REGULETTER

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Putting Sound Competition and Regulatory Policies in Place

Inside this Issue

Special Articles

Dr Supachai Panitchpakdi, Secretary General, UNCTAD, inaugurated the high profile opening session of an International Research Symposium with his insightful and erudite speech. The Research Symposium, "*Political Economy Constraints in Regulatory Regimes in Developing Countries*" was organised by CUTS on March 22-24, 2007 in New Delhi.

"Developing countries need to create effective institutional mechanisms for successful implementation of competition and regulatory policies. While market friendly reforms have become common buzzword the process has failed to stop market failures. To address these failures, a sound competition and regulatory policy needs to be put in place along with efficient enforcement mechanisms".

A sound and robust competition and regulatory policy should explicitly recognise and incorporate consumer interests and unambiguously include advocacy as a tool for promoting awareness.

It is also equally important to put appropriate institutional mechanisms in place for effective enforcement and review. If competition policy is to yield all the envisaged benefits, political will and consensus for reform is necessary.

It was emphasised that when economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries.

> "There is no perfect competition and markets cannot be left alone for determining better market access. There is a need to develop market-friendly systems for the benefit of all the stakeholders. In most developing countries, laws were drafted or applied in a business-friendly manner, which does not help economic development"
>
> ***Dr Supachai Panitchpakdi***
> *Secretary General, UNCTAD.*

Competition policy should be judged explicitly against its contribution to tackling 'the tyranny of vested interests' for poverty reduction outcomes. The problem with market is that consumers are disorganised while producers/ sellers are organised and they are able to influence the policy makers. The tyranny of vested interests, therefore, needs to be articulated, and should be used to overcome the political economy constraints. The policy makers must differentiate clearly between the public interest and vested interest.

In the concluding session Dr Bimal Jalan, MP and former Governor of Reserve Bank of India (RBI) underscored an important distinction between regulation and control and hoped that the former does not degenerate into the latter. It was concluded that competition and regulatory policies should drive the governments in developing countries, so that they could be more capable, more accountable and more responsible to deliver growth and welfare in a fair manner to citizens.

For more, see **INSERT: CUTS CCIER ACTIVITIES REPORT** *inside.*
For a webcast of the whole conference, please visit: **www.circ.in**

CUTS Centre for Competition, Investment & Economic Regulation
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Fresh Warnings

Neelie Kroes has once again warned to use her powers as European Union (EU) competition commissioner to break up the region's large, integrated energy groups, opening up a potential new front in the broader regulatory crackdown on groups such as Eon, RWE and GdF.

Kroes is a long-standing critic of gas and electricity suppliers that also control crucial transmission infrastructure, such as pipelines. She argues that integrated groups have used their grip on the networks to freeze out new entrants and stifle competition. "Ownership unbundling" – the break-up of integrated energy groups – through new legislation would take years, and is certain to face stiff opposition from some member states.

But Kroes stressed that a break-up could be imposed on individual companies as part of an antitrust decision, for example a punishment for violating EU competition rules. Asked whether forced unbundling was an option as part of an antitrust investigation, the commissioner replied: "Absolutely".

The news is of special concern for Eon and RWE of Germany, GdF of France, Eni of Italy and OMV of Austria, since they are the subject of a Commission antitrust probe. The Commission acquired the power to break up companies that violate competition rules in 2004 but has so far never used it.

The latest warning by Kroes came as she revealed the findings of a 16-month investigation into the EU markets for electricity and gas. The report painted a bleak picture of competition in the sector and the poor level of market integration. *(FT, 11.01.07)*

Coup and a Submerging Market

The Government of Thailand has announced new limits on foreign ownership of Thai companies, ignoring the pleas of foreign chambers of commerce in Bangkok and prompting yet another decline in Thai equities to their lowest level for more than two years.

The Thai Government has introduced these changes to the Foreign Business Act in the wrong way and for the wrong motives. As with its earlier blunders, it has acted without transparency or sufficient consultation. It has not even moved with the firmness and determination expected of a military-installed regime, leaving domestic and foreign investors full of doubt about the possibility of yet more changes to investment legislation in the future.

On the face of it, the announcement might look like a nationalist attempt to protect Thai companies from foreign competition, but the real reason is doubtless to punish Thaksin Shinawatra, the prime minister ousted by the coup.

He was overthrown after the controversial, tax-free sale of his family's telecoms empire to Temasek, the Singapore state holding company, for US$1.9bn. It is no surprise that telecoms is not one of the sectors exempted from the new requirement that foreigners reduce their voting rights to below 50 percent of a Thai company within two years.

The result is that the changes to the law will be bad for the business climate in Thailand. Some investors will be pushed into a forced sale of their assets.

Perversely, both Thai and existing foreign investors in most service industries will profit from discrimination against new entrants, to the detriment of competition. Above all, business will be more reluctant than ever to invest in a country where the authorities do not seem to know what they are doing.

(FT, 10.01.07)

Rise in Food Prices

Consumers will have to pay more for food in coming years as demand from biofuel manufacturers has pushed up the prices of corn and other grains for the long term, a senior economist of the US Government has warned. Keith Collins, chief economist at the US Department of Agriculture, also said grain prices could be very volatile in 2007 because of low global grain stockpiles.

According to Collins, in the past when we have seen grain prices spike, they have always fallen back because the spike was normally the result of a supply shock, such as a bad harvest, but this time it is a demand shock, which will keep prices higher.

He said higher grain prices had a knock-on effect on the livestock industry as corn, wheat and soyabeans, in the form of soyameal, are used as animal feed. Higher corn prices also affect tortilla prices in Mexico, which has forced the government to consider a price cap on one of the country's staple foods.

The strong demand for grains from biofuels has contributed to the fall in global corn and wheat stockpiles to about 25-year lows relative to days of consumption. *(FT, 05.03.07)*

Chinese Challenge

China plans to mount a head-on challenge to the dominance of Boeing and Airbus in the global market for big passenger jets by setting up a state-owned company to build the aircraft.

A statement on the Government's website said the cabinet had taken an "important strategic decision" to begin research and development to enter the market.

China is one of the biggest target markets globally for both Boeing and Airbus. The European group's latest forecast places China in second place behind only the US by both the number and value of jets needed between 2006 and 2025 with a market for 2,929 large aircraft worth US$349bn.

The move, backed by technical know-how developed over the industry's 50-year history in the country, reflected "the wish of the entire Chinese people for many years", said the statement. It did not provided details about the company or how it would be funded, nor did it set out any timetable. Boeing of the US and Europe's Airbus have a duopoly in the market for big jets of 100 seats or more.

(FT, 19.03.07)

New Competition Regime for Hong Kong

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The Hong Kong Government has announced that it had considered the results of the three-month public consultation and concluded that it was now time for Hong Kong to adopt a cross sector competition law and so by implication abandon the existing sector-specific approach that has been the favoured policy for the last decade. This is a major advance in the development of a modern competition regime in Hong Kong.

According to official sources, the new ordinance will not regulate mergers and acquisitions (M&As), at least initially, and will include clear definitions of anticompetitive practices but is not likely to tackle existing economic structures.

Civil, not criminal, penalties will be provided in the new law. Government will maintain a close dialogue with small and medium-sized enterprises (SMEs) during the passage of legislation, given their antipathy to competition law generally. Certain SME exemptions might be incorporated.

Suitable investigatory powers and provisions to protect confidential information would be included in the new law.

A new independent competition commission will be established with a supervisory non-executive board. However, the commission might not have power to sanction directly but would have to take cases to a special tribunal or the ordinary courts. The Bill would be introduced into the legislature by the end of the year, giving legislators about six months to scrutinise the scheme. This would allow the new law to be finalised before September 2008 elections to the Legislative Council.

This is clearly a welcome news but there are a number of potentially problematic issues. Firstly, many observers contend that the domination of the Hong Kong domestic economy by a small number of family controlled conglomerate firms that generally try to contract with group members, rather than outsiders, is a major structural barrier to entry to many goods and services markets in Hong Kong. This structural impediment would not be addressed in the current proposal except anticompetitive conduct that would be unlawful.

Secondly, the desire for clarity in relation to prohibitions might inhibit an evidence-based economic approach for the assessment of harm especially in dominance cases. Clarity of prohibition might oust economic efficiency and this would be both unfortunate and contrary to the government stated competition objective i.e. 'enhancement of economic efficiency and the free flow of trade, thereby also benefitting consumer welfare'.

Thirdly, any exemptions of SMEs conduct should be very carefully drafted and should not include hard-core cartel practices.

Fourthly, the absence of an M&As regime might signal to existing cartel operators that as their activities would become unlawful as separate entities under the new law, merger to form dominant firms would be the logical course of action. Government needs to be persuaded of this danger and to include M&A provisions in the ordinance.

Finally, the commission should have complete purview of all sectors, including the communications sector which is currently governed by a sectoral competition regime and the choice of internal sanctioning powers or a prosecutorial function should be very carefully examined, especially given the probable extra cost and additional length of time to dispose of cases that a prosecutorial system would imply.

At the very least a competent specialist tribunal is needed, not taking first instance cases to the ordinary courts that have no experience at all in competition matters. This would be a serious structural error and might seriously impair the effectiveness of the system.

Government is now in the process of appointing consultants to assist in the preparation and drafting of legislation. The next 18 months will see the establishment of a new competition regime in Hong Kong which will enhance the city's claim to be Asia's World City. *(www.polyu.edu.hk, 27.03.07)*

Seeking Antitrust Action on Payment Cards

Retail banks and credit card companies in the EU face sharp criticism from the region's top antitrust regulator following an inquiry that found evidence of artificially high fees, anti-competitive practices and a lack of cross-border competition.

According to an investigation by the bloc's executive body, EU's 500 million consumers are getting a raw deal from banks and card companies. The inquiry shows that markets are fragmented along national lines with a wide variety of profit margins and prices among EU member states but not within countries. The study further uncovered competition concerns over payment systems, credit registers, cooperation between banks and setting of prices and policies. The report details that in some member states the combination of high profits, a high level of concentration and the existence of barriers to market entry is worrying, with the banks being able to abuse their market power towards consumers and small businesses.

Brussels warned that the high degree of co-operation between these banks, including the refusal to compete with each other in local markets, may raise antitrust concerns, and promised closer scrutiny of the banks and of national laws that protect them. *(FT & ET, 31.01.07)*

End of Export Monopoly

The Australian Government has ended the Australian Wheat Board's (AWB) export monopoly by authorising domestic grain producers to export their own wheat.

This follows a decision earlier to suspend AWB's export monopoly for six months after the company was found guilty of paying US$240mn in kickbacks to Iraq in return for wheat contracts under the UN oil-for-food programme.

Terence Cole, the judge who led the inquiry into the Iraq bribes, also recommended criminal charges against 11 former AWB executives.

The loss of control over exports is a huge blow to AWB, as Australia accounts for about 14 percent of wheat trade worldwide.

Official sources denied that the scrapping of the monopoly system would reduce Australia's clout and price bargaining power on world markets.

Further, granting these permits will not in any way impact the price of the national pool. This is, to a significant degree, a compromise between those who are passionate supporters of a single desk and those who would want instant deregulation.

(FT, 01.01.07)

Fined Over Sales Practices

South Korean regulators fined Hyundai Motor, the country's biggest automaker, US$24.8mn for violating competition rules by putting excessive pressure on its independent car dealers to promote sales.

The Fair Trade Commission (FTC) decided to fine Hyundai and order it to correct its practices after a nine-month probe found that the carmaker had imposed excessive sales targets on independent sales agents and had threatened not to renew contracts with dealers who failed to meet their targets.

"Hyundai used its monopolistic market status to set excessive annual sales targets for car dealers while restricting the dealers' freedom to move to other areas or to recruit salespeople", the anti-trust watchdog said in a statement.

Based on a labour agreement covering staff at company-owned dealerships, Hyundai barred independent dealers from changing location or adding staff without its approval.

The US$24.8mn fine is the second-largest imposed on a company for abuse of a dominant market position.

(FT, 18.01.07)

Coordinating Gas Supplies

Russia and Qatar have discussed establishing a mechanism to coordinate the supply of natural gas across the globe. Russian President Vladimir Putin said that Moscow did not "reject the idea of creating a gas cartel and establishing a forum of gas suppliers required deeper study".

"Whether we need a natural gas cartel) or not is a different subject but natural gas producers should coordinate their activities", he said.

He said it was "very important for us to understand each other, cooperate with each other, develop unified approaches in creating common conditions for [gas] producers and establish a system of relationships with consumers".

Apart from Russia and Qatar, Iran and Algeria are also among the major producers of natural gas. In January 2007, Iran's Supreme Leader Ayatollah Ali Khamenei had proposed the idea of a gas cartel. *(TH, 14.02.07)*

Targeting Flat-Glass Cartel

Pilkington, Saint-Gobain and at least two other glass manufacturers have been formally charged for their alleged involvement in a price-fixing cartel, making it very likely that the groups will be fined by the European Commission (EC) later in 2007.

The EU's top antitrust regulator said that it had sent a statement of objections outlining the accusations to a number of groups "regarding their alleged role in a cartel for flat glass".

If the charges are confirmed in a final ruling – which has happened in the vast majority of cases – the groups would have to face fines of up to 10 percent of their global annual turnover.

Although it is rare for EC to impose the maximum penalty, it has recently pursued a policy of drastically increasing the financial pain for companies that fall foul of competition rules. *(FT, 15.03.07)*

Illegal State Aid

The EU has raised the pressure on Switzerland to abolish tax breaks for companies that move their offices there, warning that the schemes constituted illegal state aid and violated bilateral agreements.

The move reflects frustration in European capitals that a growing number of multinationals choose to locate their headquarters or distribution centres in Switzerland, with US corporations at the forefront.

The Swiss Government rejected the EC's argument as "unfounded", and


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said there were no contractual regulations between Switzerland and the EU on harmonising corporate taxation, thus making infringements impossible.

Brussels believes that companies are drawn to Switzerland not least because of favourable tax rules that would be prohibited under EU law. It is targeting in particular a law that allows Switzerland's cantons to exempt profits generated abroad from regional and local company taxes.

The EC said these tax breaks had provided a "formidable incentive" for multinational groups to locate their headquarters or distribution centres in cantons such as Zug and Schwyz to "minimise their tax liabilities".

The EC opines that Switzerland's repeated refusal to amend the tax rules violated a 1972 agreement in which both sides promise not to hand out subsidies that distort competition.

(FT, 14.02.07)

Offices Raided

The antitrust problems that have engulfed Siemens and several of its engineering rivals deepened when the EC raided the offices of several manufacturers in Germany, France and Austria in connection with a cartel probe.

Brussels said the groups were suspected of forming a price-fixing cartel in the market for transformers, key components in the power grid in controlling voltage.

Siemens said in a statement that the Brussels antitrust watchdog was investigating five companies, and added: "The EU Commission is investigating collusion in the area of power transformers in Germany, Austria and the Netherlands between 1999 and 2003".

The raids are deeply troubling the groups involved, coming weeks after Siemens, ABB, Alstom and other engineering companies were found guilty of operating another cartel in the market for electricity transmission systems.

The groups were together fined a record US$978mn with Siemens alone accounting for US$541mn of the total.

(FT, 14.02.07)

Crackdown on Bid-rigging

Japan's anti-competition authority has launched an investigation into three leading construction companies, alleging they colluded to rig bids for a big subway project in the city of Nagoya. The raid on the companies' offices is the first big bid-rigging case to have emerged since a tougher anti-monopoly law was enacted last year.

For decades, *dango*, an institutionalised form of bid-rigging that distorted competition for public works contracts and froze foreign companies out of the market, was accepted by authorities as a necessary evil. The crackdown has come as Japan's budget for public works projects has shrunk as the country tries to restore its finances. It has also coincided with growing public outrage over bid-rigging on public works projects subsidised by Japanese taxpayers. In a recent editorial, Japan's leading business daily, *the Nikkei* Newspaper, declared that "construction companies are deeply imbued with a culture of sleaze in which bid-rigging to divvy up juicy public works contracts is the norm". *(FT, 26.01.07)*

Pushing for Antitrust Immunity

Five members of the SkyTeam airline alliance plan to revive their bid to secure the antitrust immunity needed to expand their transatlantic co-operation, in spite of an impasse over liberalising air services between US and EU.

The US regulators in 2006 blocked the immunity request by SkyTeam's leaders – Air France-KLM, Delta and Northwest – arguing it could have an anti-competitive "spill-over" in the domestic US market.

Antitrust clearance is highly-prized in an industry now dominated by three global alliances, because it allows carriers to co-ordinate marketing, schedules and pricing, and share the revenues from routes operated on a joint or code-sharing basis.

Analysts opine that expanded immunity would be particularly useful for the two US carriers, which are both looking for higher revenues and margins from international expansion as part of their separate efforts to emerge from bankruptcy protection by mid-2007.

Northwest and KLM have enjoyed antitrust protection on international services since 1993, while Delta secured immunity for co-operation with Air France, Alitalia and CSA of the Czech Republic in 2002. The 2004 merger of Air France and KLM led the SkyTeam members to push for their partnerships to be combined under a single immunised umbrella.

The effect of alliances on competition remains under scrutiny on both sides of the Atlantic, and improved regulatory co-operation forms part of the stalled US-EU "open-skies" discussions. *(FT, 20.02.07)*

Retail Cartel in Fuel Market

The Italian Competition Authority has decided to open an investigation into an alleged cartel in the fuel retail distribution sector. The Authority claims that petrol companies have established parallel pricing practices involving exchanges of information and price signalling.

The investigation was initiated in response to a complaint received from a road carriers' association about alleged parallel pricing behaviour in the fuel distribution market. The Authority claims that parallel pricing has been achieved by exchanges of information conveyed by a third party which is independent of the companies charged with anti-competitive behaviour. Frequent press releases and role of special trade magazines, for example, *Staffetta Quotidiana* that covers the energy market, including trends in petroleum product prices transmitted information by way of publishing detailed data on price differentials that would not otherwise be publicly available.

It will be interesting to see how the Authority attempts to demonstrate that the companies' alleged parallel pricing behaviour cannot be justified in light of the oligopolistic structure of the market and the price transparency created by the government's regulations.

This is the first case in which the Authority has dealt with the highly controversial issue of price signalling. The outcome of the case is expected to establish new rules on the relationship between market operators which may be vitally important for the marketing and pricing policies of firms, especially those operating in oligopolies.

(ILO, 15.02.07)

Curbing *Chaebol* Abuses

In the 1960s and 1970s, South Korean *chaebol* propelled the country's explosive growth, helping to transform it from one of the world's poorest countries into an Asian tiger.

Now, South Korea is the world's 10th largest economy yet the family-run conglomerates have become what some see as untameable beasts in need of reining in.


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"The *chaebol* have become too powerful", argues Kwon Oh-seung, the chairman of the Korean Fair Trade Commission and the anti-trust regulator leading the charge to stop what he sees as the conglomerates' distortion of the Korean economy.

But rather than pursue a crackdown on the *chaebol*, South Korean government is pushing a plan to ease the regulations that govern the conglomerates and the often tangled shareholding structures via which their controlling shareholders control vast industrial empires, often with formal shareholdings of five percent of less.

The National Assembly is due this month to consider a change that would see the number of companies subject to cross-shareholding restrictions fall from 343 units of 24 *chaebol* to just 24 companies belonging to seven groups.

South Korean chaebol, the family-run conglomerates, which had once propelled the country's explosive growth, helping to transform it from one of the world's poorest countries into an Asian tiger, have now become what some see as untameable beasts in need of regulation.

Under the current regulations, *chaebol* affiliates with assets of more than US$2.14bn belonging to groups with assets of more than US$6.46bn are prohibited from holding more than 25 percent of shares in an affiliated company.

Under the proposed revision, only *chaebol* with assets of more than US$10.76bn will be affected. Furthermore, the cross-shareholding limit will be relaxed to allow companies to hold up to 40 percent in affiliates.

The Finance Ministry says the move is intended to encourage corporate investment, which is forecast to slow sharply because of economic uncertainties caused by the strong Won and December's presidential election.

The view is backed by industry groups. According to the Federation of Korean Industries, the country's 30 largest business groups expect to invest US$55.99bn this year, only 0.6 percent more than in 2006.

The finance ministry argues that any efforts to tame the *chaebol* would potentially hobble an already slowing economy.

Indeed, within South Korea there is a fear that the country's gross domestic product (GDP) would not grow without the *chaebol*.

But Kwon, whose efforts to push through stricter cross-shareholding limits have been stymied by the government, argues the new rules will simply help distort the Korean economy further. Kwon says the current limits can already see affiliates control 40-45 percent of a *chaebol* company while owners technically hold just five percent.

"The affiliates of large business groups can survive even if they are not competitive", he says. "I wanted to make the market function properly so that all those who make quality goods can survive in the market". Many analysts say it is time for Korea to wean itself off its dependence on both the chaebol and on manufacturing, for it to start developing the service sector, and to allow small and medium size enterprises – which employ 80 percent of the working population - to grow.

The huge size of the *chaebol* is being called into question, especially as Samsung and Hyundai Motor prepare to install third-generation chairmen, a process aided by complex webs of cross-shareholdings.

Kwon argues that in Korea "power is concentrated in too few hands", singling out Samsung, Hyundai Motor, Hyundai Group, LG, SK and Doosan as the main offenders. Samsung, the biggest *chaebol*, now has more than 60 affiliated companies – ranging from hotels and a securities trader to shipbuilding and petrochemicals – and accounts for almost a quarter of the Korean stock market's capitalisation and more than 20 percent of total exports.

"When I compare Korea with other countries, like the US, the UK, Germany, I see that large business groups here have the power to hamper the functioning of markets so I am very concerned", Kwon says.

The *chaebol* have vehemently resisted attempts to curb their power. Lee Seung-chol of the FKI *chaebol* club argues that the restrictions on large business that the FTC wants to pursue are simply "wrong".

"Even though big companies dominate the domestic market they do not dominate international markets. In a global, open economy, market share does not equate to market power", he says.

But analysts see logic in Kwon's calls for stricter monitoring. "The resources that the *chaebol* can deploy are massive compared with their potential competitors", says Hank Morris, a business consultant in Seoul. "So it makes sense for the government to play referee and be on the look-out for dirty tricks".

The Article appeared in the Financial Times, February 05, 2007.

Cross Border Bank Mergers

Cross-border banking mergers in the EU will face fewer regulatory obstacles, after member states and the European parliament agreed to back a law that will curb the powers of central banks to interfere in such deals.

The deal paves the way for far-reaching changes to EU banking legislation.

Central banks will now be forced to complete their review of a cross-border merger within 60 days. They will only be allowed to block or hold up deals under tightly defined conditions to avoid mergers falling through for arbitrary or protectionist reasons.

Under the current regime, central banks and other financial supervisors enjoy sweeping powers to scrutinise mergers and takeovers between companies in the financial sector. Although they are only entitled to check whether a deal poses a risk to financial stability, the EC believes that in some cases the banks have gone beyond their powers to thwart bids for protectionist reasons.

The overhaul of EU's banking laws reflects more general concern about protectionist policies in some member states.

Over the past few years, a number of large cross-border deals have faced hostility from national regulators and governments, and the EC has watched this trend with growing alarm.

(FT, 01.03.07)

Investors Creating History

Shareholders in Tokyo Kohtetsu, a Japanese steelmaker, made corporate history when they became the first group in the country to successfully stop a merger that has been approved by the company's board.

The shareholders who opposed a proposal by Tokyo Kohtetsu's board to merge with Osaka Steel through a share swap succeeded with about 33 percent of the votes in a proxy solicitation led by Ichigo Asset Management.

The board of Tokyo Kohtetsu, one of Japan's largest independent electric furnace steelmakers, had proposed a mandatory share swap of Tokyo Kohtetsu shares for shares in Osaka Steel, majority owned by Nippon Steel.

The merger proposal, which would have offered a premium of virtually zero above the previous one-month average of Tokyo Kohtetsu's share price, triggered outrage among individual investors in Tokyo Kohtetsu in particular, who voiced their anger mainly in online chat rooms.

Disgruntled shareholder expressed dismay at the terms of the deal and had called for an activist fund to come to the rescue. *(FT, 22.02.07)*

Omen for Gulf Consolidation

The expected merger of two Dubai banks is raising hopes that the Gulf financial services industry is set for a wave of consolidation as local institutions ready themselves to compete on the international stage, according to bankers in the region.

National Bank of Dubai and Emirates Bank International are in talks to create a giant Dubai Bank that, with US$45bn in assets, would become the largest lender in the oil-rich Gulf, an area riding a crest of liquidity after a five-year oil market bull run.

The creation of yet unnamed bank has received a unanimous welcome, with bankers sensing an end to the fragmented, overbanked United Arab Emirates market, and anticipating cross-border consolidation within the Gulf's financial services industry.

Analysts have long said the UAE, with 46 local and international banks serving the rapidly growing 5m population, is ripe for consolidation. But few bank owners have wanted to cede control.

According to sources, this particular marriage of two stalwart Dubai banks is a good match as their differing strengths should complement each other.

NBD is known to serve the richer retail market and handle government corporate mandates, while EBI has a more mass-market retail approach while lending to the private sector and SMEs

(FT, 10.03.07)

Enforcing New Guidelines

Japan's new merger guidelines which is expected to come into force in April 2007, have provoked criticism as they will allegedly ease the merger hurdle for domestic companies, requiring fewer cases to be scrutinised by the FTC.

However, the head of Japan's FTC, the country's anti-monopoly watchdog, has said that the new merger guidelines are not designed to create Japanese "national champions" or stifle foreign competition.

From April 2007, the Commission will begin to use the Herfindahl Hirschman index, a standard used in US and EU that measures concentration of market power.

In the past, the FTC put emphasis on the combined domestic market share of the companies merging, in principle limiting the post-merger market share to 25 percent. Under the new guidelines, the regulator will also measure import pressure from foreign companies, whereas in the past it limited the scope of the market to Japan.

The watchdog opines that competition is getting severe for Japanese firms in the global market. They have to restructure their business model and use M&A as a tool to make corporations more efficient.

Under the new guidelines, fewer proposed mergers would be subject to review by the FTC. Observers have voiced concern that the regulations will come into force almost concurrently with new legislation that will allow foreign companies to use shares to merge with public Japanese companies. Critics say the FTC's rules could make it easier for a Japanese company to rescue a peer if it becomes the target of a foreign bid. *(FT, 18.02.07)*

Satellite Radio Merger

Whenever a duopoly proposes to become a monopoly, politicians, consumer advocates, economists and regulators are understandably suspicious. So not surprisingly, the proposed merger between XM and Sirius, the only two US satellite radio operators, has met considerable hostility on Capitol Hill, in the press, and even from the chairman of the Federal Communications Commission – which made it clear 10 years ago, when the companies secured their licences that it wanted them to remain separate.

But 10 years is a lifetime in the Internet age: the market for audio entertainment has been transformed in that time. Those who love radio, and music more broadly, now have many choices that were scarcely dreamt of in the early era of the world wide web (www). Tens of millions of Americans get their entertainment now from iPods, or mobile phones, or Internet radio, or high-definition radio, or from sources that many politicians – and not a few regulators – scarcely understand.

The key question in evaluating any US merger is market definition: what market do the companies compete in, and how will competition be affected if they merge? When it comes to XM and Sirius, that question is unusually difficult. It seems obvious that there are many alternatives to satellite radio: indeed, one study quoted in recent Congressional hearings on the merger showed that satellite radio listening represents only around three percent of all radio listening, and that satellite listeners spend twice as much time listening to other forms of radio (terrestrial or internet) than to satellite. Also, that study took no account of the ubiquitous iPod - surely the main source of music for many Americans.

Those figures suggest that, in the larger scheme of things, it matters little whether there is one US satellite radio operator or two. Consumers have many alternatives if the merged company throws its weight around: in a world with thousands of free Internet radio stations, tens of millions of iPods and countless unknown technologies on the horizon, it is hard to see two companies with a combined three percent market share as a stifling monopoly.

But that depends on whether consumers consider Internet radio and mobile phones and iPods a real alternative to satellite, with its live sports feeds and Sirius talk-show host Howard Stern. It is not clear yet whether they do: but a decision on the merger cannot be taken without knowing the answer.

XM and Sirius say their merger would be good for consumers, because they could get both Howard Stern and Oprah Winfrey, without having to choose between them.

That claim may or may not be true, but what is clear is that this is only the first of many such tough merger decisions to come. As the Internet age matures, the nature of competition changes. Regulators need to look not just at competition past, but competition future. *(FT, 09.03.07)*

Spelling Price Stability

Price fluctuations in the steel market would become a thing of past. The consolidation phase in the steel industry is likely to add stability to the industry with the emergence of 10 large players controlling almost 35 percent of the global market by 2010, the Boston Consulting Group has said in a report on the steel industry launched on March 08, 2007.

The report entitled “Beyond the Boom: The Outlook for Global Steel”, has said that consolidation would mean that there would be three or four players producing more than 80 million tonnes, and five or six players producing between 40 million and 60 million tonnes of steel annually.

While the consolidation would bring stability in the market as large players could prevent sharp fluctuation in prices through production cuts, it would also open the doors for further M&As where a substantially large company would also be vulnerable to a take over bid.

“More M&As will be stimulated by the current combination of mostly moderate valuations and high earnings.

Even large, successful companies whose shares win high valuations are in danger of becoming acquisition targets now that the Arcelor-Mittal merger has created a market leader three times the size of the new company’s nearest competitor”, the report has said.

It has said that the trend toward inter-regional mergers is expected to continue with steel makers in developed countries using facilities in low-cost countries to make structural improvements in their upstream cost positions. and increase in demand for high-quality steel products from important customers such as automotive and appliance manufacturers.

The report predicts that the world-wide steel industry will achieve significant growth of three to four percent per year through 2015, reaching 1.55 billion to 1.7 billion tonnes annually. *(ET, 09.03.07)*

Anti-corruption Strategy

The World Bank's (WB) board of member countries have unanimously agreed to a heavily revised version of the anti-corruption strategy.

As per the revised strategy, WB needs to win support, stay engaged and not pull out of countries where there are corruption problems, and should work primarily through national governments and existing forums for consulting society at large.

Further, there is also commitment on the part of the WB to help make it easier to recover money stolen by corrupt officials and held in developed country banks.

WB sources said that the revised strategy would ensure the Bank's scaled-up engagement with the watchdog grassroots groups, parliamentarians and the media, while also working with the political leadership to root out corruption in all areas. *(FT, 22.03.07)*

Climate Change Hots Up

Climate change could be the biggest global risk facing many companies and chief executives who are not worried about it should be, according to Marsh, the risk and insurance unit of Marsh & McLennan.

The growing globalisation of commerce only amplifies the potential impact on business, Brian Storms, Chief Executive, Marsh & McLennan. Large-scale risks of this kind were increasing, he said, and companies needed to look at them "in a far more strategic way than they ever have in the past".

Marsh is working with former US Secretary of State Madeleine Albright's consulting firm to bring that message to companies and governments around the world. Other risks on the Storms-Albright agenda include terrorism, pandemics and earthquakes. But Albright also puts climate change near the top of the list. *(FT, 14.03.07)*

A System for Paying Bribes

Siemens had a system for paying bribes in its power generation unit and many people at Europe's largest engineering group knew about it, a former manager told a court. The two former managers on trial admitted that bribes had been paid to executives at Enel, the Italian power company, to win up to US$613mn in contracts but both denied charges of bribery and breach of fiduciary duty.

Siemens, which declined to comment, could under German law be told to pay a fine for the profits it gained through the contract if the two are convicted.

The former managers' testimony raises questions about how widespread alleged bribery was at Siemens and whether management did enough to stop it, or may even have tolerated it. *(FT, 14.03.07)*

Improving Business Climate

India and neighbouring countries did less to improve their business environment than any other region in 2005/2006, according to a study by the WB.

The report provides investors with a timely reminder of the underlying difficulties that still face business in India, ranked a lowly 134 out of a total of 175 countries around the world.

Indian Government has been struggling to relaunch a stalled programme of economic reforms, leading to fears that the country is growing faster than its underlying potential and will struggle to sustain a pace of expansion that has averaged more than eight percent over the past three years and may exceed nine percent in 2007.

"The pace of reform was slower in South Asia in 2005-06 than in any other region. Reform is sorely needed", the WB report, entitled *Doing Business in South Asia 2007*, said.

In a blow to a government determined to match Chinese growth rates, the report noted that China, ranked 41 places ahead of India, was "reforming at a faster pace". The WB has calculated that 85 percent of all business-friendly measures in top-reforming economies are enacted within the first 15 months of a new government.

The WB survey assesses a country's business environment according to 10 indicators: ease of starting and closing a business, hiring and firing workers, enforcing contracts, getting credit, registering property, protecting investors, dealing with licences, paying taxes and trading across borders. *(FT, 14.02.07)*

Ruling on Liability for Fraud Losses

US courts would consider approving a legal theory thought up by plaintiffs' lawyers that could put banks, lawyers and business partners on the hook for billions of dollars when a public company goes bust as a result of fraud.

The fifth circuit federal appeals court in New Orleans will take up the issue of "scheme liability" when it hears arguments on whether Enron's shareholders can pursue a class action against Credit Suisse, Merrill Lynch and the Vinson & Elkins law firm.

Banks and lawyers have hitherto been protected by a 1994 Supreme Court decision that says shareholders cannot recover money from companies and people who simply "aided or abetted" securities fraud.

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But the recent corporate scandals prompted plaintiffs' attorneys and angry investors to look for a way round that rule. They argue that the banks and lawyers participated in a "scheme" to hide Enron's losses from investors and, therefore, should be held "primarily responsible" for the company's collapse. *(FT, 05.02.07)*

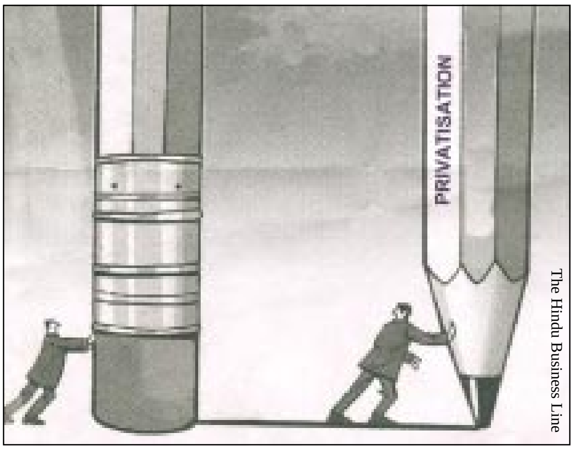
Nigeria Privatises its Electricity Industry

The Nigerian Bureau of Public Enterprises has recently announced plans to privatise three power generation plants. The privatisation process is the culmination of the reform framework laid out by the Electric Power Sector Reform Act. Before the coming into force of the Act, the electricity industry operated essentially as a monopoly, with the state-owned Nigeria Electric Power Authority dominating all aspects of the electricity industry. The passage of the Act has allowed the authority (which was renamed the Power Holding Corporation of Nigeria) to be unbundled along operational lines and laid the foundation for privatisation.

Unbundling Power Holding Corporation

Following the coming into force of the Act, the Power Holding Corporation of Nigeria was established as an initial holding company to assume the assets and liabilities of the authority.

The Act empowered the National Council on Privatisation to make a vesting order by which all assets and liabilities of the authority were transferred to the corporation.



The Act also provided for the transfer of employees from the authority to the corporation and the Nigerian Electricity Regulatory Commission. Further, after an interim period successor companies were created in accordance with the provisions of the Act.

These successor companies broadly reflected the operational divisions of the electricity industry – generation, distribution and transmission. Six generation companies (hydroelectric and thermal) were created, as well as 11 distribution companies and one transmission company.

Privatisation of Generation Companies

In the immediate future three generation plants at Ijora – a gas-fired plant with an installed capacity of 60 megawatt (MW), Oji River – a coal station with an installed capacity of 30MW and Calabar –a diesel-fired station with an installed capacity of 6.6MW – will be privatised through a sale to strategic investors.

The key criteria for pre-qualifying investors are as follows:

1. experience in power generation and operational expertise in utilities;
2. demonstration of capability to continue power generation business operations at the relevant plant without altering or converting any of its properties or assets into businesses other than power generation;
3. capacity to improve electricity generation on a year-to-year basis;
4. evidence of capacity to raise funds that will be utilised in the operation and expansion of the generating plants;
5. ability to generate and maintain a cost-effective tariff structure; and
6. capacity to manage the health, safety and environmental issues arising from the operation of the generation plant in accordance with International Organisation for Standardisation (ISO).

There are no restrictions on foreign ownership of the generating plants; however, cross-ownership without the prior consent of the Electricity Regulatory Commission (ERC) is not allowed in the Nigerian electricity industry. Therefore, potential investors that also aim to invest in Nigerian distribution and transmission companies in the future must take this factor in consideration.

Distribution and Transmission Companies

In addition to the privatisation of the generation plants, the Government also intends to privatise the 11 distribution companies unbundled from the Power Holding Corporation of Nigeria.

This would also be achieved through sale to strategic investors and, in some cases, through the award of management contracts to experienced electricity operators. The transmission company is the only company required by law to remain wholly government owned. However, in order to take advantage of the private sector's technical and management expertise, the transmission company would also be privatised through the award of a management contract.

Conclusion

This year promises to be a pivotal year for the Nigerian electricity industry. However, the success or otherwise of the Government's privatisation plans hinges on its ability to explain the intended structure of the electric power sector and the proposed tariff regime. *(ILO, 17.01.07)*

Electricity Sell-Off Postponed

The Turkish Government has postponed the privatisation of parts of the country's electricity distribution network amid fears that it would lead to higher prices for consumers in a general election year.

According to official sources, the privatisation of three distribution companies, including one in Istanbul, would not take place before the election as the government "do not want to address such a vital issue as electricity privatisation in a rush".

The postponement of the privatisation plans may fuel concern that the government's commitment to structural reform, including ending distortions in electricity pricing, will weaken during what promises to be a bruising election campaign.

Turks already pay some of the highest prices in the world for energy, especially petrol. Uncertainty about the government's intentions added to pressure on the Turkish financial markets, already buffeted by global trends in recent days.

Observers said the decision to postpone was a sign of how politics was starting to dominate the agenda this year after four years during which the focus was on stability and structural, social and political reforms.

(FT, 10.01.07)

Stepping up Privatisation

Pakistan is planning to step up the pace of its privatisation programme in 2007, starting with the completion of the delayed sale of Pakistan State Oil (PSO), the oil marketing company, according to the country's privatisation minister.

Offical sources quote that the government had resolved issues relating to the PSO sale that had worried prospective investors, including the status of about US$125m owed to the company by other Pakistani companies. As such, the government hopes to go to the market and complete this transaction in 2007 [Pakistan's financial year, which ends in June].

PSO controls more than two-thirds of the sale of petroleum products in Pakistan and is thought by many analysts to have potential for fast growth driven by Pakistan's economic recovery, now in its third year. In the past five years, PSO's government-appointed management has taken steps to bring it in line with privately owned companies, including revamping petrol stations by introducing facilities such as convenience stores.

Western economists believe that Pakistan's privatisation plans are very impressive, but if Pakistani politics comes into the picture, there is reason to be concerned over upcoming uncertainty. *(FT, 02.01.07)*

Nationalisation Plans

Venezuela has announced plans to nationalise its electrical and telecommunications companies, pledging to create a socialist state in a bold move with echoes of Fidel Castro's Cuban revolution.

"We are moving towards a Socialist Republic of Venezuela, and that requires a deep reform of our national constitution", said President Hugo Chavez.

"We are in an existential moment of Venezuelan life. We are heading towards socialism, and nothing and no one can prevent it".

Chavez, who will be sworn into a third term that runs through 2013, also said he wanted a constitutional amendment to eliminate the autonomy of the central bank and would soon ask the national assembly, solidly controlled by his allies, to give him greater powers to legislate by presidential decree.

(FE, 10.01.07)

Privatising Oil & Gas

Communist-run Vietnam plans to privatise more than 100 state-owned firms this year and next, including the oil and gas industries.

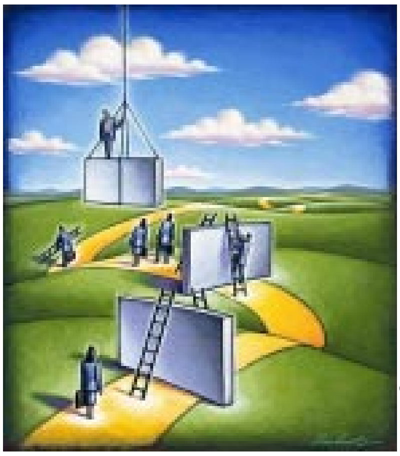
Speaking on the sidelines of a regional summit in the Philippines, Prime Minister Nguyen Tan Dung said that Vietnam would boost transparency to attract more foreign investment.

According to official sources, Vietnam plans to privatise or equitise all 104 companies, including Vietnam Airlines and the oil and gas industries in 2007 and 2008.

(FE, 13.01.07)

Brazil 'must lift barriers' to Investment

A new report by the WB points to a serious shortage of infrastructure investment in Brazil and calls for the removal of regulatory barriers to private sector investment that it says is essential to revitalise the sector.



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The report will add to concern that the government has recently announced plans to boost economic growth primarily through public sector investment will fail to match expectations and leave the country falling further behind its emerging market peers.

The WB says that investment in infrastructure in Brazil is running at about one percent of Gross Domestic Product (GDP), far short of the 3.2 percent it says is necessary to prevent further deterioration of structures and services, assuming annual GDP growth of only two percent.

The report does not detail what level of investment would be needed to achieve this growth, but says that adding four points to annual GDP growth would require spending on infrastructure equal to between five and nine percent of GDP.

The government's growth plan, known as the PAC, calls for public and private sector investments of US$241bn between 2007 and 2010.

The report highlights the need to reduce uncertainty caused by imprecise laws and changes in policy, to improve the quality of concession contracts and bolster the performance of regulatory agencies to reduce the risk of arbitrary interpretations of laws and contracts. *(FT, 01.03.07)*

Liberalisation Plans Sparks Nationwide Agitation

Italian petrol service station operators announced a two-day strike in protest at a proposal by the centre-left government to open the sector to more competition.

The planned strike illustrates how privileged interest groups are resisting government's efforts to boost Italy's low economic growth rates by liberalising protected professions and services.

Three months after winning April 2006 general election, Italian Prime Minister and his colleagues decreed the abolition of barriers to competition in areas as diverse as legal services, taxi driving and bread-baking. In the second phase of their campaign, they are taking aim at such targets as insurance companies, hairdressers and petrol station operators, all of which benefit from practices that keep prices high and competitors out.

Of the EU's five biggest member states, Italy has the largest number of petrol stations, the fewest offering self-service and the highest petrol prices. Other than on motorways, petrol stations have limited opening hours.

Italy's antitrust authority released a report that said drivers would pay lower prices for petrol if the sector was opened up to more competition, particularly from supermarkets. In a reaction similar to that of Italy's taxi drivers last July, the petrol station operators have responded furiously, threatening to shut down pumps for millions of drivers.

Similar unrest is brewing among insurance companies, whose influence was weakened in July when the government ordered agents to offer car insurance from more than one provider.

The government now wants this initiative to cover all types of insurance policy. However, Ania, Italy's insurers' association, has complained to the EC, saying the measure will merely tempt agents to sell policies carrying the highest commissions.

Hairdressers have yet to show resistance, but may do so if the government proposes getting rid of the practice by which most salons are closed on Mondays. A more formidable obstacle lies ahead in the form of sectors such as electricity and gas, where the privatisation of state enterprises has not brought genuine competition or lower prices.

Pier Ferdinando Casini, a centre-right opposition leader, said, "The 1990s taught us that privatising with out liberalising leads only to the substitution of private monopolies for public monopolies, feeding profit and power. Italy suffers from a serious backwardness in strategic sectors, with the result that our prices are among the highest in Europe but the quality of services does not improve".

(FT, 22.01.07)

Urged to Probe Privatisation of Utility

China's central government is being urged to investigate possible illegal transfers of shares in the privatisation of one of the country's biggest power companies in a case that could have significant political fallout.

Control of the Luneng Group, in Shangdong province, was acquired by two Beijing-based private companies for US$480mn in 2006 after a complicated restructuring in which shares were issued to employees and bought back by the new owners. The two private companies are controlled by two individuals, both of whom are under 40, with no significant public profile and apparently little senior experience in the power industry.

Caijing, a leading financial magazine, reported in a cover story that Luneng's sprawling assets, which include power stations, property, mines and sports teams, were more properly valued at US$9.5bn. Caijing came under heavy pressure not to run the story this month, and the Chinese press has since been silent on the issue, on orders from the Propaganda Ministry, the Communist party body that controls the media.

Attacks on Luneng have continued, however, on the Internet, and focused on the group's ties to the State Grid Corp, which has grown into one of China's biggest companies through its control of 80 percent of the country's power transmission assets.

Luneng has denied any wrongdoing, and attacked Caijing, asserting that the restructuring had been carried out "strictly" in accordance with the "relevant laws". Luneng did not comment on the valuation issue, but said its new ownership structure was "clear". State Grid refused to comment.

Wu Jinglian, one of China's most prominent liberal economists, said in the latest Caijing that the "reorganisation [of Luneng] may lead to the centralisation of wealth into the hands of a small group of people".

"The transformation of Luneng with a very vague ownership structure into a private company has violated the principle of fair procedure in the transfer of state assets", he said. Other state-owned power companies have transferred shares to their employees, but none as large as Luneng.

Critics of the Luneng deal also say the company has failed to comply with the new rules governing reform of the power sector, which separates transmission and generating assets. Luneng still retained generating assets, they said.

"If they can get their way on this, then China will be no different to Russia", said one local commentator, who asked not be named.

(FT, 31.01.07)

New Aerial Regime Taking Off

The US-European "open skies" treaty marks a historic step in the liberalisation of international aviation, but it will deliver much less than the far-reaching reforms originally sought by EU four years ago.

Ever since the 1944 Chicago Convention, international aviation has operated under an increasingly arcane web of regulation involving hundreds of bilateral treaties controlling in some cases everything from routes, frequencies and capacity to fares and ownership.

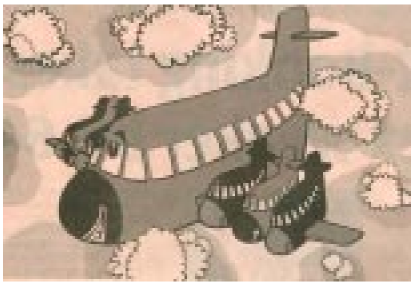
As a result, the global aviation industry has remained highly fragmented and has not been able to consolidate along the lines of virtually all other major sectors from cars and telecommunications to pharmaceuticals and banking. Where liberalisation has occurred it has taken place within countries and regions in US in late 1970s and in EU progressively in the 1990s – rather than internationally.

The EU member states gave the EC a mandate in 2003 to negotiate a comprehensive "open aviation area" with the US that would have swept away most of the shackles on transatlantic aviation.

The combined US, EU and transatlantic markets encompass around 60 percent of world aviation, and a breakthrough here would have sent a very powerful signal to the rest of global aviation. Such sweeping change has been rejected by US and EU has chosen to settle instead for half a loaf rather than no bread at all by accepting a more limited US template for a so-called "open skies plus" deal.

The US domestic aviation market remains entirely closed to foreign airlines. Cabotage in the US remains prohibited, and under the so-called "Fly America" policy, all government traffic – except in very limited circumstances – as well as the traffic of contractors working for the US Government – must fly on US airlines. It will require a huge change of sentiment in the US Congress to remove these limitations.

For the moment, however, with exceptions such as Sir Richard Branson's Virgin group, there are few examples



Business Standard

where European airlines are particularly keen to get into the US domestic market.

The treaty, for all its imperfections, nevertheless marks a big break with the past and could open a new era in transatlantic aviation, depending on the way that European and US airlines choose to exploit the opportunities. For the first time every European airline will be able to fly from every city in the the EU to every city in the US, not just from cities in its national market. For example, Germany's Lufthansa would be free to fly from Paris to NewYork, or from London to Chicago.

It remains to be seen how much the right will be used, but it could prove an option for an airline such as Virgin Atlantic with a strong global brand. Most importantly, US will finally win the long-sought prize of wrenching open London Heathrow, the key gateway airport in Europe for US to full competition by all US and European carriers.

At present, only British Airways and Virgin Atlantic from UK and American Airlines and United Airlines of the US can operate lucrative direct services between Heathrow and US.

The treaty will also facilitate EU airline consolidation by allowing carriers to merge without jeopardising their routes to the US. This risk under existing treaties helped, for example, to block British Airways' efforts to take over KLM of the Netherlands in 2000.

The US/EU pact will also create a new designation of "EU carrier", replacing individual national designations.

The EU-wide treaty with US will replace the existing national bilateral treaties, which were declared illegal by the European Court of Justice (ECJ) in 2002, and will end the period of dangerous legal uncertainty that has clouded transatlantic aviation for five years. *(FT, 23.03.07)*

Power Unbundling Plan Dropped

Europe's energy ministers in effect have buried a plan to break up the continent's biggest power companies, which Brussels claimed was a vital step towards ending competition abuses in the sector.

France led opposition to a proposal to force the full ownership "unbundling" of energy giants such as EDF and Eon, which generate power and control the grids through which it is supplied.

François Loos, French industry minister, claimed "about 10" countries supported him in opposing the plan, but when challenged he was able to name only Luxembourg and the three Baltic states.However, the German EU presidency is also privately hostile to the plan and it is now expected to be quietly dropped. "We will come to an agreement on a middle way", said Michael Glos, German economy minister.

Andris Piebalgs, EU Energy Commissioner, admitted member states might force him to change his preferred option of full ownership unbundling: "We can't exclude we will modify it".

Piebalgs did receive a mandate to look at all options for the "effective separation of supply and production activities", including the EC's fall-back plan where power companies could retain ownership of grids but where management is handed to an independent operator.

Even that is too much for Loos, who argues that big integrated companies are more likely to carry out the investment needed in networks and storage.

He wants existing energy rules – which require the legal separation of generation and grid operations into separate entities within an integrated company – properly enforced.

(FT, 16.01.07)

Probing Regulated Electricity Prices

Businesses that benefit from artificially low electricity prices could soon face higher energy bills, after the EC said it suspected such regimes constituted illegal state aid.

The Brussels regulator said it had opened a formal inquiry into Spain's regulated electricity tariffs, which currently help not only power groups such as Endesa and Iberdrola, but many large and medium-sized manufacturers too.

"These regulated tariffs might have provided significant amounts of operating aid to these industries and, to a certain extent, to the electricity incumbents...who could have made an abnormal profit on the arrangements", the Commission said.

It added that the low tariffs for industrial customers had led to a US$4.9bn deficit in the country's electricity system in 2005 alone, which would now be recouped by charging all Spanish consumers.

Regulated tariffs function like price caps and several large EU member states use them to ensure that certain customers benefit from low electricity prices. The Commission argues that many national regulated tariffs are illegal and last year launched infringement procedures against several countries in an attempt to end the special treatment.

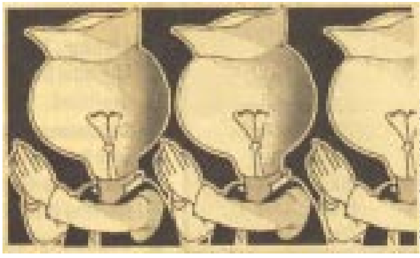
However, should the tariff regimes also be found to violate state aid law, the consequences could be far more drastic. The Commission has the power to order the repayment of illegal subsidies.

France and Italy are among the member states that were also ordered to end their regulated tariff regime in 2006, making them the most likely candidates for further Commission state aid inquiries.

The Commission stressed the Spanish regime not only disadvantaged other companies that faced higher energy costs, but also have undermined competition in the Spanish market. "Because only the traditional Spanish electricity incumbents were allowed to provide low regulated tariffs, potential new suppliers may have been prevented from entering the market", it said.

It is understood the investigation was prompted by a complaint from Centrica, the UK energy group that is active as an energy supplier in the Spanish market. *(FT, 20.01.07)*

More European-level regulation would aim to create incentives for cross-border interconnectors and remove technical barriers, allowing foreign companies to take on big national champions intheir home markets.



The Economic Times

Tougher Energy Regulations

Towards Uniting European Energy Markets

Moves to create a genuine pan-European energy market are on the cards as part of a new drive by Brussels to improve the continent's feeble cross-border gas and electricity networks.

Tougher regulation and new planning rules are among measures intended to develop international links, connecting 27 essentially separate national EU energy markets.

The plans are part of an EU energy policy to be set out intended to create a more competitive market and to encourage the development of big pan-European energy companies.

Key to the proposal is a toughening-up of Europe's energy regulation: some national regulators are seen in Brussels as weak or too close to the big incumbent companies they are supervising.

More European-level regulation would aim to create incentives for cross-border interconnectors and remove technical barriers, allowing foreign companies to take on big national champions in their home markets.

The EU Energy Commission has set out three options for beefing up European regulation, including giving statutory teeth to Ergeg, the body representing national gas and electricity regulators.

Big integrated energy companies such as Eon and EdF could also cede control over national power grids, increasing the incentive for networks to be extended across borders to rival – companies.

Further the Commission is expected to propose the appointment of "co-ordinators" to oversee the construction of cross-border pylons, cables and pipelines and a new five-year planning approval limit for schemes deemed to be of "European interest".

Projects identified in the paper include the Power Link between Germany, Poland and Lithuania, connections to offshore wind power in northern Europe, electricity connections between France and Spain and the Nabucco pipeline bringing gas from the Caspian to central Europe.

A blackout that plunged parts of western Europe into darkness in November 2006, exposing weaknesses in the cross-border system and fears over adequate power production, has stiffened Brussels' resolve.

As Dieter Helm, an economist at Oxford University, says: "If the EU had more interconnectors, its countries could much more easily import extra electricity from each other at times of need".

"In addition, building links between countries should increase competition, leading to lower electricity prices – as long as the internal market is functioning well", he added.

EU leaders agreed more than four years ago that interconnectors should by 2005 be able to import at least the equivalent of 10 percent of a country's installed electricity production capacity. However, some member states are far from reaching that goal, with Poland, UK and Spain among the laggards, at two, three and five percent respectively. France, Italy and Portugal also fail to hit the target. *(FT, 01.01.07)*

Evergreening is a Global Phenomenon

The Hindu Business Line

Evergreening is a global debate over whether foreign pharma companies should be allowed to delay the entry of local generics.

– Aditya Trivedi

Evergreening is a global debate over whether foreign pharma companies should be allowed to delay the entry of local generics. Different countries have met this challenge differently but mostly through awards by their respective competition commission or through courts which determine the intention of the patent applicant in seeking to extend the life of the patent.

The fact is pharma companies worldwide have been using evergreening to extend the life of their original patent. The real issue is whether and to what extent the new chemical entities (NCEs) could be relied upon to augment the flow of new medicines and whether we can allow combination of known substances to fill in till a fresh NCE is developed, even if it means delaying the entry of generics.

We have just begun to learn to play the big game as is evident from recent buying of foreign companies by Indian corporates. The fear is, if granted, these patents may block the commercialisation of products that are in the public domain.

Let us see how countries have dealt with evergreening. In August 2004, the Australian Parliament passed legislation, which included amendments to discourage improper legal action by pharmaceutical companies to delay generic entry. In Arrow Pharmaceuticals Ltd vs Merck & Co., (2004) FCA 1282, the Australian Federal Court concluded that, the dosage regime of the Merck's drug, *Aminobisphosphonates* did not involve any newly discovered technical effect and that, even if the dosage regimen were novel that, of itself, did not confer novelty on the manner of administration involved.

Following a six-year investigation, the EC fined AstraZeneca around US$80mnfor abusing a dominant position in its application for supplementary protection certificates (SPCs), which, under the EC regulations are provided to extend the lifetime of patents covering medicines up to five years.

In yet another judgement, the ECJ while upholding the German court ruling against SPC for chemotherapeutic Gliadel sought to define the term "active ingredient". "The proposal for a regulation, therefore, concerns only new medicinal products. It does not involve granting a SPC for all medicinal products that are authorised to be placed on the market. Only one SPC may be granted for any one product, a product being understood to mean an active substance in the strict sense. Minor changes to the medicinal product such as a new dose, the use of a different salt or ester or a different pharmaceutical form will not lead to the issue of a new SPC". On the other hand, it is interesting to note that in 2004, the Canadian Competition authorities refused to pursue a complaint about evergreening practices saying the regulatory framework already contained specific provisions designed to balance the competing interests of patentees and generic manufacturers. What is important to infer from all these cases is that the law on patents nowhere seems to have prevented a patent from being granted, whether it is combination of substances or not. The question of intention of the patent holder/bogus claims or of market dominance is left to be decided by the respective competition authorities or courts in these countries.

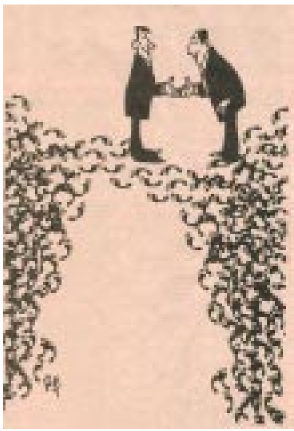
Harm to competition should not be viewed from the mere existence of exclusive rights granted by patent law as long as it is taken care of by competition regime. Inefficiency occurs because the private reward from accruing monopoly profits outweighs the social gain from accelerating the innovation process, which could be corrected by introducing the sound principle of competition policy.

Balancing between providing incentives to invest in innovation on the one hand and for efficient diffusion of innovation on the other is central to the interface between competition policy and intellectual property laws (IPLs). In developed countries abuse of Intellectual Property Rights (IPRs) is covered under competition law to ensure the required balance. Drug industries, like any other knowledge industry (in IT, the recent dispute between AT&T and Microsoft), do induce competition concerns and face tough regulations and directions, particularly in the US and Europe. In India, we need to find a middle path.

The framework of IP legislation has laid the ground for innovation-driven manufacturing, which would prevent any potential market failure on account of unclear property rights in sectors like pharma, biotech, IT and agrochemicals. What we need, therefore, is effective tools of competition policy based on sound principles of competition. Unfortunately, the enactment of the Competition Act 2002 due to legal challenge in the courts has made the Act operational only partially. As a result, there is a policy vacuum.

The author is director, Abu-Ghazaleh Intellectual Property, India. Views are personal.The article appeared in the Economic Times, February 26, 2007.

Public Private Partnerships In Brazil
- The First Experiences


Business Standard

The Brazilian programme of projects under the Public-Private Partnership (PPP) Law, which was enacted in December 2004, has not quite been able to take off yet. Several reasons - including the political stir caused by president's Lula reelection late in 2006 – have caused the federal programme to be postponed many times. Most importantly, there appear to have been a general underestimate of the time that these complex projects may take. Thus, although the country announced at the start of the programme more than two dozens projects at the federal level, none has officially started, and only two seem likely to be initiated in the upcoming months. Yet, the 2004 statute is expected to be one of the greatest tools for fresh investment in the Brazilian extremely deficient infrastructure sector allowing the continuing growth of the country's record exports.

– Isabel C Franco

Brazil is not, however, a stranger to PPPs – they did exist prior to the enactment of the specific statute. Several chief projects were developed such as the US$2.1bn Bolivia-Brazil Natural Gas Pipeline whose success is now so challenged by Evo Morales' stubbornness in respecting and honouring the take-or-pay contract with Brazil.

That is the most troubling risk for private investors in partnerships of such long term projects the rotation of governments and their capacity and willingness to honour terms and conditions of commitments of previous and many times rival authorities.

Surprisingly, however, the PPP projects have started at full-fledge speed in certain Brazilian states, namely São Paulo, Bahia and Minas Gerais.

São Paulo was definitely the pioneer with Line 4 of the Subway in its capital city megalopolis. The project was not free of controversy – the main claim likening the partnership to a disguised privatisation. All along 2006, the unions publicly fought the project fearing loss of their jobs or the reduction of their salaries. They obtained injunctions against the execution and initiation of the contract – to no avail. The São Paulo courts ordered the programme to continue. The winning consortium, CCR, known as a competent combination of Brazil's largest and most traditional engineering companies, will be responsible for supplying, installing, operating and maintaining approximately 30 trains that will run through nine stations on the new subway line in the city.

The PPP underlying contract will be for 30 years and CCR's compensation will consist of fares derived from the operation of the line, in an amount of US$37mn in 48 installments. The construction of the stations are of the responsibility of the state of São Paulo and, in case of delay, CCR will be entitled to an indemnity proportionate to the duration of the delay. The innovation of the PPP law in Brazil – followed one way or the other by the states' statutes – is the guaranty provided by the public authority. In the case of Line 4 of the subway the state company created by the state of São Paulo to be responsible for the programme (CPP) will guaranty the subway company's obligation up to approximately US$30mn in case of delay or default.

Another leading state to launch its program, Minas Gerais, started its programme with a project to improve, operate and maintain roughly 250 miles of a state highway known as MG-050 for a contractual term of 25 years. Committed to an investment of US$300mn the partnership will guarantee winning consortium Equipav S/A monthly payments by MG's road agency (US$7.9mn per year) in addition to toll collections. Here, again the guaranty is provided by a especially formed company – Codemig, which will guarantee the states financial obligation towards the private partner. The project has not yet started as the bidding procedures have been challenged by the competing bidders.

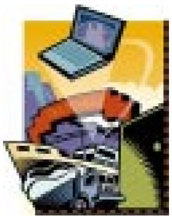
Following these pioneer states, the northeastern state of Bahia initiated its programme with a sewage pipeline to run underwater in the capital city of Salvador. The private partner will design, build, operate and maintain the system for a contractual term of 18 years. The sewage and water sectors have never been attractive to the private sector in Brazil given the country's chronic lack of proper legal framework for the sector and uncertainty as to the decision of roles and responsibilities between the states and the municipalities. Bahia ingeniously structured the project so as the private partner will provide its services to a state incumbent (Embasa) in order to avoid being exposed to the risks inherent to the uncertainties of the lack of specific framework. The total amount of the investment in the sewage system is US$125mn and the winning consortium, a Brazilian conglomerate of worldwide respected companies known as Odebrecht Investimentos, will receive payments guaranteed by Embasa's receivables. The project – yet to be initiated – has suffered already subtle threats by the new administration of the state of Bahia, just led to power at the end of 2006 in a sudden change of political winds.

All in all, despite the slow pace of the federal programme which has resulted in no projects being actually initiated at the federal level, the concept of PPPs in Brazil appears to have been absorbed positively by all sectors of society in the country. In a PPP the Brazilian Government will assume fewer risks in the project as these will be mostly borne by the investors and all of the parties involved in the financing of the project. Thus, given the risks of the venture and the length of the contracts, the success of the PPPs can only be insured by the reassurance that the public partner will make the payments due to the private partner along the term of the contract, which can extend through decades and pass through many different administrations. The statute attempts to deal with the loopholes of the Brazilian realities by providing the private partners substantial collaterals, which are to be entirely capable of judicial execution and foreclosure thus minimising fears that disputes over the performance and payments would linger indefinitely. Additionally, having in mind the anachronic Brazilian judiciary system, the PPP framework allows arbitration to be used as a dispute resolution mechanism. This is essential for the credibility of the system. Experience shows that using the judiciary branch in Brazil to resolve disputes may discourage investors from considering any contract with the public administration.

Slowly – but surely – the PPPs are gaining the trust of the Brazilians who know that the demand for investments in the bottlenecks of infrastructure in their country is virtually impossible to be supplied only by the public sector.

Isabel C Franco specialises in corporate, mergers and acquisitions, telecommunications and general counseling on how to do business in Brazil. The article appeared in www.mondaq.com, March 23, 2007

TAKE A LOOK



Services Trade Liberalisation and Domestic Regulations

The Developing Country Conundrum

– By Suparna Karmakar, ICRIER, New Delhi, India

Services have become the engine of growth in a large number of economies in the developing world. Additionally, the rapid development of ICT, and emergence of transnational corporations, has not only made cross-border provision of services easier, but has also increased the demand for and trade in services; developing countries today are increasingly emerging as cost efficient providers of key business and professional services, thereby becoming key players in the services supply chain.

In the absence of explicit tariff barriers, as compared to goods, over the years, countries have more intensively regulated services on grounds of protecting consumer interest and ensuring quality and excellence of professional services provided. It is also true that as cheap labour is the resource with comparative advantage in most developing countries, and especially India, access to developed country markets by means of cross-border supply and movement of natural persons have the potential of conferring the maximum benefits from services liberalisation.

However, challenges for market access in developed countries in these two modes of supply lie in the range of regulatory barriers, including burdensome visa formalities, stringent quotas and qualification requirements, and discriminatory taxes, levies and standards faced by the developing country service providers. Most professions are closely regulated and certified, and often self-regulated, usually though sectoral trade associations.

This paper brings out the key elements of the prevalent regulatory measures and barriers to market access for developing country service providers, and assesses how (if at all) the proposed disciplines on domestic regulations would help in securing or easing market access problems of developing country professionals in the developed country markets.

An analysis of select professional services in India indicate that for developing countries in general there exist many elements in the proposed disciplines that are not only desirable but would help them to get better market access into key developed country markets.

Also it appears that given the prevailing weaknesses of the domestic legal and institutional framework in most developing countries, commensurate changes in the domestic legal and regulatory systems would need to be incorporated prior to the adoption of the DR Disciplines so as to enable countries to fulfill the requirements under such disciplines.

Incorporation of suitable special and differential treatment (S&DT) provisions is needed to ensure proper implementation of the said disciplines and satisfy the development agenda of the Doha Round.

The full article could be accessed at: http://www.bepress.com/gej/vol7/iss1/3/

European Competition Policy Needs Urgent Reforms

– Xavier Vives

The Hindu Business Line

A satisfactory resolution of the conflicts between regulation and competition policy has to be based on three pillars:

1. **Confinement of regulation to natural monopoly sectors as a general principle;**
2. **The building of a Europe-wide system of regulators with common principles and books of rules; and**
3. **The progressive elimination of public ownership in "network" industries such as energy, telecoms and banking.**

Italy has managed, in effect, to block the merger of Spain's Abertis with the Italian Autostrade which would have created a pan-European infrastructure group by moving the goalposts in the middle of a merger procedure and introducing substantial uncertainty about the terms of highway concessions.

In spite of objections from the EC, Rome has got away with it for the moment and perhaps for good for three reasons. First, regulation is fragmented and the Italian regulator, Anas, need not respond to any European logic. Second, the Italian Government, instead of confronting Brussels' authority directly, claimed the issue was Italian. Third, the tools of European competition policy are limited. This is particularly so in nationally regulated sectors and whenever there is public ownership.

In Europe, there are many tensions between regulation and competition policy. In the energy market, vertically integrated companies that control transport (pipelines) and transmission (high-tension grid) can discriminate against entrants and block entry. They also lack incentives to provide adequate interconnection capacity across countries. National regulators may themselves not have the right incentives to fix the problem if they reflect short-term government wishes.

In telecommunications, there is talk about regulating wholesale markets to lower mobile roaming charges. In this sector, the EC, the competition authority, is also tempted to intervene in a regulatory capacityto promote access to existing networks. An alternative might be to foster infrastructure competition, for example, between incumbent and cable operators in the provision of broadband services.

In banking, the level of "interchange" fees between merchant and customer banks in the credit card business may be targeted for regulation. An alternative could be the fostering of competition between banks' proprietary networks and associative ones such as MasterCard to keep in check potential market power.

Problems are compounded where there are publicly controlled companies, since in this case the government is both on the side of the regulator and of the regulated and, therefore, the regulator faces a conflict of interest something particularly relevant in the energy sector.

A satisfactory resolution of the conflicts between regulation and competition policy has to be based on three pillars: confinement of regulation to natural monopoly sectors as a general principle; the building of a Europe-wide system of regulators with common principles and books of rules; and the progressive elimination of public ownership in "network" industries such as energy, telecoms and banking.

With respect to the first pillar, whenever Brussels tries to regulate a competitive business sector, it gets into trouble because the regulation ends up being intrusive the telecoms sector is no exception.

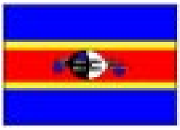
On the second pillar, national regulators should be integrated into a European system with common rules, sector by sector, that provides an even playing field. For example, transmission and transport in energy markets should be "unbundled" from supply and generation because they are a natural monopoly and control of this bottleneck has high potential for excluding rivals. Interconnection capacity across boundaries should be managed at the European level. In highway concessions, national regulators should abide by a set of European rules that avoid regulatory opportunism and arbitrary changes. In the banking sector, there are further stability arguments based on the potential systemic damage of pan-European bank failures, in favour of tighter co-ordination of national regulators.

With respect to state-run companies, the distortions they introduce may end up paralysing reform and market integration in a whole industry. In the energy sector this may be the result of French Government control.

In order to foster European integration in network industries we need to rely on clear guidelines about the balance between regulation and competition policy and to take serious steps towards a system of European regulators that ends fragmentation. These measures would contribute decisively to the lifting of the present obstacles to an enlarged competitive market. For this, Brussels must promote more competition than regulation as a matter of principle and more co-ordinated regulation as a matter of practice.

The writer is professor of economics and finance at Iese Business School and at ICREA-UPF. The Article appeared in the Financial Times, December 12, 2006

About a Competition Law – Swaziland



The tiny mountain kingdom of Swaziland is the last absolute monarchy in sub-Saharan Africa (SSA). Although it had its autonomy guaranteed by the British in the late 19th century, its independence was granted in 1968. Student and labour unrest during the 1990s have pressured the monarchy (one of the oldest on the continent) to grudgingly allow political reform and greater democracy.

Competition Law and Institutions

Swaziland is a signatory to the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA). Article 55 of this treaty requires signatory states to create competitive market conditions within the common market. With the assistance of the Zambian Competition Commission (ZCC), Swaziland has a draft Competition Bill. The Bill is awaiting Parliamentary assent. It provides for the following:

- encouraging competition in the economy by controlling anticompetitive trade practices, M&As, monopolies and concentration of economic power and Unfair Trade Practices (UTPs), promote economic development and growth and protect consumer welfare;
- providing an appropriate institutional and operational mechanism for its administration, including the Fair Trading Act; and
- providing for the establishment of a Competition Commission.

This Bill was a natural response from pressure from the four regionally driven competition related provisions to which the kingdom of Swaziland belongs. The first one being the Southern African Customs Union (SACU) Agreement to which the Kingdom of Swaziland is party. Article 40 states that there shall be competition policies in each member state and that member states shall cooperate with each other with respect to the enforcement of competition laws and regulations. Article 41 of the same treaty reflects on UTPs where it gives power to the Council of Ministers to advise the Customs Union (CU) Commission to develop policies and instruments to address UTPs between member states.

The second competition related regional agreement is contained in Article 55 of the COMESA treaty, which provides for a regional policy on competition and is used as a starting point for developing a regional competition policy to which the kingdom of Swaziland is also a signatory. This article provides for fair competition within the region by prohibiting 'any agreement between undertakings or concerted practice, which has as its objective, or effects the prevention, restriction or distortion of competition within the common market'.

The third is the provision in Article 25 of the SADC Trade Protocol (whose implementation started in 2001), which seeks to implement measures within the community that prohibit unfair business practices and promote competition. Swaziland is a member of SADC. The fourth is contained in the Cotonou Agreement to which the country subscribes.

Institutional Capacity

Generally speaking, there is a minimal institutional capacity and much of the economy is under state control where local firms that are uncompetitive enjoy the benefit of a protectionist environment. Thus, the various sectors of the economy are dominated by state owned institutions. The current Companies Act is 92 years old and is undergoing review.

Having no separate agency, the country's competition related the Commerce Ministry handles issues. However, due to unsatisfactory levels of performance and productivity of the public sector to deliver services a public sector management programme, (PSMP-1), was launched in 1995. In recognition of the fact that very little progress was made, the programme was redesigned and re-launched in 1999, to bring about an effective and responsive civil service, by addressing the issues including: a lack of clear and appropriate ministerial missions, objectives, strategies, structures and staffing levels as well as a missing clear definition of and distinction between the roles of public sector, private sector and civil society.

Concluding Observations and Future Scenario

The passage into law of the Competition Bill will provide direction to competition issues in Africa's last absolute mountain kingdom of Swaziland. This will put into place the creation of the Competition Commission.

The government, however, has a long way to go in freeing market prices. The International Monetary Fund (IMF) reports that administered prices account for approximately 16 percent of the consumer price index.

The major services industries like electricity, telecommunications, railways, and water services are controlled by the state and government makes transfers to these parastatals to control the prices.

Publications

PolicyWatch

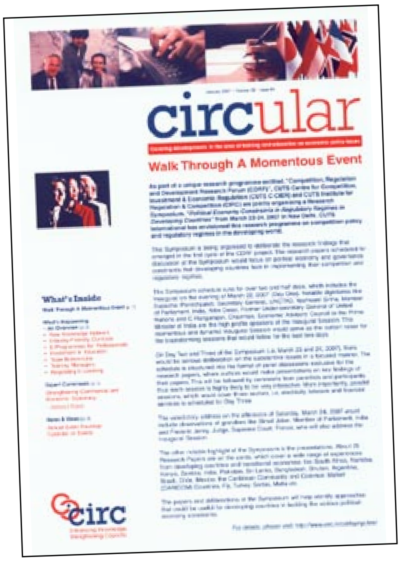
The cover story of PolicyWatch (October-December 2006) discusses the broad benefits of Special Economic Zones (SEZs). It further addresses the development challenges which India is facing today and how agriculture can be made more productive to maintain food security and increase the manufacturing base to absorb a large army of unemployed and under-employed labour in the country.

Special article by Ashok Parthasarathi, the former advisor to Prime Minster Indira Gandhi and permanent secretary to scientific departments in the Government of India states that in the age of globalisation and market-friendly economies, government should keep out of industries that have no social, environmental or security implications.

The Good Practices section defines the history of evolution and the process of watershed management and how the proper management of land resources is essential for socio-economic development of countries dependant on those resources, and thus maintaining eco-balance.

(www.cuts-international.org/pw-index.htm)


PolicyWatch
Broad Benefits of Special Economic Zones
SEZ


circular
Walk Through A Momentous Event

CIRCular

'CIRCular' a quarterly newsletter of CUTS Institute for Regulation and Competition (CIRC), carries a brief on the research symposium entitled, 'Political Economy Constraints in Regulatory Regimes in Developing Countries', jointly organised by CIRC and CUTS Centre for Competition, Investment & Economic Regulation (CUTS C-CIER). In essence the note tries to capture in brief the major highlights of the symposium.

Special article by Kishan Rana addresses a theme: Strengthening Commercial and Economic Diplomacy which is something not often debated. It focuses on our contemporary training needs, in support of India's efforts to connect with the world economy and use external markets to spur domestic socio-economic growth.

The section 'News & Views' carries glimpses of the events and activities of CIRC during the period.

(www.circ.in/publication.htm)

Forum

We would be grateful if you might be able to send a copy of your new book to our research unit at United Nations Development Programme (UNDP). As always we are eager to draw on the research work of CUTS.

Ronald U Mendoza,
Policy Analyst/Economist,
UNDP, New York

We want to hear from you...

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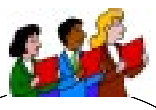

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Eagerly waiting to hear from you!

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