

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD



Guiding policies and procedures

**under section F of the United Nations
Set on Competition**



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UNCTAD/DITC/CPLP/MISC/2021/2

Note

The present document reproduces resolution B, on the guiding policies and principles under section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, and the corresponding annex approved by the Eighth United Nations Conference to Review the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held from 19 to 23 October 2020.

The official versions of resolution B and its annex are published in document TD/RBP/CONF.9/9. This reproduction is intended to be a user-friendly reference for all States.

18 February 2021

GUIDING POLICIES AND PROCEDURES UNDER SECTION F OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

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 cooperation.¹ among competition authorities² 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,

1 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".

2 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.³

Closing plenary meeting

23 October 2020

³ See TD/RBP/CONF.9/9, annex I.

ANNEX

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;⁴
 - (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.

4 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.

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 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 confidentiality⁵ or, in the case of mergers, working with authorities to align

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