



"Guiding Policies and Procedures under Section F of the UN Set on Competition"

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Topics:

1. The UN Set
2. Discussions for facilitating international cooperation under Section F of the UN set
3. Obstacles to international cooperation
4. Why "Guiding Policies and Procedures" are needed?
5. Content of the "Guiding Policies and Procedures"



1. "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (the UN Set)

- ✓ The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (1980)
- ✓ Key features:
 - Principles and rules for enterprises, including transnational corporations: enterprises should refrain from anticompetitive practices
 - Principles and rules for States at national, regional and subregional levels: enforcement against anticompetitive practices by States
 - International measures: international cooperation and exchanges of information



1. "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (the UN Set)

- ✓ Section F. International measures: "Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries, and the economic development of these countries"
- ✓ "work aimed at achieving common approaches" (para 1), consultations among States (para 4), continued work by UNCTAD on the elaboration of a model law or laws (para 5), technical assistance and advisory and training programmes (para 6)



2. Discussions for facilitating international cooperation under Section F of the UN set

- ✓ 15th session of IGE (October 2016): member States requested the UNCTAD secretariat to prepare a study on “Enhancing international cooperation in the investigation of cross-border competition cases: Tools and procedures”
- ✓ 16th session of IGE (July 2017): member States requested the UNCTAD secretariat to facilitate member States to establish a discussion group on international cooperation (DGIC)
- ✓ 17th session of IGE (July 2018): mandate of the DGIC was renewed for one year
- ✓ Ad-Hoc Expert Group Meeting on Competition Law and Policy (April 2019): consultations with all member States and relevant stakeholders
- ✓ 18th session of the IGE (July 2019): "Guiding Policies and Procedures" were adopted / member States requested the UNCTAD secretariat to disseminate them



3. Obstacles to international cooperation

- ✓ Lack of awareness on possible cooperation
- ✓ Legal restrictions
- ✓ Lack of mutual understanding, trust and interaction between competition authorities



4. Why "Guiding Policies and Procedures" are needed?

- ✓ Despite the existence of multiple international cooperation frameworks, competition authorities still face obstacles
- ✓ The "Guiding Policies and Procedures" are:
 - to promote mutual trust and understanding of each other's legal framework
 - to facilitate contact with other authorities
 - to clarify what is possible in the existing scheme especially for younger authorities with no actual experience of cooperation
- ✓ It is NOT binding, but competition authorities can use it as a "guide" in communicating with other authorities in practice



5. Content of the "Guiding Policies and Procedures"

I. Guiding Policies

II. Toolkit for cooperation in competition cases

III. The role of UNCTAD in facilitating cooperation under the Section F of the UN Set

- Annex



I. Guiding principles

- ✓ Benefits of Cooperation
- ✓ Importance to provide tools for developing countries
- ✓ Cooperation is based on mutual trust
- ✓ Significant flexibility exists in the way authorities may seek to cooperate with each other
- ✓ Key requisite of successful cooperation in competition cases is the ability to provide effective and credible assurances that shared information will be maintained in confidence and will be used only for purposes that the sharing authorities have permitted



II. Toolkit for Cooperation in Competition Cases

- ✓ Flexibility between the authorities in initiating cooperation based on each authority's relevant domestic law and policy, or mutual agreement and understanding

- ✓ Cooperation among authorities may include the following:
 - Initial contacts
 - Further communication among authorities
 - Timing alignment
 - Exchange of information, confidentiality and waivers of confidentiality
 - Discussions on substance and case resolution



III. The Role of UNCTAD in facilitating cooperation under Section F of the UN Set

UNCTAD Secretariat can assist authorities with:

- ✓ developing confidentiality provisions and promote mutual trust among authorities that will support more effective cooperation
- ✓ 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
- ✓ maintaining 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, cartels) and identifying linguistic abilities among contacts



III. The Role of UNCTAD in facilitating cooperation under Section F of the UN Set

In case of consultation under Section F. 4 of the UN Set, the requesting authority may ask UNCTAD Secretariat for:

- ✓ assistance with preparing the request for consultation;
- ✓ advice on procedural matters within the scope of the consultation;
- ✓ the provision of mutually agreed conference facilities by the Secretary-General of UNCTAD, if needed;
- ✓ 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 work products listed in the ANNEX;
- ✓ interpretation of the UN Set provisions; and
- ✓ upon specific request and consent by all authorities involved, participation in the consultation



III. The Role of UNCTAD in facilitating cooperation under Section F of the UN Set

- ✓ In case the assistance of UNCTAD Secretariat is needed to facilitate consultations, the scope of the assistance needs to be determined before the consultation officially begins.
- ✓ Consultations should be in compliance with the laws and rules on confidentiality applicable in the jurisdictions involved





THANK YOU!

<http://unctad.org/en/Pages/DITC/CompetitionLaw/Competition-Law-and-Policy.aspx>

