competition authority.

H. Combating cross-border cartels

(Agenda item 12)

40. A panel comprised representatives from the Governments of Brazil, the Republic of Korea, the Russian Federation (moderator), South Africa and the United States.

41. The panellists discussed the challenges competition authorities face when dealing with cross-border cartels, and how cooperation, notably through UNCTAD, helped alleviate the obstacles. The main obstacle was a diversity of enforcement systems and competition policies. Due to the COVID-19 pandemic, global impact in all industrial sectors and a high risk of cartelization, the topic was more relevant.

42. A representative of the [Brazil, Russian Federation, India, China and South Africa] BRICS Competition Law and Policy Centre presented a study, which concluded that competition authorities acknowledged the need to tackle cross-border cartels, but also showed hesitation to cooperate due to lack of trust, common understanding and openness, as well as limited reliable international tools. Synchronization and enhanced engagement from competition authorities could be improved with a cooperative platform and by leveraging UNCTAD capacity-building instruments. One panellist stressed that close cooperation based on trust among competition authorities could increase efficiency in the case-handling process.

43. Some panellists called for harmonization of instruments and enforcement procedures through trust building activities and coordination at the regional and international levels. Another panellist mentioned the importance of International Competition Network guidance for new and smaller agencies to foster stronger relationships. Finally, one delegate highlighted that, in new cooperation agreements, confidential information and cross-border detection to tackle new complexities should be considered.

44. Many delegates expressed support for the proposal of a working group to discuss combating cross-border cartels within the agenda of UNCTAD.

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

(Agenda item 13)

45. The UNCTAD secretariat presented capacity-building and technical assistance activities carried out based on best practices, and including dissemination to several countries, at the national and regional levels. Four discussants, representing institutions from China, Paraguay and Peru, as well as from the Economic and Social Commission for Western Asia of the United Nations, then focused on the issue.

46. One discussant emphasized UNCTAD collaboration, through the Competition and Consumer Protection for Latin America programme, especially in the adoption and implementation of the competition legislation of Paraguay.

47. Another discussant referred to a letter of understanding between the Economic and Social Commission for Western Asia, UNCTAD and the Organization for Economic Cooperation and Development for raising awareness on competition law and policy and addressing the needs of member States in the Arab region in drafting laws and regulations. A first joint forum was organized in January 2020 in Beirut.

48. Another discussant underlined UNCTAD assistance in supporting intellectual development in the competition field in Latin America. She highlighted several activities carried out in the academic field with the support of UNCTAD.

49. The final discussant explained the reasons for choosing UNCTAD as a partner to carry out a new project on online consumer dispute resolution. The goal was to improve the trust of consumers and businesses, especially in international trade and e-commerce, as well as to promote more cooperation among countries.

J. Voluntary peer review of consumer protection law and policy: Peru

(Agenda item 14)

50. The voluntary peer review opened with a statement by the President of the National Institute for the Defence of Competition and Protection of Intellectual Property, the Peruvian consumer protection agency. The UNCTAD secretariat then presented the main findings and recommendations of the background report (TD/RBP/CONF.9/7) on the legal, policy and institutional frameworks for consumer protection.

51. Representatives of the Governments of Australia, Italy and the United States acted as peer reviewers. The peer reviewers asked the delegation of Peru about the protection of the country's vulnerable and disadvantaged consumers, funding of consumer associations, interaction between government institutions with responsibilities in consumer protection, enforcement powers in digital markets, international cooperation and collective redress.

52. In turn, a representative of the Peruvian consumer protection agency asked peer reviewers about the use of behavioural insights in consumer product safety, regional networks for cross-border enforcement cooperation and policymaking in the digital economy. She also asked questions of other delegates participating in the session, to benefit from their experiences, on measures taken to address consumer overindebtedness and avenues for public funding of consumer associations.

53. The secretariat presented a proposal for technical assistance projects to implement the peer review recommendations, with an overall goal of improving the legislative and institutional frameworks for consumer protection of Peru. The representative of Peru expressed agreement with the recommendations and appreciation for the guidance from UNCTAD.

54. Finally, the delegation of Chile volunteered to participate in a voluntary peer review exercise in 2021.

K. Voluntary peer review of competition law and policy: West African Economic and Monetary Union

(Agenda item 15)

55. Opening the discussion, the Chair of the Competition Committee of the Organization for Economic Cooperation and Development/Professor of the ESSEC Business School (Paris) and the former Director of Competition at the Commission of the West African Economic and Monetary Union/International Consultant presented the report on the voluntary peer review. The head of the delegation of the West African Economic and Monetary Union then made a statement.

56. In the voluntary peer review report, the efforts of the Commission of the West African Economic and Monetary Union to improve the enforcement of competition law were highlighted. Further work was needed, however, to enhance the effectiveness of the Union's competition regime, as centralization of enforcement at the regional level had undermined national competition authorities. Recommendations for institutional and legal reform were also provided in the report to improve the competition regime of the West African Economic and Monetary Union and strengthen collaboration with the Economic Community of West African States, considering that the eight member States of the Union were also member States of the Community.

57. A Commissioner of the West African Economic and Monetary Union outlined UNCTAD technical assistance work, underscored cooperation with the Economic Community of West African States and noted implementation of the recommendations in collaboration with UNCTAD.

58. The Chair of the Competition Council of Tunisia, Director of Competition of the Common Market for Eastern and Southern Africa and a former Deputy Director of the Swiss Competition Commission/Professor of the School of Management and Law of the Zurich University of Applied Sciences acted as peer reviewers.

59. Peer reviewers asked questions concerning the timetable for decisions by the Commission; the relationship between Commission and national competition authorities; the experience of the West African Economic and Monetary Union in merger control; advocacy initiatives; and collaboration with the Economic Community of West African States. In response, the Commissioner of the West African Economic and Monetary Union stated that since 2007 initiatives had been undertaken by the regional authority to cooperate with national competition authorities. Also, strong cooperation between the West African Economic and Monetary Union and the Economic Community of West African States was needed to clarify the competencies of each body.

60. The UNCTAD secretariat presented a technical assistance project to consolidate the institutional and regulatory frameworks in the countries of the Union and to facilitate the collaboration with the Community.

61. One delegate commended UNCTAD for the support to between the West African Economic and Monetary Union since 2007, saying that important reforms were needed to establish an effective competition regime in West Africa.

III. Organizational matters

A. Opening of the Conference

(Agenda item 1)

62. 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 was opened on 19 October 2020 by Ms. Katrina Naut (Dominican Republic).

B. Election of the president and other officers

(Agenda item 2)

63. The election of the president and other officers was placed under a silence procedure from 13 to 16 October 2020, in accordance with the provisions of United Nations General Assembly decision 74/544 of 27 March 2020. At the opening plenary meeting, on 19 October 2020, the elected President of 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, Ms. Katrina Naut (Dominican Republic), reminded participants that the election of all officers had been successfully conducted through a silence procedure.

64. The Conference elected six Vice-Presidents and a Rapporteur to serve on the Bureau of the Conference at its eighth session. Accordingly, the elected Bureau was as follows:

| | |
|-------------------------|---|
| <i>President:</i> | Ms. Ms. Katrina Naut (Dominican Republic) |
| <i>Vice-Presidents:</i> | Mr. Vaqif Sadiqov (Azerbaijan) Ms. Nozipho Joyce Mxakato-Diseko (South Africa) Ms. Monique T.G. van Daalen (Netherlands) Mr. Salim Baddoura (Lebanon) Mr. Lundeg Purevsuren (Mongolia) Mr. Michal Kaplan (Czechia) |
| <i>Rapporteur:</i> | Ms. Charline van der Beek (Austria) |

65. Following established practice, the Conference agreed that the regional coordinators would be fully associated with the work of the Bureau of the Conference.

C. Adoption of the rules of procedure

(Agenda item 3)

66. At the opening plenary meeting, on 19 October 2020, the President of the Conference recalled that the rules of procedure for the session, as contained in TD/RBP/CONF.7/9, had been adopted through a silence procedure conducted from 13 to 16 October 2020.

D. Adoption of the agenda and organization of the work of the Conference

(Agenda item 4)

67. Also at the opening plenary meeting, the President of the Conference recalled that the agenda of the session, as contained in TD/RBP/CONF.9/1, had also been adopted through a silence procedure conducted from 13 to 16 October 2020 (see annex II).

E. Credentials of the representatives to the Conference

(Agenda item 5)

Appointment of a credentials committee

68. At the opening plenary meeting, on 19 October 2020, the Conference agreed that the Bureau of the Conference would assume the functions of a credentials committee and would report to the Conference accordingly.

Report of the Credentials Committee

69. At the closing plenary meeting, on 23 October 2020, the President informed participants that the credentials of States participating in the Conference were found to be in due and proper form.

F. Other business

(Agenda item 16)

70. At the closing plenary meeting, recalling UNCTAD technical cooperation in reviewing competition and consumer protection policies, one delegate expressed the commitment of the Democratic Republic of the Congo to implement all recommendations to consolidate both competition and consumer protection policies.

Provisional agendas

71. At its closing plenary meeting, the Conference approved the provisional agenda of the nineteenth session of the Intergovernmental Group of Experts on Competition Law and Policy (see annex III).

72. Also at its closing plenary meeting, the Conference approved the provisional agenda of the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy (see annex IV).

G. Adoption of the report of the Conference

(Agenda item 17)

73. Also at its closing plenary meeting, on 23 October 2020, the Conference adopted its report on the eighth session. The Conference further authorized the Rapporteur, under the authority of the President, to finalize the report, taking into account the proceedings of the closing plenary meeting.

Annex I

Guiding policies and procedures under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

I. Guiding principles

Member States recognize the following guiding principles.

1. Cooperation can benefit competition authorities (hereinafter “authorities”), subjects of enforcement activities (hereinafter “parties”) and others seeking to facilitate cooperation whose interests may be affected or affect such enforcement activities (hereinafter “third parties”). Cooperation can:

- (a) Help to promote consistent outcomes;¹
- (b) Increase investigative efficiency by reducing unnecessary duplication of work, delays and burdens for parties, third parties and authorities;
- (c) Reduce gaps in information available to authorities and lead to a more informed decision-making process;
- (d) Help to promote convergence, both in the analysis of specific cases, as well as more generally, in relation to principles applicable to the review of mergers and suspected anticompetitive conduct;
- (e) Increase familiarity between authorities and mutual understanding of their processes, which in turn may help foster trust and facilitate future cooperation.

2. It is important to provide authorities from developing countries and countries with economies in transition practical tools and methods of cooperation. Timely provision and maintenance of effective guidance relating to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and relevant procedures and tools for cooperation will help such authorities to more effectively address suspected anticompetitive practices and mergers in their jurisdictions.

3. Cooperation between authorities is based on mutual trust and conducted on a voluntary basis. While authorities are, in principle, encouraged to cooperate in investigations of suspected anticompetitive conduct and merger review (hereinafter collectively referred to as “investigations”) that may raise competition issues of common concern in their jurisdictions, authorities have full discretion to decide whether to cooperate. Cooperation does not limit an authority’s right to make independent enforcement decisions.

4. Cooperation between authorities can be especially beneficial in cases that raise competition issues of common concern, including in global or cross-border cases in which investigations or remedies may overlap, investigation by one authority may affect parties in another jurisdiction or remedies applied in one jurisdiction may impact another jurisdiction.

5. Significant flexibility exists in the way authorities may seek to cooperate with each other. The extent of cooperation may vary from case to case, ranging from less extensive cooperation, for example, keeping each other informed of past experience with cases with similar suspected conduct or theories of harm, to more extensive cooperation, such as when parallel investigations of the same cross-border suspected anticompetitive conduct may be launched or a common remedy may be designed to address the effects of conduct or mergers in more than one jurisdiction. There may be various reasons for differing levels of

¹ Different authorities could appropriately reach different outcomes on the same matter, as the conduct or merger might have different potential effects in different jurisdictions. Cooperation may still be useful to ensure that outcomes are consistent and do not conflict with each other.

cooperation and engagement, such as differences in the potential impact of the conduct on the jurisdictions involved, as well as differences in procedural rules, in the scope or timing of investigations or in authorities' resources. Each authority has full discretion to determine the level of cooperation appropriate to its needs throughout the process.

6. Parties have the ability to facilitate cooperation, especially in merger cases and for leniency applicants in cartel cases. Some types of cooperation may depend on the extent of parties' willingness to facilitate cooperation, e.g. providing appropriate waivers of confidentiality² or, in the case of mergers, working with authorities to align review timetables. In such cases, it may be beneficial for authorities to explain to parties the benefits of such cooperation, how the parties may help to facilitate such cooperation and how their confidential information will be protected. Authorities are also encouraged to request that parties inform them of the existence of contact(s) with other authorities.

7. One of the key requisites of successful cooperation in competition cases is the ability to provide effective and credible assurances³ that shared information will be maintained in confidence and will be used only for purposes that the sharing authorities have permitted. Requesting authorities should inform the sharing authorities if there is a possibility that the shared information may be used for criminal and/or other legal proceedings.

8. Effective cooperation between authorities is supported by mutual trust and an understanding of each other's legal frameworks, confidentiality rules and investigative processes. Authorities may find it useful to have discussions or share informational materials about their respective processes and, if necessary, seek the assistance of the UNCTAD secretariat. Explanations of investigative practices, timetables, procedures and confidentiality rules increase transparency and mutual understanding and can therefore help make cooperation more effective and, when appropriate information of this type is made public, may foster greater willingness in parties to facilitate cooperation.

9. Authorities that engage in cooperation may find it useful to develop their own authority-to-authority protocols for cooperation. However, formal agreements or other authority-to-authority protocols for cooperation are not a necessary pre-condition for authorities to cooperate if appropriate assurances of confidentiality have otherwise been established, including with the assistance of the UNCTAD secretariat as will be discussed in section III.

II. Toolkit for cooperation in competition cases

10. A significant body of information has been collected by international and multilateral organizations, including the International Competition Network, the Competition Committee of the Organization for Economic Cooperation and Development, UNCTAD and other entities, that provides valuable information about how cooperation in particular cases can be made more effective. Authorities are encouraged to refer to this body of works, presented in the appendix below.

11. Requests for cooperation between authorities are addressed directly from one authority to the other.

12. Requests for cooperation are most helpful when they include:

- (a) An indication of the jurisdictions and enterprises involved;

² Hereinafter referred to as a waiver. Waivers are most commonly employed in merger cases or with respect to leniency applications in cartel cases. More information on waivers in merger cases, as well as the model confidentiality waiver of the International Competition Network's Merger Working Group, may be found at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_ModelWaiver.pdf. An International Competition Network model leniency waiver is available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_LeniencyWaiverNote.pdf.

³ For example, through legislation, bilateral cooperation agreements, adherence to multilateral frameworks or agreements, definitive policy statements (e.g. guidelines, regulations or rules on confidentiality) or a case-specific assurance.

(b) A factual description of the alleged competition concern(s), including, if practicable and appropriate, a preliminary definition of the relevant market(s); a preliminary assessment of the enterprise(s) involved and its/their market power; and a description of the alleged harmful effects of the competition concern(s) on the interests of the requesting authority's jurisdiction;

(c) The legal basis under which the alleged competition concern(s) may be reviewed under the requesting authority's law;

(d) A description, if known, of the cooperation sought from the requested authority.

13. Authorities may seek assistance through UNCTAD as described in section III, including with respect to preparing requests for cooperation and facilitating contact with other authorities.

14. In relation to the implementation of this section, there should be flexibility between authorities in initiating cooperation based on each authority's relevant domestic law and policy, or mutual agreement and understanding. Member States recognize that tools of cooperation among authorities may include the following:

(a) *Initial contacts*

(i) As appropriate to the investigation, early contact in a variety of ways, including contact with other authorities, information supplied by parties and formal or informal notifications, may allow for a more meaningful discussion among authorities at key stages of their respective investigations.

(ii) Initial contacts between authorities may be used to discuss the potential scope and depth of cooperation appropriate to an investigation, as well as the need for and frequency of additional contacts.

(b) *Further communication among authorities*

(i) The frequency and level of further communication will normally depend on the nature of cooperation. When ongoing cooperation is mutually beneficial, experience demonstrates that periodic communication by cooperating authorities throughout their respective enforcement activities, especially at key decision-making stages, can be helpful to avoid conflicting outcomes.

(ii) Discussions between authorities are generally held among the relevant investigative staff, including as appropriate, case handlers, economists, lawyers, other technical experts and management.

(c) *Alignment of timing*

(i) Investigations that are aligned at key decision-making stages may allow for more efficient cooperation by allowing for more meaningful discussions between authorities.

(ii) Meaningful cooperation can take place even if authorities are in different phases in their respective processes. In such cases, it may still be beneficial for authorities to discuss theories of harm, factual findings and case resolutions.

(d) *Exchange of information, confidentiality and waivers of confidentiality*

(i) Information sharing between authorities (whether orally or in writing) occurs in a manner consistent with each authority's legal obligations to maintain confidentiality. An authority's commitment to protect the confidentiality of information that it receives from another authority during cooperation is a critical factor in the ability and willingness to share information.

(ii) In most jurisdictions, the consent of the party or third party that provided confidential information is usually required to enable an authority to share that information, whether orally or in writing, with another authority. While the exchange of non-confidential information can lead to effective cooperation, a waiver of confidentiality may enable more extensive cooperation, as it allows for more

informed and detailed discussions in relation to substantive assessment and possible remedies, especially in merger cases.

(iii) The decision as to whether to grant a waiver is at the sole discretion of the party that provided the confidential information. Refusal to grant a waiver does not prejudice the refusing party in the investigation. Transparency about applicable rules and practices on the handling of confidential information promotes greater understanding about the process of sharing information for both authorities and parties and may serve to encourage parties to grant waivers. Authorities can facilitate the granting of waivers by explaining the benefits of their use and through the development of model waivers.⁴

(e) *Discussions on substance and case resolution*

(i) When appropriate to the matter under applicable law, discussions on substantive issues relevant to the investigation might include but are not limited to: market definition, market dynamics, theories of competitive harm, economic theories and empirical evidence needed to test those theories, potential competitive effects and efficiencies of the conduct, as well as potential remedies.

(ii) When more extensive cooperation is expected to be mutually beneficial, authorities may discuss investigative planning, evidence gathering methodology and the manner through which particular substantive aspects and theories of harm may be investigated.

III. The role of UNCTAD in facilitating cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

15. UNCTAD is the focal point for competition law and policy within the United Nations system. The UNCTAD mandate dates back to the adoption of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980. The Set plays an important role in encouraging the adoption and strengthening of laws and policies in this area at the national and regional levels. UNCTAD assists developing countries and countries with economies in transition in adopting or revising competition legislation and policies, to align them with international best practices, as well as regional frameworks, in these areas.

16. The UNCTAD secretariat provides valuable technical assistance to facilitate and improve the level of cooperation in competition cases. It can undertake a facilitating function to assist authorities, especially those from developing countries and countries with economies in transition that desire to request cooperation from authorities that do not have well-developed relationships with such authorities.⁵

17. The UNCTAD secretariat can assist authorities with the development of confidentiality provisions and promote mutual trust among authorities that will support more effective cooperation.

18. The UNCTAD secretariat can also assist authorities by providing publicly available legal texts and guidelines that are relevant to cooperation, such as confidentiality rules, rules concerning investigations and data protection rules in other jurisdictions.

⁴ Authorities may find it useful to promulgate model waivers that seek to protect confidentiality in the context of the authorities' needs and applicable law. Authorities have found that waivers are more readily offered by parties when they address legitimate concerns regarding the exchange of information (for example, the concern that a document covered by privilege in one jurisdiction may not be privileged in another). In some jurisdictions, oral waivers may be acceptable. For a link to a model waiver, see article 6 above.

⁵ The address of the Competition and Consumer Policies Branch of UNCTAD is Palais des Nations, CH-1211 Geneva, Switzerland; tel.: 41 22 907 02 47; email: ccpb@unctad.org.

19. The UNCTAD secretariat should maintain a list of contact persons who may facilitate international cooperation at each Member State's authority, including where appropriate by identifying contacts for particular types of conduct (e.g. mergers and cartels) and identifying linguistic abilities among contacts.

20. The UNCTAD secretariat should periodically review and recommend changes to the list of works compiled by international and multilateral organizations provided in the appendix below.

21. In the case of consultations under paragraph 4 of section F of the Set:

- (a) The requesting authority may ask UNCTAD secretariat for:
 - (i) Assistance with preparing the request for consultation;
 - (ii) Advice on procedural matters within the scope of a consultation;
 - (iii) The provision of mutually agreed conference facilities by the Secretary-General of UNCTAD, if needed;
 - (iv) Guidance, especially for authorities from developing countries and countries with economies in transition, with regard to confidentiality assurances and any use of information shared in the course of such consultation, if necessary, based on the works listed in the appendix below;
 - (v) Interpretation of the provisions of the Set;
 - (vi) Participation in the consultation, upon specific request and consent by all authorities involved.
- (b) In case the assistance of the UNCTAD secretariat is needed to facilitate consultations, the scope of that assistance needs to be determined before the consultation officially begins.
- (c) Consultations should be in compliance with the laws and rules on confidentiality applicable in the jurisdictions involved.

Appendix

Section 1

Guidance from international organizations on how cooperation in particular cases can be made more effective

1. Organization for Economic Cooperation and Development, 2014. *Recommendation of the OECD Council concerning International Cooperation on Competition Investigations and Proceedings*.
 - Contains a mechanism allowing non-Organization for Economic Cooperation and Development members to adhere to the recommendation.
2. International Competition Network, 2015. Practical guide to international enforcement cooperation in mergers.
 - Provides practical guidance in the context of increased multijurisdictional mergers and multilateral cooperation.
3. International Competition Network, 2012. Framework for merger review cooperation.
 - Regularly updated. A useful tool on possible approaches for information exchange among case teams, including a framework for providing assurances of confidentiality.
4. International Competition Network, 2005. Waivers of confidentiality in merger investigations.

- Identifies and discusses issues underlying the rationale, content and use of waivers, and presents several model waivers of confidentiality.
- 5. International Competition Network, 2016. Framework for the promotion of the sharing of non-confidential information for cartel enforcement.
 - Regularly updated. A useful tool for improving international enforcement cooperation by fostering “pick-up-the-phone relationships”.
- 6. International Competition Network, 2014. Waivers of confidentiality in cartel investigations.
 - Provides a definition of waivers of confidentiality in a cross-jurisdictional context and their purpose in information sharing. Outlines distinctions between waivers and other information exchange practices and provides templates for waivers of confidentiality.

Section 2

Other background information

1. UNCTAD, 2012. Cross-border anticompetitive practices: The challenges for developing countries and economies in transition (TD/B/C.I/CLP/16).
2. UNCTAD, 2013. Modalities and procedures for international cooperation in competition cases involving more than one country (TD/B/C.I/CLP/21).
3. UNCTAD, 2014. Informal cooperation among competition authorities in specific cases (TD/B/C.I/CLP/29).
4. International cooperation in merger cases as a tool for effective enforcement of competition law (UNCTAD, 2015).
5. UNCTAD, 2017. Enhancing international cooperation in the investigation of competition cross- border cases: Tools and procedures (TD/B/C.I/CLP/44).
6. UNCTAD, 2018. Survey report on the obstacles to international cooperation. Discussion group on international cooperation.
7. International Competition Network, 2007. *Cooperation Between Competition Agencies in Cartel Investigations*.
 - Conducts a stocktaking of the various forms of cooperation between authorities in cartel investigations. Identifies some of the barriers to greater cooperation and proposes some avenues for exploration as to how those barriers might be lowered or removed.
8. Asia-Pacific Economic Cooperation, 2012. *Survey on Information Exchange on Competition in APEC Region: Phase I*.
9. Southern African Development Community, 2009. SADC Declaration on Regional Cooperation in Competition and Consumer Policies.
10. Organization for Economic Cooperation and Development, 2013. Report on the [Organization for Economic Cooperation and Development] OECD/[International Competition Network] ICN survey on international enforcement cooperation.
11. Organization for Economic Cooperation and Development, 2014. Challenges of international cooperation in competition law enforcement.

Annex II

Agenda of 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

1. Opening of the Conference.
2. Election of the president and other officers.
3. Adoption of the rules of procedure.
4. Adoption of the agenda and organization of the work of the Conference.
5. Credentials of the representatives to the Conference:
 - (a) Appointment of a credentials committee;
 - (b) Report of the Credentials Committee.
6. Implementation of the United Nations guidelines for consumer protection and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.
7. Strengthening consumer protection and competition in the digital economy.
8. International enforcement cooperation among consumer protection authorities in electronic commerce.
9. International cooperation under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices: Adoption of the guiding policies and procedures.
10. Improving consumer product safety worldwide: Good data for good policy.
11. Competitive neutrality.
12. Combating cross-border cartels.
13. Review of capacity-building in and technical assistance on consumer protection and competition law and policy.
14. Voluntary peer review of consumer protection law and policy: Peru.
15. Voluntary peer review of competition law and policy: West African Economic and Monetary Union.
16. Other business.
17. Adoption of the report of the Conference.

Annex III

Provisional agenda of the nineteenth 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 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 on competition law and policy: Malawi.
9. Review of capacity-building on and technical assistance in 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.

Annex IV

Provisional agenda of the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Report on the implementation of the United Nations guidelines for consumer protection by member States and relevant stakeholders.
4. Latest developments in legal and institutional frameworks: UNCTAD world consumer protection map.
5. Report of the working groups on:
 - (a) Consumer product safety: modalities for the prevention of cross-border distribution of unsafe consumer products;
 - (b) Consumer protection in electronic commerce.
6. Report of the working group on modalities of UNCTAD voluntary peer reviews of competition and consumer protection law and policy.
7. Consumer protection needs of vulnerable and disadvantaged consumers in connection with public utilities.
8. Consumer law, policy and regulatory actions in response to and in the aftermath of the COVID-19 pandemic.
9. Voluntary peer review on consumer protection law and policy: Chile.
10. Review of capacity-building on and technical assistance in consumer protection law and policy.
11. Provisional agenda for the sixth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.
12. Adoption of the report of the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.

Annex V

[English only]

Attendance*

1. The following States attended the Conference:

| | |
|---------------------------------------|----------------------|
| Albania | Kazakhstan |
| Algeria | Kenya |
| Argentina | Kiribati |
| Armenia | Kyrgyzstan |
| Australia | Latvia |
| Austria | Lebanon |
| Azerbaijan | Lesotho |
| Bahrain | Malawi |
| Bangladesh | Malaysia |
| Barbados | Mali |
| Belarus | Mauritius |
| Benin | Mexico |
| Bolivia (Plurinational State of) | Mongolia |
| Botswana | Montenegro |
| Brazil | Morocco |
| Bulgaria | Mozambique |
| Burkina Faso | Myanmar |
| Canada | Nepal |
| Chile | Netherlands |
| China | Niger |
| Colombia | Nigeria |
| Congo | North Macedonia |
| Costa Rica | Oman |
| Croatia | Pakistan |
| Czechia | Panama |
| Côte d'Ivoire | Paraguay |
| Democratic People's Republic of Korea | Peru |
| Democratic Republic of the Congo | Philippines |
| Dominican Republic | Portugal |
| Ecuador | Qatar |
| Egypt | Republic of Korea |
| El Salvador | Republic of Moldova |
| France | Romania |
| Gabon | Russian Federation |
| Gambia | Saudi Arabia |
| Georgia | Senegal |
| Germany | Serbia |
| Greece | South Africa |
| Guatemala | Spain |
| Hungary | State of Palestine |
| India | Sudan |
| Indonesia | Sweden |
| Iran (Islamic Republic of) | Switzerland |
| Ireland | Syrian Arab Republic |
| Italy | Thailand |
| Japan | Togo |
| Jordan | Trinidad and Tobago |

* For the list of participants, see TD/RBP/CONF.9/INF.1.

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| Tunisia | Uzbekistan |
| Turkey | Vanuatu |
| United Kingdom of Great Britain and Northern Ireland | Viet Nam |
| United Republic of Tanzania | Zambia |
| United States of America | Zimbabwe |

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

African Development Bank
 Caribbean Community
 Common Market for Eastern and Southern Africa
 Economic Community of West African States
 Eurasian Economic Commission
 European Union
 Organization for Economic Cooperation and Development
 West African Economic and Monetary Union

3. The following specialized agencies and related organizations were represented at the Conference:

International Telecommunication Union
 World Bank Group
 World Intellectual Property Organization
 World Tourism Organization
 World Trade Organization

4. The following non-governmental organizations, in status with UNCTAD, were represented at the Conference:

General category

Consumer Unity and Trust Society International
 Consumers International
 Global Traders Conference
 International Law Association
 International Network for Standardization of Higher Education Degrees
 International Organization of Employers
 Oxfam International
 Village Suisse ONG

Special category

International Ocean Institute
