REGULETTER

A Quarterly Newsletter

25 years CUTS International 1983 2008

Volume 8, No. 4/2007

Engaging Civil Society to Promote Competitive Reforms in Developing Countries

Inside this Issue

Special Articles

CUTS Centre for Competition, Investment & Economic Regulation

CUTS C-CIER

Competition has become a dominant driving force with increasing number of countries giving greater impetus towards promoting competition and moving towards a market economy. Over the last 25 years, more and more countries have given a greater impetus to promote competition through adoption of specific competition regimes. Today, competition law has spread around the globe and about 100 countries are said to have enacted one form of competition statute or another.

One of the objectives of competition policy & law is to preserve the interest of consumers, and therefore there has been an increase in the extent and levels of consumers/civil society organisations (CSOs) participation in shaping the national competition regimes. There is enough evidence worldwide to suggest that CSOs have played an effective role in the national and regional processes of developing and implementing competition regimes. Such advances were earlier mostly witnessed among the developed countries. However, in recent times they have also been encountered in the developing world.

Broadly speaking, there are three stages in the process of developing and implementing a national competition regime:

- Stage-I: Evolution of a Competition Law;
- Stage-II: Developing the conditions/environment for the implementation of the Competition Law; and
- Stage-III: Actual implementation of the Competition Law.

A country's success in facilitating competitive reforms, from the perspectives of competition policy and law, depends on the ease and speed with which it is able to graduate from one stage to the next one. This, in turn, depends on specific 'steps and measures' that a country adopts to strengthen its position at every stage – in preparing to move on to the next stage. Further, engagement of CSOs in the process of evolving and shaping the competition law as allies is equally crucial.

CSOs' Engagement

One of the primary conditions to enable CSOs' participation in shaping national competition regimes is the willingness within the government ministries and policymakers to engage civil society actors in this process. Among many of the countries that CUTS have worked in, the participation of the civil society in developing the competition policy/law of the country has been seen to be driven by a clear policy directive of the government. For instance, in Mozambique, the

Government established a 'Working Group on Competition Policy', comprising of 20-odd members that included representatives from consumer organisations and CSOs. This group has been working very closely with the Ministry of Industry and Commerce of Mozambique in developing the competition law and policy of the country. A similar approach has been witnessed in India, where a new competition law was adopted in 2002 after research-based advocacy led by CUTS, in structured consultations with the Finance Minister. In many countries, the public/civil society is entrusted with an opportunity to provide comments on the draft competition legislation. This is a healthy trend.

One approach that seems to have caught the attention of national planners is for having courses on competition policy and law introduced in the national universities. This, in addition to developing capacity among the faculties who teach the course, would also help train young professionals on the basic aspects of competition policy and law. A Masters course on "Competition Policy and Regulatory Economics" has been started in the Addis Ababa University, in Ethiopia three years ago.

Competition agencies in developing countries have limitations pertaining to resources (human and financial) that hinder their ability to effectively implement the laws. Increasingly, developing country governments and competition agencies have started to develop synergies with consumer groups and research institutions in their jurisdictions to be able to assist in enforcement. For example, CUTS partner in Sri Lanka: Institute for Policy Studies was once called upon by the Fair Trade Commission of the country to assist them in analysing a complex pharma merger case.

Competition laws in many developing countries, like Tanzania envisage a formal relationship with consumer organisations in order to be able to better implement the law. In Zambia, the Commission is required to have a consumer representative on its board. This practice also exists in other countries, such as Poland, Georgia, Latvia, Egypt and Jordan. The approach of a pro-active civil society engagement in implementing the competition law has also been adopted in other countries like Vietnam, Kenya and Mauritius.

Impediments to CSO Engagement

There has been a mixed experience of CSOs engagement in the process of promoting competitive reforms in countries across the globe. In some countriess they have been quite active, while in others they do not even exist. Certain inherent weaknesses do exist in the working of the CSOs, which often retard the effectiveness of their actions; and thus it is sometimes unreasonable to expect that engagement of civil society in an initiative would always result in progressive changes.

Lack of continuity has been observed to be one big obstacle in the path of civil society participation in promoting competitive reforms. Strong possibilities of organisations withering away with time exist, as the people involved with their organisations are not able to develop the organisation strategically through a long-term planning process.

Sometimes due to a number of consumer groups working on competition issues, difference of opinions among them becomes inevitable. In such a scenario, often one organisation is seen to undermine the other and it becomes difficult to form a consensus on a specific issue. In many countries, including India, the civil society views a competition law as a market access agenda by rich countries or a part of a neo-liberal agenda. For instance, in Malaysia and Bangladesh, there is an opposition to adopting a competition law by both state and non-state actors since competition policy is no longer on the WTO Doha Round agenda. Both these countries do not have a competition law though it is being discussed currently.

Conclusion

Civil society participation in evolving and implementing competition regimes has helped in developing public opinion in favour of the need for an effective competition law as a means to promote economic democracy and good governance, aid economic growth, reduce poverty and protect the consumer interest.

For ensuring civil society participation in developing countries, a strong will, commitment and vision within the government circles to engage CSOs pro-actively at various stages of developing and implementing national competition regimes is essential. Further, CSOs must develop internal capacity on competition policy issues – especially an understanding of how an effective competition regime can promote economic democracy and good governance, protect consumer interest and aid poverty eradication efforts in the developing world. Commitment in the international development community to promote civil society participation in evolving competitive markets in the developing world is another essential requirement.

Observing a World Competition Day somewhat like the World Consumer Rights Day could be beneficial to draw the attention of the wider community on competition issues. Likewise establishment of an 'International Competition Fund' to be housed in an intergovernmental organisation, such as the World Bank, financed by penalties imposed on companies engaged in international cartels to be used to assist CSOs to pursue competition reforms would also be helpful. CUTS has been campaigning for this fund, to be a useful resource for organisations wanting to undertake projects on competition issues, in the developing world.

National governments, intergovernmental organisations, international organisations specialising on competition policy and law issues and the international development community should combine their energies to ensure engagement of CSOs in the various stages of evolving and implementing national competition laws in the developing world.

Egypt Plans Legal Reforms

The Egyptian Trade and Industry Ministry has announced plans to change the antitrust law to reflect fundamental changes in modern business practices.

According to the Ministry, the current fines and sanctions are not realistic, and that the country's old antitrust rules, which were established in 2005, had become redundant.

The announcement comes about a month after the Egyptian Competition Authority published a report alleging that 11 of the nation's cement companies had colluded to fix prices in the local market.

The report followed the Authority's 14-month investigation of the sector, prompted by what the Government and others saw as unjustified price increases. During its investigation, the Authority collected four years' worth of data and documents, and interviewed officials from the companies, distributors, traders and contractors. *(GCR, 20.11.07)*

Mexico Fine-Tunes Competition Law

Mexico's Federal Competition Commission has amended its regulations on the country's economic competition law. The new rules clarify procedures for pre-merger notifications, predatory-pricing regulation, monopolistic practices and leniency applications.

In particular, the rules specify that leniency applications should only be made via the Commission's designated contact number or email address, that the Commission has 48 hours to respond, that applications will be reviewed in strict chronological order, and that information provided will only be used for identified procedures.

Official sources quote that the Commission can now order audits, inspections and use other means without the need of judicial warrants. But this does not mean that it will not face legal teams that have means beyond theirs, the sources added.

The new regulations were published in the Commission's official gazette in June 2006, but have only come into force in October 2007.

(GCR, 24.10.07)

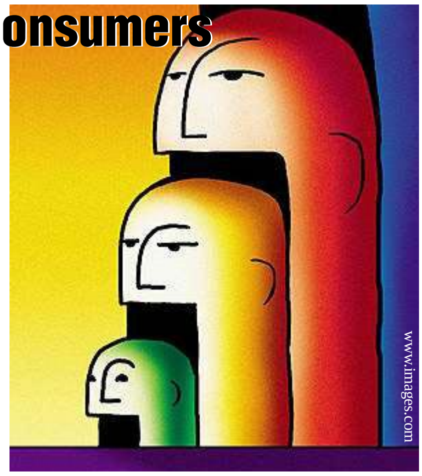
Japan Issues IP Guidelines

Japan's Federal Trade Commission (FTC) has published a finalised set of intellectual property guidelines, which would replace the patent and know-how licensing guidelines. In particular, they tackle conduct that forecloses others from using technology, conduct that limits the scope of a licence, and restrict the activities of the licencee.

It is important for competition policy to insulate competition in technology from any negative effect caused by restrictions created by intellectual property systems.

According to experts, the guidelines demonstrate that the Commission will look at pro-competitive effects of licences in scrutinising the legality of traditional restrictions, such as the number of products, designation of raw materials, and the handling of competing products. *(GCR, 03.10.07)*

Greater Power to Consumers



The idea of class action lawsuits sends shivers down the spine of British businesses. So corporate nerves are jangling after proposals from the Office of Fair Trading (OFT) to enable consumers to seek compensation more readily through the courts if they have been harmed by anticompetitive practices. But this does not mean that the UK is bound to become exposed to a US-style litigious culture.

The OFT would like consumers who are considering litigation to receive easier access to funding and greater protection against court costs. It suggests that groups representing consumers and small businesses should be able to go to court not only in cases where competition authorities have already acted, but also on a stand-alone basis.

These ideas take UK competition law into uncharted waters. Steering a sensible course will mean ensuring that changes benefit consumers, not lawyers. This must include adopting procedures intended to deter frivolous actions, such as giving judges power to deny permission for a case to proceed and to supervise any settlement and funding arrangements. Equally, there must be no change to the UK system, which – unlike the American courts – does not make multiple damages available.

It must also be clear that a greater ability for consumers to go to court cannot be a substitute for the work of competition watchdogs. There is no sign that representative bodies have limitless appetite or funds to make use of their new powers. Of course, the OFT must concentrate its fire on the most important cases, but it cannot afford to behave as though it is entering a job share.

None of this undermines the case in principle for giving consumers greater power. A clear advantage in making it easier for consumers and businesses that have been harmed by anticompetitive conduct to take court action is that more of them would do so. Thus, they would provide a further incentive for companies to keep within the rules. This would be valuable where the likely damage to any one customer is too slight to merit legal action but where the company behaving badly would benefit significantly.

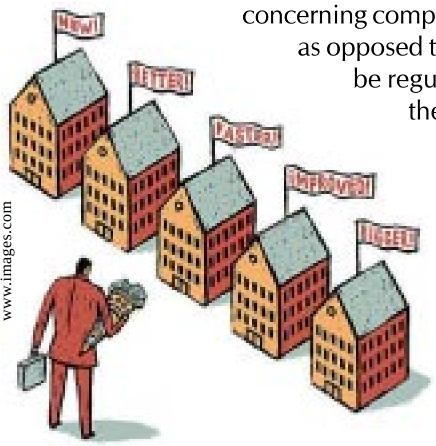
The OFT's paper comes a few months ahead of a European white paper dealing with antitrust damages actions. It should be required reading for Neelie Kroes, the competition commissioner. Some ideas floated earlier, such as "double damages", would encourage disproportionate litigation. What is needed is a better balance between a well-judged mix of safeguards and enhanced consumer rights. *(FT, 28.11.07)*

Merger to Strengthen Competition

The Government of Estonia recently approved the merger of the five state agencies in the Ministry of Economic Affairs and Communications. At present there are five separate state agencies: the Competition Board; the Communications Board; the Energy Market Inspectorate; the Technical Surveillance Inspectorate; and the Railway Board.

After the proposed merger takes place, there will be two state agencies: the Competition Board and the Technical Surveillance Board. The merger is expected to take place by January 01, 2008. The new Competition Board will deal with competition issues and price regulation, while the new Technical Surveillance Board will deal with technical surveillance of the railway, communications and energy sectors.

The principal idea behind the merger is to strengthen the monitoring of the competition situation in Estonia. The work of the Competition Board will be more efficient and transparent since all decisions concerning competition will be made by one agency, as opposed to previously when decisions could be regulated by both the Competition and the Communications Board.



www.images.com

Estonia is small in size and there is a risk of anticompetitive agreements being concluded. The Ministry of Economic Affairs and Communications believes that the merger will bring positive effects to the Estonian economy, in both the private and public sectors, resulting in a better position for companies in the export-import market.

In addition to the supposed economic effects, the merger will prepare the agencies for better adjustment to new national and European regulations relating to competition policies. It is hoped that the merger will strengthen relations between the state agencies and the private sector, and also improve the quality and speed of the service provided to enterprises. The merger should decrease the ambiguity between the decisions of separate institutions and give more certainty to the regulation of competition in the free economy.

(ILO, 20.12.07)

Combating Unfair Competition

On August 23, 2007 the Polish Parliament passed the Act on Combating Unfair Competition, which takes effect on December 21, 2007. The Act transposes into Polish law the EU regulations which address the practice of exerting a negative influence on the economic decisions of consumers in purchasing goods and services.

The Act introduces the concept of 'unfair market practices', defined for the first time in Polish law, and prohibits such practices.

The Act indicates two practices which are regarded as exceptionally unfair: (i) misleading market practices involving an action or failure to act which, by depriving the average consumer of access to important information, may prevent him or her from making a free choice; and (ii) aggressive market practices involving the exertion of unlawful pressure which considerably reduces or may considerably reduce the average consumer's freedom of choice.

The Act provides for the imposition of fines in the case of aggressive market practices and imprisonment if such activity is conducted in an organised manner.

(ILO, 04.10.07)

Japan to Align Anti-monopoly Law

Japan's FTC has unveiled proposed changes to anti-monopoly laws that would broaden the definition of anticompetitive behaviour and increase fines to bring Japan into line with European and US standards.

In 2006, Japan introduced the most sweeping changes to its anti-monopoly law in more than 50 years. But the FTC continued to be criticised for being impotent and, with authorities in the US and Europe cracking down on monopolistic behaviour with more fervour, the discrepancy between Japan and the rest of the world is seen to be growing.

In an effort to strengthen its powers, the FTC submitted a list of proposals to have the anti-monopoly law formally amended by the end of 2008.

Under the current law, the FTC can impose fines only on cases involving "dango", the institutionalised bid rigging that has long distorted competition for public works contracts and excluded foreigners from the Japanese market.

The FTC seeks to include cases of large firms exploiting their market shares to bully smaller businesses, and other unfair trade practices. At present, it can only issue warnings to the offenders.

But, observers opine that any move to toughen scrutiny is likely to face opposition from Keidanren, Japan's most powerful business lobby.

(FT, 17.10.07)

Root-and-Branch Review

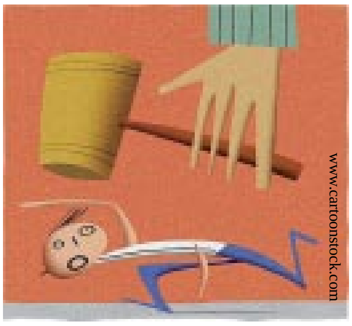
Mexican has launched a root-and-branch review of economic competitiveness, inspired by a similar project in Australia. The "process for strengthening competitiveness in Mexico" will be run by a competitiveness cabinet along with special competitiveness committees.

Chairman of the Federal Competition Commission, Eduardo Perez Motta will lead a specially created team that will examine laws and regulations in strategically important industries to develop alternatives that distort competition less.

In addition, a regulatory team will focus on general regulatory improvement, working under the head of the Federal Commission for Regulatory Improvement.

(GCR, 21.12.07)

Cartel Accusation Rejected



On August 14, 2007 the National Commission for the Defence of Competition, Argentina and the secretary of domestic trade rejected an accusation by the Confederación de Asociaciones Rurales de Buenos Aires y La Pama (CARBAP) against the principal seed export companies for fixing the purchase price of wheat. The alleged fixed-price agreement was a consequence of the federal government's intervention in the wheat market.

Facts

The claim was filed on November 30, 2006 by CARBAP, a trade federation formed by 114 trade associations of agricultural producers from the provinces of Buenos Aires and La Pampa (these two provinces produce almost 60 percent of all wheat in Argentina). The accused seed export companies acquired the wheat from local producers and sold it in foreign markets.

CARBAP accused the main seed export companies of fixing the purchase price of wheat arguing that alleged illegal conduct was an abuse of a dominant position and caused damage to the general economic interest.

All accused seed export companies and their presidents offered explanations which rejected all accusations of anticompetitive practices, highlighting that the price of wheat in the primary market was controlled and fixed by federal government regulations.

According to the National Commission for the Defence of Competition, the wheat market is subject to significant Government intervention due to the economic crisis that Argentina experienced during 2001. The Federal Government intervened through several rules and regulations that restricted the commercialisation of wheat which were aimed at preventing an increase in the price of flour in the Argentine market. The National Commission for the Defence of Competition pointed out that: "the intervention in the wheat chain of value by the federal government was framed within the price stability policies performed by the federal government".

Comment

This precedent is important as it clearly states that Argentina's competition authority cannot investigate and penalise potential anticompetitive conduct that results from Federal Government intervention in the markets. Many markets in Argentina are controlled by the federal government and such control leads market participants to engage in conduct that could be considered anticompetitive and illegal. However, the Competition Authority will not penalise and/or investigate such conduct if it is the result of regulations passed with the intention of preventing price increases. *(ILO, 04.10.07)*

The Microsofties

Microsoft has finally gone cuddly. The software giant has brought an end to its battle with the EC and backed out of an anti-trust appeal in South Korea. Microsoft is right to abandon its rage against the regulators, but if it is to compete with its snuggly new business practices, it will have to discover an innovative edge.

That Microsoft has backed down from further confrontation and agreed to provide technical data on one of its products for a minimal royalty is a triumph for the Commission. It is a qualified triumph – in this specific case Microsoft's compliance comes far too late for some of its competitors – but by grinding away for nine years Europe's competition authority has won an important point of principle.

It was the grind that got to Microsoft in the end. At the height of its legal wars with the US Department of Justice (DoJ), the Commission and other regulators around the world, it came to resemble a cut-throat law firm with a software company attached. Managing all those lawsuits was clearly not conducive to corporate morale and wellbeing.

If Microsoft is determined to avoid fights with regulators it will be less able to integrate new functions into Windows. The colonisation of one market using strength in another has been a primary source of Microsoft's growth and profits.

Instead Microsoft will have to innovate and become more responsive. It need not revolutionise software itself, but no longer can it rely on Windows to catch up with rivals who are one or two years ahead. It will have to be an alert and nimble supplier of code for each new niche.

Microsoft, unable to force its own software on new markets, will also have to do better at making products that interoperate with rival software. It has already taken big steps but could do more to conform with popular industry standards.

Like any other dominant business, such as Wal-Mart or General Electric, Microsoft will still draw legitimate strength from its dominant franchises. Outright acts of bullying will now be punished but competitors should not expect Microsoft to be too cuddly.

A more normal kind of industry dominance, however, is welcome. The software business is maturing. Microsoft's arc has already peaked – probably around the time of Windows 95 – and it will never be quite such a force again. Anti-trust regulators should not let it slip back to the business practices of that era. *(FT, 23.10.07)*

EU Penalises Visa for Refusal

The EU's antitrust authority imposed a US$14.8mn fine on Visa, the credit card issuer, for refusing Morgan Stanley as a member.

Neelie Kroes, the competition commissioner, said that although Visa had since admitted the US investment bank, its blackballing for six years had impeded competition in the credit card market.

Kroes said the bank's exclusion was "unjustified because Morgan Stanley was not a competitor in Europe – and discriminatory because Visa had previously admitted as members of their network other card network operators, such as Citigroup (owner of the Diners' Club network) and the shareholders of the JCB card".

Kroes also said Morgan Stanley could have brought innovation, lower prices and better service to the market dominated by Visa and MasterCard. *(FT, 04.10.07)*

www.wingspdk.com

FINES & PENALTIES

LCD Tender-fixers Penalised

Indonesia's competition watchdog has banned three liquid crystal display (LCD) monitor suppliers from taking part in procurement tenders for two years, after finding them guilty of anticompetitive practices.

The Business Competition Supervisory Commission says the companies – Sima Agustus, Tiga Permata Hati and Buana Rimba Raya – fixed tender offers to supply almost 270 LCD monitors to the Jakarta Regional Government in 2006.

The Commission found that the companies conspired with the tender committee to fix the deal, and rigged the offer to favour Mega Power LCD monitors.

The Commission has also recommended imposing administrative sanctions on goods and services procurement committee, the regional administration bureau, and the head of administration bureau for the regional administration secretary.

The Commission also suggested that the Jakarta city administration should re-evaluate its recruitment procedure for personnel involved in tenders to prevent further collusive practices, and be more selective in accepting tender participants.

(GCR, 12.11.07)

PRICE FIXING

Jakarta Watchdog Targets Temasek

Indonesia's business Competition Authority ruled that Temasek Holdings had breached competition rules through ownership of significant stakes in the country's two largest mobile phone operators.

The Authority ordered the Singaporean Government's state investment arm Temasek to sell one within two years and fined it and eight of its subsidiaries US$2.7mn each for their involvement in the offence.

The Authority decided that Temasek and its subsidiaries comprised a single business entity. The eight subsidiaries fined were SingTel, Singapore -Telecom Mobile, STT, STT Communications, AMH, AMH Company, Indonesia Communications and Indonesia Communications Pte.

Indonesia has some of the highest telephone tariffs in the world but this is partly because the Government sets steep charges for inter-operator connections. *(FT, 20.11.07)*

BP Agrees to Settle Charges

BP has agreed to pay US$303mn to settle a federal lawsuit claiming it manipulated the price for home propane by cornering the market and limiting supply.

The settlement stands as one of the largest payouts in a US energy case. Officials with both the Department of Justice and the Commodity Futures Trading Commission, a financial regulator, would not confirm media reports claiming the deal had been reached.

According to the settlement, BP will be under the close watch of regulators for at least three years to avoid possible criminal prosecution for price manipulation. BP will submit trading reports to both US and international regulators, news reports indicate.

BP will also report to bodies outside the US, including the UK's Financial Services Authority. *(FT, 23.10.07)*

Carrefour Fined over Toy Prices

French competition watchdog fined five toy suppliers and three retailers a hefty US$53.8mn for colluding to stop price competition during the holiday periods of 2001-03.

Carrefour, the hypermarket retailer that has promised to reimburse consumers "10 times the difference" if a product is found cheaper elsewhere, drew the heaviest fine of €27.4mn (US$41mn), while Hasbro was hit with a €5.1mn (US$7.6mn) penalty and Lego must pay €1.6mn (US$2.37mn).

The Competition Council also gave a clear signal that it suspected price fixing between retailers and suppliers might be an industry wide practice, especially in the holiday period when 60 percent of the €2.6bn (US$3.9bn) in toy sales are made.

In effect, the Council found that toy suppliers had agreed with retailers that their products would be sold at the same price in all outlets. In parallel, suppliers and retailers established a system of policing that would detect when products were sold at lower than agreed prices, leading to price revisions. *(FT, 21.10.07)*

Landmark Judgement

South Korea's Supreme Court has issued a landmark judgment on dominance, ruling that, to constitute abuse, a firm's dominance must have anticompetitive effects.

The Court ruled that auto-part manufacturer POSCO's refusal to supply Hyundai Hysco was not abuse of its dominant position because its refusal to supply did not have any anticompetitive effects on Hyundai. Instead, Hyundai found an alternative supplier in Japan and has continued to turn a net profit since 2001.

The case began in 1999, when the country's FTC fined POSCO KRW1.6bn (€1.2bn). POSCO appealed against the decision, but the lower court upheld the fine, claiming its behaviour constituted abuse of market dominance.

The Court reversed this decision and sent the case back to the Seoul High Court and ordered the Korean FTC to investigate in the future whether there are anticompetitive effects, before issuing a "transparent and reasonable" decision. *(GCR, 26.11.07)*

Setting Unfair Prices

The Albanian Competition Authority has fined the country's two mobile phone operators, Vodafone Albania and Albanian Mobile Communication, a total of US$5.52mn for abusing their market dominance.

The Authority accused two companies of overcharging customers by "setting unfair prices in the mobile market". The companies have more than two million subscribers and no outside competition.

Vodafone was fined US$2.94mn, while AMC, a former state-run telecom, was fined US$2.58mn.

During the investigation, the Authority concluded that, from 2000 to 2005, Vodafone Albania was dominant in the mobile market and had abused its position by charging unfair and excessive prices.

The telecom probe is one of the first large-scale investigations by the Albanian watchdog. The Authority was established in 2003. *(GCR, 13.11.07)*

ABUSE OF DOMINANCE

Slim Faces New Antitrust Probe

Mexican regulators are to reopen an investigation of billionaire Carlos Slim's telephone companies *Telefonos de Mexico* SAB and America Movil SAB.

The Federal Competition Commission referred to the possibility of a new probe and said any inquiry would identify market where *Telefones de Mexico* and America Movil have, so regulation might be needed to encourage new entrants

The investigation might lead the Competition Commission to declare *Telefonos de Mexico* or *Telmex* and America Movil's Telcel unit dominate, clearing the way for the Federal Telecommunications Commission to issue special regulation to curb their market power.

Regulator are renewing attempts to rein in Slim's dominance in telecom more than 16 years after phone monopoly from the government. The Commission will rely on an antitrust law enacted last year that gave the agency more power to punish practices deemed anticompetitive. *(FT, 30.10.07)*

CARTELS

First Criminal Cartel Charges

The OFT announced that three UK businessmen have been charged with criminal cartel offences under the Enterprise Act 2002.

This is the first time that such charges have been brought since the introduction of the criminal cartel offence in 2003. The maximum penalty for the criminal cartel offence is five years prison term and/or an unlimited fine.

The charges concern an alleged cartel for marine hose, which is used by the oil and defence industries for transporting oil between tankers and storage facilities.

The OFT has characterised this development as "highly significant … in both the UK's own competition regime and in international cooperation against cartels" and noted this sends a clear message to business that the OFT takes its enforcement responsibilities seriously.

As this involves the first ever UK criminal cartel prosecution it will be followed closely and will shape the development of UK competition law.

(www.mondaq.com, 31.12.07)

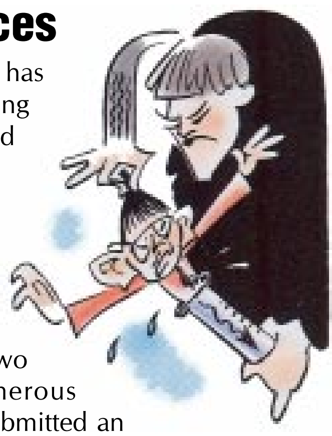
Christmas Tree Growers Charged

Denmark's Christmas tree growers, the biggest exporters of the trees in Europe, have been charged with organising a cartel as prices in 2007 spike by up to 25 percent.

The Danish public prosecutor for serious economic crimes has charged the Danish Christmas Tree Grower's Association and its director under the country's competition law for sending out price guidelines to its members.

The competition office stated that the association guided its members on how to calculate prices of Christmas trees and recommended certain prices. This is seen as an agreement according to the competition law, which is forbidden. *(FT, 18.12.07)*

Fines for Abusive Practices



Down to Earth

The Competition Authority of Portugal has issued its first decision on a case involving abuse of a dominant position. It fined incumbent operator Portugal Telecom €38mn (US$56mn) for abusive practices in the market for access to underground duct systems for cables and other electronic communications infrastructure.

Portugal Telecom was found to have refused access to its underground ducts to two pay-television cable operators on numerous occasions. One of the operators, TvTel, submitted an initial complaint in June 2003 that led to the Authority's investigation and decision.

According to the Authority's findings between 2001 and 2005 Portugal Telecom rejected at least 52 requests for access to its ducts, either refusing access entirely or granting only partial access to unconnected sections of underground infrastructure.

Furthermore, Portugal Telecom's excessive and unjustified delays in replying to requests were found to have had a similar effect to a refusal during the period pending a reply.

This is a landmark decision by the Authority, not least because it is the first abuse of dominance case to be concluded since the Authority was founded in 2003. In addition, the fine imposed on Portugal Telecom is the largest ever issued in Portugal for anticompetitive restrictive practices. *(ILO, 13.10.07)*

Largest Latin TV Company

Argentina's Competition Commission has cleared a merger between Multicaanal and Cablevisión, creating the largest cable TV company in Latin America.

With almost three million subscribers, the merged company will control almost half of Argentina's cable market, and have almost 620,000 broadband users.

The Commission approved the US$1.1bn merger on the condition that the two groups continually invest to improve the quality of service, though it is not clear how this will be measured.

Multicanal and Cablevisión will continue to operate as separate brands and are investing over US$600mn between them to digitalise their networks. *(GCR, 13.12.07)*

Creating "African Champion"

Canadian mining company Katanga Mining has agreed to buy rival Nikanor. The companies say the merged entity could become the largest copper producer in Africa and the largest cobalt producer in the world.

The deal, worth US$3.3bn, would combine the companies' copper and cobalt mining assets in the Democratic Republic of Congo.

Nikanor officials say the deal would create an "African champion with phenomenal resources and potential".

On the other hand, Katanga's officials have added that combining the assets would "create an industry leader in both copper and cobalt".

The deal is subject to approval from the UK Competition Commission and the EC. *(GCR, 07.11.07)*

Nike Bags British Sportswear Firm

UK's OFT has cleared US sportswear company Nike to acquire rival Umbro, moving the transaction one step closer to closure.

In the OFT's analysis of the merger, it says the combined company would "raise no competition concerns in any market", and it declined to refer the deal to the Competition Commission for further review.

While the companies would have a high combined market share in replica football kit sales, the office says, that number overstates the rivalry between the sportswear firms.

While Nike makes only replica club kits, Umbro's market share comes almost exclusively from kits for the England national side, and the two are not significant competitive alternatives. *(GCR, 24.10.07)*

Nod to Google/DoubleClick

After months of legal wrangling, accusations and outcry from lawmakers on both sides, the US FTC has approved a merger between Google and DoubleClick.

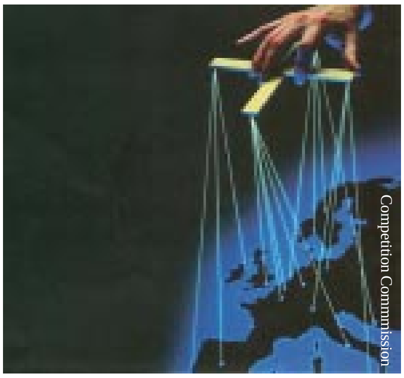
The US$3.1bn deal will combine Google, the world's most popular search engine, with DoubleClick, a leading developer of advertising software.

The watchdog decided that the merger would not harm competition, given that the third party ad serving market is highly competitive, and that Google is unlikely to exploit DoubleClick's strong position to benefit Google's own ad software product, AdSense.

One source close to the deal says that in its decision, the Commission declares that Google holds a dominant position in several internet markets, and used a very narrow market definition to conduct its study. *(GCR, 20.12.07)*

Tenfold Increase in M&As

The volume of mid-market mergers and acquisitions (M&As) deals in Asia has climbed tenfold since 2003 as companies seek to build scale in the region, according to a research report published by Mergermarket.



Mid-market M&A volume is regarded as an important barometer of economic activity as it signals that companies are seeking to grow and reduce market inefficiencies.

The study showed that there were nearly 100 deals in the first quarter of this year in the US$50mn to US$300mn range, compared with just 10 in the corresponding period in 2003.

The research study, which covers Asia excluding Japan and Australia, highlights the huge increase in corporate activity in recent years, driven by the region's soaring growth rates.

The study showed that since the start of 2003 the region was home to almost 900 mid-market deals with a combined value of more than US$100bn.

According to the authors, mid-market deals now account for about a fifth of the region's overall M&A activity, a ratio in line with the US and Europe.

Such deals, which are running at a steady US$$10bn per quarter, are expected to grow as companies eye expansion opportunities at home and abroad. *(FT, 28.11.07)*

Regulator to Oppose Woolworths Bid

Australia's competition regulator has stated that it would oppose any attempt by Woolworths to buy the Kmart and Officeworks retail chains owned by its rival Coles.

Coles has agreed to be taken over by Wesfarmers, the Australian-listed conglomerate, which has also flagged the possible sale of the Kmart discount department store group.

Woolworths, Australia's largest retailer, asked the Australian Competition and Consumer Commission (ACCC) to consider a proposal for it to buy both Kmart and Officeworks in the event that Coles is broken up.

The ACCC's investigation found that the proposed acquisition by Woolworths of Kmart, Big W's closest competitor (owned by Woolworths) in a number of respects, would be likely to substantially lessen competition in a number of markets. *(FT, 18.10.07)*

Israel Clears Insurance to be Sold in Post Offices

Israel's Antitrust Authority has exempted a joint venture in the insurance sector, shielding the deal from scrutiny by the country's antitrust tribunal.

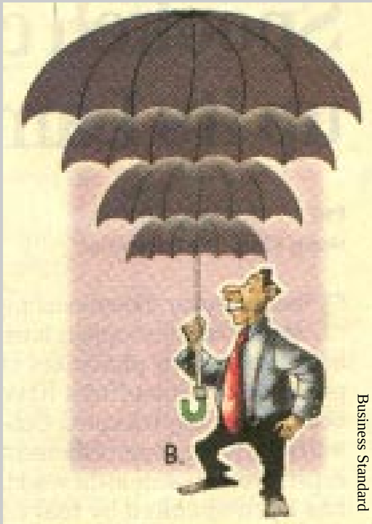
The three-year exemption will allow Israel Post Company and Mizrah Insurance Services to combine their services, provided that Israel Post does not discriminate against customers who decline to use the new service.

Israel Post operates the country's post offices – the only place where customers can transfer ownership of vehicles. The new joint venture will allow Mizrah to set up manned and automated stands within post offices where customers can buy vehicle and other insurance.

At these stations, customers will have a choice between vehicle insurance plans from several companies. The arrangement should create fierce competition for traditional insurance agents, a spokesperson from the Authority says.

The Authority says the deal should increase competition among insurance distributors, because it creates an additional distribution platform. However, the Authority has warned Israel Post that it must not discriminate between customers who use the new insurance service and those get their insurance elsewhere.

The Authority will revisit the deal after three years. *(GCR, 07.12.07)*



Business Standard

Brussels Backs Organon Deal

The EC approved Schering Plough's US$15.6bn takeover of Organon, the pharmaceuticals arm of Akzo Nobel of the Netherlands, subject to the sale of several animal medicines.

The move clears an important hurdle to the creation of a large medicines group, boosting Schering-Plough's human drugs pipeline and international presence, and creating one of the world's top two animal health companies.

The Commission approved without condition the combination of the two companies' human medicines portfolios, arguing that the merger would not "significantly modify the structure of the human health markets concerned". It added that there were "a number of credible alternative competitors".

However, Brussels said there were "competition concerns" for some veterinary products. It ordered the sale of more than 20 formulations across the European area. *(FT, 12.10.07)*

Brazil's Anatel to Rule on Telefónica

Anatel, the Brazilian telecommunications regulator, is soon expected to give the go-ahead to an agreement under which Telefónica of Spain will pay US$3.3bn for a share in control of Telecom Italia.

If approved, the deal will mark not only a significant step in consolidation of the global telecoms industry but also a substantial victory in a long-running battle for control of the sector in Latin America.

Industry experts opine that Anatel's decision was eagerly awaited in the industry not least because a merger of the two groups would create an entity with greatly increased bargaining power over its suppliers, even if strategic issues were kept separate.

But the real significance of the deal was that it would prevent companies controlled by Carlos Slim, the Mexican entrepreneur, from extending their control of the Brazilian and other Latin American markets, experts added.

(FT, 23.10.07)

Bid for Videogames

French media conglomerate Vivendi has launched a takeover of videogame group Activision in a bid to create the world's largest videogames publisher.

The US$9.8bn tie-up would bring hit games Guitar Hero and Call of Duty under Vivendi's control. Vivendi already owns World of Warcraft, an international best-seller.

The merger is expected to improve worldwide distribution of the games. One competition specialist says it is likely to prompt further consolidation in the sector. *(GCR, 03.12.07)*

Mexico Rejects Airline Tie-up

Mexico's Federal Competition Commission has blocked Mexicana Airline's proposed acquisition of rival carrier Aeroméxico.

The Commission says the deal between the country's two largest airlines would give the merged company "substantial power in the passenger air-transport market" and "the ability to unfairly displace its competitors and impose unfavourable prices and conditions on consumers".

"The competition which we are experiencing in the air transport market is one of the commission's major achievements", says the Commission.

"Our analysis shows that a merger between the two main players in this market could put this competition in serious risk and mean higher prices and fewer options for those who, for the first time, can use this type of transport", the Commission added.

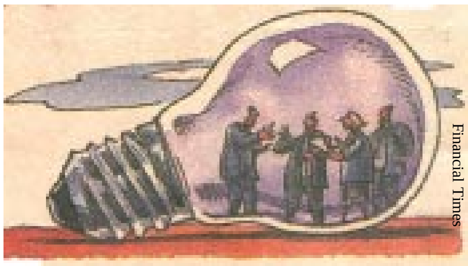
Mexicana and Aeroméxico can appeal against the decision. Mexicana had offered around US$200mn for the government's shares in Aeroméxico. If approved, Mexicana said the combined entity would control 53 percent of the domestic market.

(GCR, 12.10.07)

Legislation Amendments Force Energy Companies to Unbundle by 2011

– Loyens & Loeff NV

From January 01, 2011 Dutch energy companies must be unbundled up to shareholder level to comply with recent amendments to the Electricity and Gas Acts. Gas and electricity networks will be operated and owned by operators that are legally and economically independent from their former vertically integrated commercial group members. Energy companies will be split into commercial companies and separate network companies under strict regulatory supervision.



Independent Operation

The new Act amends the Electricity Act 1998 and the Gas Act with regard to rules on the independent operation of networks. Parliament adopted the bill after debate lasting almost three years. The main subject of debate was – and remains – why the Netherlands is the only European country to impose ownership unbundling on its energy companies.

Unbundling would make Dutch companies easy targets for foreign competitors and also significantly affect companies' credit ratings and impede new investments. However, a European tendency towards ownership unbundling is slowly becoming discernible and increasingly viable.

Two of the four major energy companies, Delta and Eneco, brought an action against the Dutch state before the court of The Hague concerning the act, claiming it is contrary to EU law (i.e., free movement of capital and/or the freedom to provide services and right of ownership). As these cases will probably require a preliminary ruling by the European Court of Justice, a decision is not expected before the compliance date of January 01, 2011.

Ownership Unbundling

The core of the Act is laid down in Section 10b of the Electricity Act 1998 and in the older Section 10a, which was previously adopted and is now to enter into force. Section 10a provides for the transfer of the beneficial ownership of the network to its operator.

Section 10b states in short that a network operator may not be affiliated in any way or at any level with commercial energy activities. It is to have full control over and obtain all benefits from the network.

Energy companies that are still vertically integrated and include a network operator are obliged to split. They are free to choose how to unbundle the network operator from supply, trade and/or production activities. They may choose to split off either the network company or the commercial company. A key factor in this decision is the potential harm that could be inflicted on the cross-border leases vested in the networks.

High-Voltage Grid Transfer

From January 01, 2008, and pursuant to the amended Section 10 of the Electricity Act, the national high-voltage grid will include networks at 110 kilovolts (kV) or higher (previously it was 220kV or higher). As a direct consequence, the current operators (regional network operators) are obliged to transfer the management of these networks to the transmission system operator, TenneT.

In a letter of October 18, 2007 the minister informed the Second Chamber of recent developments. One particular question concerned where the high-voltage grid ends. The issue was whether transformers were to be regarded as part of the high-voltage grid or of the regional networks. It has now been decided that they will be part of the regional networks and will remain under the management of the regional network operators. Outstanding issues are: (i) financial compensation by TenneT; and (ii) possible infringement of third parties' contractual rights as a result of the transfer.

Privatisation

The Act makes privatisation of the networks and the network companies virtually impossible. As from January 16, 2007, a change of ownership in a network or the shares in a network operator is subject to approval by the minister of economic affairs. The minister will withhold approval if the transfer of network ownership would lead to any grid rights being transferred to a person not within the 'circle of the government'. The minister may issue a regulation regarding the possible parties falling within this category.

From July 01, 2008, the minister's consent to a transfer of network-operator share rights will be subject to rules that are to be laid down in a special governmental decree and no such consent is to be given prior to its enactment. The decree must be passed by both chambers of Parliament. It is also possible that (partial) privatisation of the network operator will be the topic of a bill to be enacted if a fixed quorum in one of the chambers so requires.

– Loyens & Loeff is an independent full-service law firm with integrated corporate law and tax practices in Denmark. The article appeared in the International Law Office Newsletter, November 26, 2007.

EU End Ire Against Malta

The EC says it is satisfied with steps Malta has taken to open its petroleum market to competition – ending almost two years of criticism and threats of legal action.

DG Comp closed infringement proceedings against the country after the Government put new procedures in place allowing other petroleum companies to compete with former state monopoly Enemalta.

According to the EU accession treaty, Malta's Government had to ensure that petroleum products could be traded through a licensing system.

The watchdog says the necessary measures have now been published, and the Maltese authorities have apparently assured them that operating licenses will be issued to competitors who meet the legal requirements.

(GCR, 19.12.07)

Rules on Unsolicited Calls

The Italian Data Protection Authority has recently dealt with the hot topic of unsolicited phone calls made by Italian telecommunications operators for commercial purposes.

The issue was raised following complaints by customers who were annoyed at receiving a growing number of unsolicited calls promoting new products or services, many of which were activated without the customer's consent.

On the basis of these complaints, the Authority issued five substantially similar decisions against the leading operators in the Italian telecommunications sector.

In particular, the decisions concern the use of personal data taken from telephone directories for commercial communications purposes without the data subjects' prior consent (which is required under the Data Protection Code).

The decisions clarify that the sole purpose of telephone directories is to facilitate interpersonal communication; therefore, personal data in public directories cannot be used for promotional or commercial communications without the data subjects' express consent.

(ILO, 31.10.07)

Interconnection Charges Reduced

In 2004, Colt Telecom AG and Verizon Switzerland AG requested that the Federal Communications Commission determine the interconnection charges levied by Swisscom Fixnet AG for 2004 up to the date of the rendering of the decision.

In its decision rendered on December 14, 2007, the Commission held that Swisscom had invoiced excessive interconnection charges for the years 2004 to 2006 and ordered it to reduce its prices for the period by 15 to 20 percent for usage charges and by 5 to 15 percent for non-usage charges.

Swisscom will have to reimburse the parties for the excess charged with interest at the 12-month Swiss franc London Interbank Offered Rate plus 1.5 percent.

The Commission further announced that it will shortly determine the interconnection charges for 2007 and 2008. The Commission's decision is subject to appeal to the Federal Administrative Court. *(ILO, 19.12.07)*

Mexico Boosts Airport Competition

Mexico's Federal Competition Commission has recommended a series of measures designed to increase competition in the country's airport sector.

According to the watchdog, Mexico's airports are blighted by regulatory inefficiencies. "This means high airport tariffs that disadvantage customers who are forced to pay part of the costs in each air ticket". the Commission said, in a statement.

Following a year-long investigation of the airport sector, the Commission has proposed three initiatives to increase efficiency in the sector.

First, it has recommended stimulating competition between local airports. In particular, it has urged the Government to sell its stake in the airports near Mexico City to guarantee that wholly independent agents run the airports.

Second, the Commission will increase tariff regulation by appointing an independent regulator to reduce airport tariffs in existing airports. For new airports, there will be an allocation mechanism based on lower prices.

Finally, the Commission has proposed making the existing mechanism for auctions of airport slots more effective, to guarantee that all airlines have access to airports in competitive conditions.

(GCR, 04.10.07)

US Backs "Do Not-Call" Registry

The US House of Representatives voted to make permanent the Federal Trade Commission's ''do-not- call'' registry, which bars telemarketers from dialing more than 145 million telephone numbers.

The bipartisan measure prevents the four-year-old list from expiring next year and ensures that consumers do not have to register their numbers again, lawmakers said before approving it by voice vote.

Sources quote that the best way to deal with the nightmare is to end it before it starts. Further, the measure lets the FTC continue "scrubbing" the list every month to remove numbers that have been disconnected or reassigned.

The FTC has filed 34 lawsuits in the past four years for alleged violations of the do-not-call rules. Companies have paid more than US$16mn in Government fines and repaid US$8mn to consumers, according to the Commission.

(BL, 12.12.07)

Oil Refinery Privatisation Initiatives Suffer Setbacks

– Odujinrin & Adefulu

As part of its reform initiatives the Government embarked on the privatisation of four state-owned refineries. The objective of the refinery privatisation initiative was to promote efficiency in the downstream oil sector of the economy. The refineries have operated significantly below operational capacity despite the significant sums of money spent recently on upgrading them. This has led to the importation of large volumes of petroleum products. However, the privatisation process itself has suffered a number of problems, which suggests that Nigeria may not be ready for refinery privatisation.

www.academic.udayton.edu

Facts

The refinery privatisation process began in 2003 and was initially aimed at attracting the major oil companies which operate in Nigeria – including Shell, Mobil and Chevron – to acquire a 51 stake in each refinery. This was unsuccessful due to the perception that the refineries were not good enough to meet necessary efficiency levels. However, after a lengthy process, a bid by the Bluestar Oil Services Ltd consortium to acquire 51 of the Port Harcourt Refining Company Ltd and the Kaduna Refining and Petrochemical Company Ltd was accepted. The Bluestar consortium paid US$561mn for the 51 stake in Port Harcourt and US$160mn for the stake in Kaduna.

Transparency

The sale of the refineries on the eve of the previous government's departure from power raised concerns about the transparency of the exercise. In addition, there were concerns that the refineries were grossly undervalued at the prices for which they were sold. An *ad-hoc* Senate committee estimated the Port Harcourt refinery alone to be worth US$2bn.

National Interest

Other concerns identified verged on national interest issues. The sale of majority interests in the two companies would have given the Bluestar consortium a controlling stake over assets which nominally provide over 70 of national refinery capacity.

Furthermore, the powerful petroleum unions advocated strongly that such assets should be kept under state control. This argument was supported by the Nigerian National Petroleum Corporation, Nigeria's national oil company, which argued that the refineries could be run efficiently if they remained in its ownership.

These concerns led to a strike called by the Nigerian Labour Congress. One of the principal demands for calling off the strike was the revocation of refinery privatisation. The new administration intervened by declaring that a review of the entire programme would be conducted.

In view of this declaration, the consortium resolved to vacate its interest in the refineries for 12 months to allow the Nigerian National Petroleum Corporation to fulfill its pledge to:

- manage the refineries at full capacity without government funds;
- eliminate queues at filling stations; and
- eliminate importation of petroleum products.

Comment

While it appears that the Nigerian National Petroleum Corporation has regained possession of the refineries, it is unclear whether this position has arisen as a result of the consortium's vacation of its interests or the cancellation of the privatisation process by the Federal Government. In the case of the latter, the effect is that a new privatisation process may not be initiated within the 12-month vacation period. It is unclear whether there are any agreements to enforce such a position.

The failure and eventual cancellation of the refinery privatisation may concern potential investors. This failure is primarily attributable to transparency and due process issues. If the privatisation of refineries is to succeed in Nigeria the national interest concerns must be noted and the argument for privatisation must be made clearly before commencing such an exercise.

– Odujinrin & Adefulu is a premier Law Firm of Nigeria. The article appeared in the International Law Office Newsletter dated October 31, 2007.

Ghana: Sale-Buy Pact

The Ministry of Communications has announced the conclusion by the Government of Ghana (GoG) of a sale and purchase agreement with Celtel International, in respect of 75 percent of the shares of Western Telesystems (Ghana) Limited, (Westel).

The GoG through the Ghana National Petroleum Corporation holds the remaining 25 percent.

Celtel will be investing millions of dollars in a state-of-the art telecommunications network and associated services to offer its unparalleled experience as a pan-African operator, bringing telecommunications services to more than 24 million customers in 14 countries across the continent.

GoG believes that the entry of Celtel in the Ghanaian telecom market at this stage will further promote the needed competition in the telecom sector to ensure quality service delivery to the people of Ghana. *(All Africa. 23.10.07)*

Privatising Post in Japan

Japan began privatisation of its postal system, creating the world's largest commercial bank in a bid to inject more competition into the country's banking sector.

The massive changeover is the result of 2005 reforms instituted by then-Prime Minister Junichiro Koizumi, a former post and telecommunications minister who championed the issue in his landslide elections victory that year.

The promoters said the reforms would encourage Japanese – long used to stashing cash in the bank for miserable interest rates – to turn to more productive investments such as stocks.

It would also fuel competition and be a boon to foreign banks and investment companies hoping to scoop up new clients. *(TH, 01.10.07)*

PTT to Return Pipelines Business

Thailand's Supreme Administrative Court has ordered PTT, the energy conglomerate, to return its natural gas pipeline business to the state, saying such assets "must be used for the benefit of the public, not a private company".

However, the court rejected an appeal by Thai consumer groups for the renationalisation of the company, bringing some relief to investors, who feared a massive stock market sell-off if the court ordered the reversal of its 2001 listing.

But analysts say the transfer of PTT's pipelines business could still have negative repercussions for the company and the broader stock market, depending on how it is handled. Pipelines account for 10 to 15 percent of PTT's annual profits. *(FT, 15.12.07)*

EU Postal Reform Deal Ends Deadlock

Postal companies should be free to compete for customers across the EU from 2011 as governments ended a year-long deadlock over opening the US$125bn market.

The move will allow any operator to carry letters under the 50g "reserved" threshold, though powerful incumbents are still favourites to retain the business.

For letters up to 50g, states can set minimum requirements for delivery times, uniform prices and access to post offices. Crucial to competition will be how national regulators exercise their role.

The deal marks the end of a 20-year quest by the EC to open the market, which accounts for one percent of gross domestic product (GDP). The 1997 postal directive set quality standards and allowed some market opening. ***(FT, 02.10.07)***

State Assets Set for Privatisation

A report delivered at the joint meeting of Oliy Majlis, the Parliament of Uzbekistan, has noted the need to intensify the process of privatisation in the country.

The President's resolution "On measures to further intensify the processes of privatisation and active attraction of foreign investments in 2007-2010" has provided a new impetus to the consistent growth of privatisation.

Thus, the document pays particular attention to the sharp reduction in the stake of the state in the shareholding capitals of enterprises in strategically important industries, and the increasing role of private property in the development of the country's economy.

Based on this resolution, a new programme of privatisation consisting of three stages was developed and passed. According to the programme, it was planned to privatise 1,432 enterprises and keep the state's share only in 45 companies by 2011.

(AsiaPulse News, 15.10.07)

Kenya: Sugar in Private Hands

www.nicholsoncartoons.com

The entire Kenyan sugar sector will soon be in the hands of the private sector if a grand sugar firm's privatisation programme fronted by the Government goes according to plan.

Leading sugar mill Mumias Sugar Company already has 30 percent of its total stake in private hands as the Government plans to divest another 25 percent stake to the public in a second public offer to come to the market soon.

Tenders from interested investors for the two sugar mills were received in Nairobi in what analysts see as a step in the right direction for the Kenya sugar industry.

Among the other highlights of the privatisation spree is the need to make the country self-reliant in sugar production after years of importation aimed at filling the deficit in the domestic market. *(All Africa, 19.11.07)*

More than Just Philanthropy

There is growing pressure from consumers for firms to behave in a socially responsible way. Today, more than half of FTSE 100 firms publish annual Corporate Social Responsibility (CSR) reports – on recycled paper, one hopes. However, for many companies CSR has become just another box to tick and is nothing more than a cynical exercise in mud deflection.

William E. Halal, Professor of Science, Technology, & Innovation at George Washington University, argues that for firms to be socially responsible, they have to engage all the stakeholders (customers, suppliers, staff, the general public) collaboratively. He calls these extended enterprises ‘corporate communities’. Companies like IKEA, Nokia and Microsoft, come nearest to these ideals.

Generous donations from wealthy firms, is not what it is about. That’s just guilt money. Companies need to be actively involved in improving the future for all stakeholders. Firms do not exist in isolation from society. Their future success depends on the health and wealth of the communities they operate in.

The Indian consulting and IT services giant, Satyam Computer Services, is one organisation that has gone beyond mere chequebook charity, and is actively involved in shaping the lives of local communities. Aside from literacy and sanitation programmes, Satyam kick started a public-private partnership called Emergency Management and Research Institute (EMRI) which has transformed the lives of 25 million people in the state of Andhra Pradesh (where Satyam’s headquarter is located).

The goal of EMRI is to create a unified emergency service for India. A year ago, there was no single emergency number in the state of Andhra Pradesh, or anywhere in else India, for that matter. Satyam founders felt it was their role as a “good corporate citizen” to do something about the situation.

Venkat Changavelli, Chief Executive Officer of EMRI, says that although India received independence 50 years ago, they still don’t have a number to dial in the case of an emergency. There is one number for the police, another for an ambulance, one for the fire brigade and a different number of each hospital. What’s more, you can not phone any of the emergency numbers on a mobile phone. “You can wait until the government decides to prioritise this issue,” says Changavelli, “but you could be waiting ten, twenty years.”


www.eolitservices.co.uk

Real corporate social responsibility begins to happen when firms engage with stakeholders as equal partners. CSR should not just be used as a defence mechanism against negative media attention, it should also be seen as a source of profit and sustainability.

To get the service off the ground, EMRI had to collaborate with a number of stakeholders, including local government, NGOs, hospitals, police departments, fire brigades and emergency victims themselves. “We have signed agreements with 90 hospitals who have committed to treat emergency patients for 24 hours free of charge”, says Changavelli. EMRI also collaborated with foreign organisations, such as the American National Emergency Number Association, who came and shared their practices and procedures with EMRI, and the American Association of Physicians of Indian Origin (AAPI) who trained doctors and set up emergency management.

The three digit emergency number, 108, is toll free. Asking for a vehicle is free. Treatment in the ambulance is free. Even the first 24 hour stay in the hospital is free. While this may sound like a private organisation doing the work of a cash-strapped government, Changavelli says that it is not Satyam’s goal to do the work of government, they only intend to start the ball rolling, using their money, technology and know how.

Satyam and EMRI are also cooperating with the Indian Government to help build roads and other vital infrastructure in some of the most underprivileged rural communities. If the communities prosper, Satyam prospers. The company believes that creating value for society is an integral part of their business.

While doing good may cost money in the short term, it’s a long-term strategy for sustainability. Ethically minded consumers are an affluent and increasingly vocal group. Any company that thinks it can get away with simply paying lip-service to CSR can expect to be found out. In an age of blogs, chat rooms and podcasts, it has never been easier for citizen journalists to blow the whistle on errant firms. You never know who is watching – it may be one of your employees, a supplier or even a customer. Bad news travels fast, and stakeholders can damage a company’s profits by publishing their misgivings online. Even profitable companies, like Nike and McDonalds, have changed the way they do business as a result of consumer pressure.

But CSR should not just be used as a defence mechanism against negative media attention, it should also be seen as a source of profit and sustainability. Many studies have shown that there is a positive correlation between a company’s social performance and their financial performance. There is no reason why doing good should not equate to doing well.

The article appeared in January 2007 issue of The Economist.

West on Anti-corruption Pressure

The new head of Transparency International (TI) has warned London and other global financial centres to expect “much greater pressure” from the corruption watchdog to tighten anti-graft and money laundering regulations.

The TI head added that corruption “facilitated by bankers and financial centres” had received too little attention by the global pressure group.

He called for more stringent government regulation of both onshore and offshore financial centres, including New York and Singapore.

He indicated that TI would lobby for specific regulations on shell companies — and on western bankers, accountants and others working for them – that are used to hide corrupt funds.

TI for the first time will publish a report on the actions of specific companies in combating corruption in January 2008.

The report will assess big oil, gas and mining companies on their readiness to publish information on their revenue flows in energy projects, especially in developing countries.

(FT, 16.11.07)

Norway Rushes for Female Directors

Norwegian public companies are scrambling to meet deadline to fill 40 percent of board seats with women or risk being shut down.

Some have held extraordinary general meetings over the Christmas period to elect female directors. Under an amendment to the companies act passed by the Government in 2003, public companies must give men and women at least 40 percent of board seats each.

More than 80 percent of companies have complied but up to 80 companies have not. Norway has long been a leader in promoting gender equality. But the corporate world remained an exception. In 2003, there were 254 women among the country’s 2,800 directors of public companies, less than 9 percent.

Norway has the highest proportion of female directors in the world at 36 percent. Sweden is second and the US third. *(FT, 31.12.07)*

Historic Environmental Deal

A US$4.6bn settlement by one of the last holdouts among polluting power companies signals the end of a long legal debate over acid rain and a tougher battle ahead over carbon dioxide and the use of fossil fuels in the US.

The agreement with American Electric Power Co., struck just as the company was to defend itself in court, ends an eight-year battle over reducing smokestack pollution that drifted across Northeast and mid-Atlantic states and chewed away on mountain ranges, bays and national landmarks.

Government officials praised the deal as the largest environmental settlement in the nation’s history.

AEP, based in Columbus, Ohio, maintains it never violated Clean Air Act rules to curb emissions, and had already spent or planned to pay US$5.1bn on scrubbers and other equipment to reduce its pollution.

AEP must also pay a US$15mn civil fine and US$60mn in cleanup and mitigation costs to help heal polluted land in the Shenandoah National Park and waterways including the Chesapeake Bay.

In all, the costs and civil fines will far exceed any company payout in an environmental case.

(Washington Post, 10.10.07)

Creating a Greenhouse Gas Registry

In an unexpected development, the US Senate recently passed legislation with a requirement for the US Environmental Protection Agency (EPA) to create a greenhouse gas emissions registry for industries.

Down to Earth

Under the Bill, EPA must develop the registry and require industries to report greenhouse gas emissions exceeding thresholds that EPA must develop for different industries in various sectors of the economy.

EPA must also establish the frequency at which the industries must submit their reports to the agency.

Supporters of the registry have described it as a fundamental building block for more comprehensive climate legislation, including a cap-and-trade system.

(Mondaq, 21.12.07)

US$220m Award for UK Officials

The privatisation of Qinetiq, the British defence research group, in effect awarded US$220m of public assets to 10 civil servants who negotiated-up their own incentives before agreeing to a buyer, the UK public spending watchdog has found.

In a scathing investigation into the privatisation of the group, the National Audit Office (NAO) says taxpayers lost tens of millions of pounds because Ministry of Defence (MoD) officials mishandled negotiations and gave “excessive” incentives to managers.

The report highlights flaws in one of the most contentious privatisations undertaken by the Labour government. Senior civil servants turned executives made returns of 19,900 percent from the two-step deal, the report says.

The report says that after talks with the Qinetic chief executive and chairman, Carlyle doubled the amount of equity offered to staff to 20 percent. This proposal diluted the government’s shareholding in the privatised group. The department sought no outside advice on the incentive scheme, believing its interests were aligned with those of Caryle.

The NAO said more money would have been generated for taxpayers if a big contract had been awarded to Qinetic before the sale of the stake to Carlyle, rather than shortly after. *(FT, 23.11.07)*

Why Plutocracy Endangers Emerging Market Economies

– Martin Wolf

A capitalism that generates vast wealth, partly on the back of political connections, and rewards those who resist competition is likely to generate the social and political drawbacks of the system without many of the offsetting gains.

Down to Earth

Mexico's Carlos Slim is now the richest man in the world, or so Fortune magazine has told us. His ascension is fascinating. This is not only because he is extraordinarily rich. It is also because the manner in which he has accumulated his wealth tells us much about the capitalism that is spreading across the globe.

Estimated at US$59bn, Slim's fortune is equal to 6.6 percent of Mexico's gross domestic product. Does this extraordinary accumulation of wealth in a single man's hands matter? One reason someone might think so is that it implies extraordinary inequality. If, for example, one assumed a real return of 6 percent a year, the Slim family's permanent income would be US$3.6bn a year. On World Bank figures, the average income of Mexico's poorest 10 percent was US$1,200 per head in 2005. So the Slim family's permanent income equals the current incomes of 3m of Mexico's poorest people.

Furthermore, vast concentrations of wealth are sure to have political consequences, inciting corruption and populism. Thus, it seems sure to weaken both the legitimacy and effectiveness of fragile democracies.

These dangers are evident. But one can counter that the drive to accumulate wealth is the spur to entrepreneurship. It matters, therefore, how far wealth is generated in competitive as opposed to relatively protected markets.

How, then, did Slim make his fortune? A part of the answer is that he is a businessman with an eye for opportunity. What, however, was his most important opportunity? In Slim's case, the gold-mine was Teléfonos de México, or Telmex, in which he obtained a controlling stake from the government in 1990.

Telmex has proved to be a licence to print money, a description once used of ITV, the UK's first commercial television station. When privatised, Telmex was given what amounts to six years of exclusivity. Moreover, as Brian Winter of US Today points out, Telmex still controls 92 percent of the country's fixed-line market. According to the Organisation for Economic Co-operation and Development, Mexico has some of the highest telephone charges among its members, both for fixed lines and mobile telephony. Winter reports that voice-over-internet providers, Vonage and Skype, have accused Telmex of intentionally blocking access to their sites, to protect its long-distance services.

Telmex denies these charges. But two points are clear: Telmex is an extremely profitable privatised quasi-monopoly; and Slim's ownership has catapulted him from being rich to enormously wealthy. No British government could have allowed an individual to become so rich from a single privatisation.

Thirty nine of the 100 richest people in the world, according to Forbes, are Americans. Interestingly, the fortunes of all these people together amount to only 4.5 percent of US GDP and, so, to relatively less than Slim's in Mexico. These American super-rich made (or inherited) their money from many different activities (including technology, media, retail and resorts). But it did come from success in competitive markets. Even where this position is controversial, as in the case of Microsoft, most (though not all) would agree that the company played a useful role in standardising products in a dynamic new industry.

To put the point bluntly, there exist more or less useful ways of making a fortune. The least useful are through political connections; the most useful are in competitive markets.

Are the vast fortunes being made in emerging economies the result of productive entrepreneurship or of rent-seeking? The answer to this question depends on where the economies are likely to go. The bigger the fortunes made by extracting rent from uncompetitive markets, the greater the resistance to the introduction of fiercer competition and so the weaker competition itself is likely to be. As I learnt in Mexico just over a week ago, knowledgeable observers partly ascribe the country's weak growth to the lack of robust competition across the economy.

In his article, Winter worries that "as the core of the global economy shifts to countries with weak rule of law and institutions, connections to government, rather than entrepreneurial skill, are becoming the quickest and most effective route to wealth". Fortunately, there are many counter-examples, such as Azim Premji of Wipro, the Indian software company. Moreover, even where the origin of the fortune rests in connections, the new owners are likely to use their assets more skilfully than governments. Slim's Telmex is an example. The Russians' companies are, too.

Yet concerns remain. A capitalism that generates vast wealth, partly on the back of political connections, and rewards those who resist competition is likely to generate the social and political drawbacks of the system without many of the offsetting gains. Not all capitalisms are created equal. Those who support the market economy must never forget this.

– Associate editor and chief economics commentator at the Financial Times. The Article appeared in the Financial Times, November 06, 2007.

A Market Rigged Against the Cartels

– Nikki Tait

Shockwaves rippled from Brussels to the suburbs of Detroit when Guardian Industries, a US privately owned manufacturing group, was hit with a €148m (£106m) fine for price-rigging.

It was the largest single element of a €487m (US$740m) penalty imposed by the European Commission on four glassmakers for running a cartel in the market for flat-glass, used mainly in the construction industry.

The fine was lower than predicted: some had suggested it might be the Commission's first-ever €1bn-plus cartel penalty. But the high forecasts had overestimated the length of time during which the cartel persisted.

New fining guidelines, which started to bite in November 2007, now tie cartel penalties awarded by the Commission more closely to the scale of an infringement. In broad terms, fines will be based on up to 30 percent of a company's annual sales to the manipulated market, multiplied by the number of years of cartel involvement – and then subjected to various other factors and adjustments.

In this case, the price-rigging alleged by the Commission had persisted for barely a year. Had it run on for any significant length of time, the penalties could have been extremely high. The Brussels authorities hope the implications of this new regime will serve as a warning to companies tempted to breach antitrust rules.

"There should be a real call to change attitudes", Neelie Kroes, EU Competition Commissioner, told a clutch of businessmen and MEPs at a think-tank dinner recently. And the message, she also suggested, was getting through: "CEOs are now asking how they can address these problems - that is what I am looking for".

But, while no one seeks to defend cartel behaviour, competition specialists do query whether the ever-mounting penalties are blurring the boundaries between civil and criminal law.

The Commission and its competition directorate, they point out, are administrative bodies, working under a civil law regime.

However, the total sum raised from antitrust fines has jumped from less than €700m (US$1,063m) in 2005 to €1.8bn (US$2.73bn) in 2006 and more than €3.3bn (US$5.01bn) in 2007. With more cartel investigations pending there are concerns over whether escalating penalties are pushing the fining system into quasi-criminal territory – and whether this demands a higher standard of proof and transparency.

"When fines get so high, they are clearly of a punitive nature", says Alec Burnside, at Linklaters' Brussels office. In such a situation, lawyers argue, it should become incumbent on the Commission to make its decision-making more open – for example, detailing precisely how penalties have been calculated.

A second concern is whether penalties at this sort of level could affect a company's willingness to participate in a particular market – and so prove counterproductive. Commission fines cannot top 10 percent of a company's total annual turnover, but competition specialists claim that if fines regularly settle at that sort of level there may be consequences for corporate business structures, particularly if companies also face private damages actions. "I know that is of some concern inside the Commission", claims one lawyer.

Commission officials counter that such considerations would be taken into account when fines were set. The increased fines may place Europe's top courts under pressure. One of the most significant checks on the Commission's fining decisions is companies' right to appeal – in this case, to the Luxembourg-based Court of First Instance.

Kyriakos Fountoukakos, at Herbert Smith, the law firm, points out that the CFI has unlimited jurisdiction to adjust Commission-imposed fines. "It may well decide to exercise [this power] in a more interventionist way".

This though raises questions about how the higher fining regime may fit with the Commission's proposed "direct settlement" arrangements. The arrangements, which are under consultation, envisage that companies could reduce their penalties in exchange for acknowledging their cartel involvement. The Commission hopes this will help free its resources.

The question is whether, faced with the possibility of large fines, some companies will feel obliged to take this option, under which they may effectively (although not formally) surrender appeal rights.

In response, the Commission says companies that play by the rules have nothing to fear.

As for the determined Kroes, she says simply: "The finest day for me will be when the fines are zero". Judging by the past few weeks, however, such a day is still some way off.

– Law Courts Correspondent. The Article appeared in the Financial Times, December 17, 2007.

Botswana: Does Privatisation Develop Economy?

– Dimpho Mashaba

Just asking, this question came to my mind after the government accelerated its privatisation stance of Air Botswana and Botswana Telecommunications Corporation, through the intended "strategic partnership" with regional airliner South African Airlink failed.

These move raises more questions than answers. Do these people really know what they are doing? Do they have our interests at heart? Why such a hurry while economically the country is still doing well? Is privatisation panacea for economic growth and development? So help them God for the Botswana Democratic Party capitalist regime do not know what they are doing.

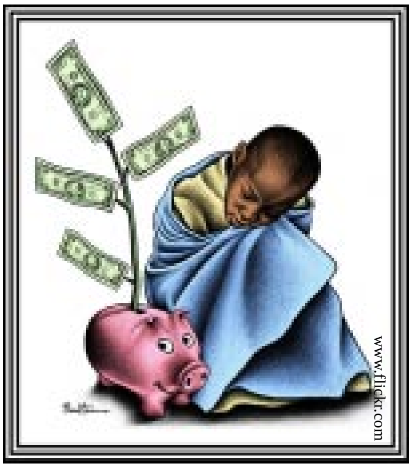
Believe it or not, in principle privatisation is ideal in realising privates sector and individual initiatives, of course it broadens domestic equity ownership.

The ruling elites believe that privatiation is a messiah for economic growth and development. To them privatisation will create a free market economy, promote domestic investment and generate new sources of revenue.

President Festus Mogae *et al* also argue that the exercise will benefit the economy through higher return on capital in private business. To Mogae, Motsumi and Public Enterprises Evaluation and Privatisation Agency (PEEPA) the move reduces managerial decisions and reduces the government control of business.

Who is fooling who? Sorry, the Finance Ministry has something to add unto the list of justifications, Baledzi Gaolathe and his Permanent Secretary Serwalo Tumelo believe that privatisation will reduce the scope of government hence increase capital security.

Hallucinations they make, this is the conclusion after careful analysis of the principle of privatisation; its Economic Theories such as Orthodox, Property Rights, Public Choice and Agency Theory, among others.



Privatisation is not a panacea for economic growth and development. Economic growth can only be enhanced by broadening economic participation and restructuring existing parastatals to provide an enabling environment for economic growth.

In a nutshell, privatisation only serves to enrich few people and perpetuate the already existing inequalities.

The problem with the current privatisation drive is that it is conceived to satisfy selfish ends rather than broaden economic development. Remember the Galeforolwe and Serwalo saga, this was just time when chicken came home to roost.

The public needs to know why the PEEPA CEO, Joshua Galeforolwe was told to stop reporting to the Ministry of Finance and instead to Office of the President. They say someone received a warning letter when he tried to question this. This development caused a war of words between the Office of the President and Ministry of Finance. Selfish, selfish ends at best.

Still on Air Botswana, the negotiations were tainted by allegations from the beginning that they were masterminded by an interested party-Nico Czypionka, former consultant and the member of the Botswana Economic Advisory Committee.

There were allegations of conflict of interest between PEEPA board members and Public Procurement and Assets Disposal Board (PPADB).

It is an open secret that the ruling elites and their international friends are positioning themselves in such a way as to gain maximum personal benefits from the privatisation programme. Sorry the Air Botswana bid did not go as they expected, if only Airlink had known it was just wishful thinking.

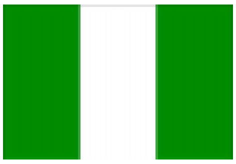
Mma Motsumi said the deal failed because they had the citizens interest at heart, hell no if at all they have the people's interest at heart they could have abided by MP Maoto's motion and saved the citizens taxes.

Nothing could stop them then, even if we the Botswana Congress Party threatened to go to courts of law to stop them since they had violated their 2003 Air Botswana Transition Act, they were so determined to seal the deal.

All in all privatisation is not a panacea for economic growth and development.

Economic growth can only be enhanced by broadening economic participation and restructuring existing parastatals to provide an enabling environment for economic growth.

– BCP YL Secretary General. The Article appeared on All Africa.com, October 16, 2007.



About a Competition Law – Nigeria*

Nigeria, with a population of over 136 million, is obviously the largest market in sub-Saharan Africa (SSA) with reasonably skilled and potential manpower for efficient and effective management of investment projects within the country.

Economy

Nigeria's economy could be aptly described as most promising. It is a mixed economy and accommodates all: individuals, corporate organisations and government agencies, to invest in almost all economic activities. Since 1995, the Federal Government of Nigeria has introduced some bold economic measures, which have had a salutary effect on the economy. The Government has been liberalising and privatising some sectors that were hitherto state monopolies, with the purpose of introducing competition. So, the country now actively engages in the promotion and protection of competition in its markets.

Competition Evolution and Environment

Nigeria's current industrial policy thrust is anchored on a guided deregulation of the economy and the Government's dis-engagement from activities, which are market-oriented. This leaves the Government to play the role of facilitator, focusing on the provision of incentives, policy and infrastructure, which are necessary to enhance the private sector role as the engine of growth.

The Nigerian Enterprises Promotion Acts, which hitherto regulated the extent and limits of foreign participation in diverse sectors of the economy and inhibited competition, were repealed in 1995. Given the need to stabilise the banking and finance sectors, and promote confidence in these vital institutions, the Failed Banks (Recovery of Debts) and Financial Mal-practices in Banks Decrees of 1994 were put in place.

Under the Privatisation and Commercialisation Law of 1988, the Government successfully sold its holdings in industrial enterprises and financial institutions, and such divestments were made by way of 'offers for sale' on the floor of the Exchange, so that ultimate shareholdings in such enterprises could be widespread.

The 1997 Budget proposed the repeal of all existing laws that inhibited competition in certain sectors of the economy. Consequently, with the promulgation of the Public Enterprises Promotion and Commercialisation Decree in 1998, private sector investors (including non-Nigerians) were free to participate in, and compete with, Government-owned public utility service corporations in the areas of: telecommunication, electricity generation, exploration of petroleum, export refineries, coal and bitumen exploration, hotel and tourism.

Competition Law and Policy

At present, Nigeria is yet to develop its competition law. Efforts are currently being made to draft the competition law. Nonetheless, competition cases or issues in various sectors of the economy are handled at present, directly or indirectly, by the regulatory institutions.

The Nigerian Investment Promotion Commission Decree No. 16 of 1995

This decree established the Nigerian Investment Promotion Commission (NIPC) as the successor to the Industrial Development Co-ordination Committee (IDCC). The NIPC is an agency of the Federal Government of Nigeria, with perpetual succession and a common seal, which means the Commission's leadership structure will always have a successor after expiration of tenure of office of the incumbent leader. This is specially established, among other things, to:

- coordinate, monitor, encourage and provide necessary assistance and guidance for the establishment and operation of enterprises in Nigeria;
- initiate and support measures, which shall enhance the investment climate in Nigeria for both Nigerian and non – Nigerian investors;
- promote investments in and outside Nigeria through effective promotional means;
- register and keep records of all enterprises to which the NIPC Decree legislation applies;
- identify specific projects and invite interested investors to participate in those projects;
- provide and disseminate up-to-date information on incentives available to investors;
- assist incoming and existing investors by providing support services; and
- evaluate the impact of the Commission on investment in Nigeria and recommend appropriate remedies and additional incentives.

The Investment and Securities Act No. 45 of 1999 was promulgated on May 26, 1999. The Act repealed the Security and Exchange Act of 1998. The new Act promotes a more efficient and virile capital market, pivotal to meeting the nation's economic and developmental aspirations in this new millennium.

Among the various roles of the Commission is to register and regulate securities exchange; capital trade points; futures; options and derivatives exchanges; commodity exchanges; and any other recognised investment exchange.

Future Scenario

Nigeria is gradually forging ahead in its quest for putting in place a competition regime in the country. There has been a departure from the earlier proposal to transform the Consumer Council into the Trade and Competition Commission. Now that the final copy of the proposed Nigerian Trade and Competition Commission (NTCC) bill is almost ready at the National Assembly, events within the next six months will see the President assenting to the bill to usher in a new competition regime in Nigeria. By implication, Nigeria is certain to join other countries in the World with a functional competition regime.

---

* *Extracted from Competition Regimes in the World – A Civil Society Report, www.competitionregimes.com*

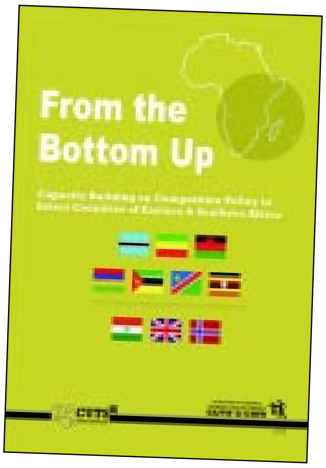
Publications

Research Report

From the Bottom Up

CUTS International initiated the Project entitled, 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' (also referred to as the 7Up3 project) with the dual objectives of assessing the bottlenecks that prevent effective implementation of competition regimes in the project countries; and enhancing the capacity of multiple stakeholders to comprehend the benefits of competition policy and law.

This Report published under the 7Up3 project charts out the competition scenario in seven countries in Eastern and Southern Africa, viz. Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda, and highlights the weaknesses that require to be addressed for operationalising competition regimes in them. It strongly recommends national governments to prioritise competition administration in the framework of their national development strategies to promote economic development as a means to reducing poverty and inequality.



Research Report
http://www.cuts-ccier.org/7up3/pdf/synthesisReport.pdf
Project Webpage: www.cuts-international.org/7up3.htm

Briefing Paper

Status of Competition and Regulation in India, 2007

(C-CIER No 3/2007)

The Indian economy had been characterised by significant government involvement marked with the dominance of large state-owned public enterprises. There existed lacunae in the older laws and policies, which needed corrections as India moved ahead in creating a sound economic regulatory regime aimed at delivering higher growth, creating more employment and ensuring distributional justice to all. In order to realise this, India embarked on the path of economic reforms during 1990s by shifting to market driven economic policies.

This Briefing Paper brief evaluates the significance of competition policies and regulatory regimes, including the government policies that impeded competition. It also examines the competition-related issues and sectoral dimensions citing examples of selected sectors. It recommends, among others, adoption of a National Competition Policy, so that a better regulatory regime can be realised in the country.

This Briefing Paper can be accessed at:
http://www.cuts-international.org/pdf/C-CIER-No-3-2007.pdf

Forum

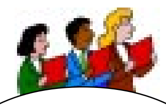
Thanks for sending a copy of the research report entitled 'Competition and Regulation in India, 2007'. This Report reminds the government of its commitments in the area of competition and regulation and highlights aspects that remain unaddressed.

Sunil Arora
Principal Secretary to Chief Minister
Government of Rajasthan

We want to hear from you...

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds off to grade the newsletter on the following parameters on a scale of one to ten (ten being the best). Try to be honest and please suggest ways for improvement.

- Content
- Number of pages devoted to short news stories
- Number of special articles
- Use as an information base
- Readability (colour, illustrations & layout)



Please e-mail your comments and suggestions to **outreach@ccier.cuts.org**

Eagerly waiting to hear from you!

Published by

Published by: **CUTS Centre for Competition, Investment & Economic Regulation**
D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India,
Ph: +91.141.228 2821, Fax: +91.141.228 2485,
Email: c-cier@cuts.org, Web site: www.cuts-international.org

Printed by: Jaipur Printers P. Ltd., M.I. Road, Jaipur 302 001, India.
Annual Subscription Rs. 150/US$30

sources

BL: The HIndu Business Line
FT: Financial Times
GCR: Global Competition Review
ILO: International Law Office
TH: The Hindu

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information and do not indicate the literal transcript of a particular news/story.