REGULETTER

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Challenges in Promoting Competition in Agriculture Markets – Evidence from West Africa

The agriculture sector is the backbone of the socio-economic setting in West African countries, as it is in many other parts of the developing world. A recent study by CUTS in Burkina Faso, Gambia, Ghana, Mali, Nigeria, Senegal and Togo reveal that farmers remain in an impoverished state, while other market players (in inputs and outputs sub-sectors) have prospered. Governments need to take immediate action to address certain structural and functional anomalies in the agriculture market, and demonstrate their commitment towards reducing poverty.

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Agriculture is mostly a family affair in West African countries, with farm activities undertaken by individual households in an uncoordinated manner scattered across small land holdings. Individual farmers, or even their associations, where they exist, have little or no power in determining prices of their outputs. They have to rely on prices offered by procuring entities, which is often far below the government-set 'floor prices'.

Farmers rely on 'informal sources' to procure seeds/stocks in most countries. Given that such seeds are often of dubious quality, this practice adversely affects productivity. A correlation seems to emerge when we compare this finding with the declining productivity levels observed in some of the countries. The propensity to rely on 'informal sources' for seeds can be attributed, among others, to the fact that seed markets are mostly characterised by dominant or monopolistic public sector firms, who allegedly indulge in excessive pricing. The other possible explanation is a weak 'extension service'.

It is at the marketing stage where competition concerns were mostly observed. Such concerns include: abuse of dominant position, non-transparent licensing regime, policy-induced entry barriers, etc. Government policies protect state owned enterprises in The Gambia (groundnuts) and Ghana (cocoa) from private sector competition. In Senegal and Burkina Faso, farmers allege that dominant private companies offer low prices and poor payment terms.

Continued usage of uncertified seeds is a market failure that the government should address as a priority, given its implication on poverty. An option would be to consider private participation in extension services, as done in some other African countries. Existing competition authorities should closely monitor behaviour of dominant firms, both public and private, as it has adverse impact on farmer's livelihoods.

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CUTS Centre for Competition, Investment & Economic Regulation

CUTS C-CIER

Amendments to Croatian Competition

A new Competition Act for Croatia was adopted in June 2009. The amendments will enter into force on October 01, 2010 and affect all aspects of competition law. The Croatian Competition Agency will be empowered to conduct unannounced inspections of undertakings that are accused of infringing competition rules.

The new Competition Act establishes a single court protection regime in respect of the agency's decisions and the fines imposed, which will be under the competence of the Administrative Court, and makes relevant commercial courts competent to assess damages claims stemming from competition law infringements. It will no longer be possible to apply to the Competition Agency for an individual exemption from anti-competitive agreements that create countervailing efficiencies. *(ILO, 08.04.10)*

Pakistani Competition Law Renewed

The Senate Standing Committee on Finance has approved the draft of the Competition Bill 2010, which will reinstate the powers of the Competition Commission of Pakistan (CCP). An amendment has been included which will mean that appeals against CCP decisions will be heard by an independent competition appellate tribunal, rather than the high courts.

Amendments to the bill will also increase the cap on fines in cases where the annual revenue of a business is not determined. The cap on fines has been reduced from 15 to 10 percent of annual turnover in cases where annual revenue is known. Pakistan has been without an effective competition authority since March 2010, when the previous competition ordinance was allowed to lapse. *(DT, 06.05.10)*

Mexico Approves Antitrust Reforms

Mexico's lower house of Congress approved legislation that will give the country's anti-trust agency greater powers to punish firms and executives that violate competition laws. The bill would allow the Federal Competition Commission (CFC) to levy fines of up to 10 percent of a company's annual sales and seek prison terms of up to 10 years for individuals found guilty of anti-competitive practices.

The bill would also give the CFC the power to conduct surprise on-site investigations, among other new faculties. Enforcing competition laws is an uphill battle in Mexico, where a number of industries – including broadcasting, telecommunications, and cement – are dominated by one or two powerful business magnates. *(NASDAQ, 30.04.10)*

Albania Revamps Competition Law

The Albanian Competition Authority recently proposed several amendments to the Competition Law which were prepared with the goal of harmonising the Albanian competition legislation with the European Union (EU) law, pursuant to the Stabilisation and Association Agreement concluded with the EU.

The amendments proposed by the Competition Authority affect almost all chapters of the law, including those on anti-competitive agreements, merger control, dominance, notification and investigation procedures, fines and appeals and their execution. The draft amendments will be soon submitted to the Council of Ministers for the initiation of the legislative process. *(ILO,06.05.10)*

Algeria Submits Price Controls Law

Algeria's government has submitted to the Parliament a draft law that will allow it to set price controls on all consumer goods and services as part of a campaign to curb inflation.

The planned price controls are the latest in a series of measures increasing the state's role in energy exporter Algeria's economy, where sharp rises in food prices have helped fuel strikes and public unrest.

The draft amendments to Algeria's competition law will widen the government's scope to set price ceilings and establish tougher penalties for traders who charge over that price. *(Reuters, 30.06.10)*

UAE Introduces New Laws

The Ministry of Economy of United Arab Emirates (UAE) is in the process of developing new laws as part of modernising the legislative system and enhancing the business environment in line with the UAE strategic vision for 2021.

The new laws will cover Foreign Investment, Competition, Certificate of Origin, Arbitration, Industry Affairs Regulation, Amendment of Industrial Ownership, Anti Commercial Fraud, Auditors Profession Regulation and Companies' Law.

The Competition Law will lay down the mechanisms governing healthy competition in business while the Law of Commercial Arbitration will plug the gaps in the existing one. The new laws seek to address the existing gaps in commercial regulations and arbitration and promote efficiency, transparency, and investor confidence in the business sector. *(Zawya, 10.04.10)*

Hong Kong Competition Law Set to Surface

The Hong Kong government appears set to introduce its competition bill into the Legislative Council on July 14, 2010. The bill will cover collusive behaviour and concerted practices as well as abuse of dominant positions. It will not, however, introduce merger controls, leaving open the question of whether mergers could be challenged ex post under general competition law. Government agencies and some statutory bodies will be exempt from the competition law, with the government still in the process of deciding which bodies to exempt.

Under the proposed law, a competition commission will be established with the power to investigate companies on its own initiative or after referral from the government or courts. Cases will be heard before a competition tribunal which will have the power to impose fines of up to 10 percent of annual turnover. There will also be provision for private actions by third parties who have suffered damages. *(TS, 28.06.10)*

Promoting Competition in Namibia

– Mihe Gaomab*

The need for explaining our work is to avoid any potential conflict or friction that may harm our continuous sustained engagement with sectoral regulators such as Bank of Namibia. In terms of the Competition Act, 2003 the Commission is entrusted as the principal institution to promote and safeguard competition in Namibia. The Commission is therefore empowered by law to protect the competitive process of all economic activities within Namibia or having an effect in Namibia. This means that the Commission is empowered by law to investigate and decide on an appropriate course of action on activities that do not promote competition in Namibia, irrespective of whether the effects of such activities are foreign or local.

The prime responsibility of the Commission is therefore to promote competition in the local market, thereby realising a competitive economy for the benefit of broader economic development in Namibia. It was formally launched on December 09, 2009, but the Commission had been operational by law before the launch and undertook cases on mergers between businesses or undertakings and to investigate certain practices which are anti-competitive and were not in accordance with the competition law.

Namibia's competition law does not only allow the Commission to promote and protect competition in the marketplace, but it also takes into account the public interests provisions of protecting consumers by safeguarding competitive prices and product choices, as well as promoting employment and advancing the social and economic welfare of Namibians.

As opposed to this, the Competition Commission's responsibilities are expressly provided for in the Act and the regulations for the administration and enforcement of competition in Namibia.

The Namibian Competition Commission has noted the frequency of questions in the media on the public understanding of the role and functions of the Commission. Recent media reports alluded that there could be misunderstanding and confusion regarding the work of the Commission as provided for in the Competition Act, 2003 and the regulations that govern the operationalisation of the Act. It is in light of this that the Commission thought it prudent to inform the public on the work we do, as well as to explain our relations to the sectoral regulators in Namibia

The Commission by virtue of the Competition Act, 2003 and regulations governing its operations is empowered by law to be the principal organ on promoting competition in the local market.

The Commission has wider powers, guidelines and regulations on monitoring, investigating and deciding on activities of business which are anti-competitive, and on any mergers and acquisitions.

The Commission is further empowered through relevant legal structures to decide on fines, penalties and remedial actions to be taken to correct anti-competitive behaviour. This is all in the interest of promoting a safe, just, orderly and competitive marketplace in Namibia.

The Commission acknowledges positively any desirable regulatory decision in the interest of promoting local competition in Namibia in any sector and is empowered by law to engage with sectoral regulators such as the Bank of Namibia and Communications Regulatory Authority of Namibia (CRAN), to agree on a memorandum of understanding (MoU) to ensure on a consultative basis the cooperation and coordination on competition matters.

It should however be clear to the public that the MoU is not aimed at sharing competition responsibilities. Rather, it is aimed at formalising each other's responsibilities in terms of the respective Acts where the Bank of Namibia, for example, is entrusted primarily to ensure financial stability, soundness and technical viability of any concern in the financial sector and the Namibian Competition Commission's primary responsibility is to look at the efficiency, adaptability and the competitive behaviour of any firm within that sector.

In short, whilst the Bank is to look at the financial and technical aspects concerning any matter in the financial sector, the Commission is to look at the regulation of the financial market to ensure proper competitive behaviour of players therein.

* *Secretary, Namibian Competition Commission. The article apparred in New Era, 11 June 2010.*

ABUSE OF DOMINANCE

Cinemas Face Antitrust Drama

Vietnam's Competition Authority has started investigations into Megastar Media Joint Venture Company, which is accused of abusing its dominant position through pricing policies in the foreign film distribution market. The complaint was brought by six local cinema operators, who alleged that Megastar imposes unreasonably low prices on cinema tickets with the aim to seize market share for its own multiplex cinemas.

Megastar, jointly owned by Vietnamese Phuong Nam Cultural Corp and British Envoy Media is Vietnam's top distributor of foreign films, with exclusive rights of distribution of many foreign films, such as top-grossing film Avatar. Megastar changed its pricing policy in June 2008, which set a minimum fee of US$1.30 per ticket. *(FT, 30.05.10)*

Spain Probes Abertis Telecom

The Spanish Competition Authority, the *Comisión Nacional de la Competencia* (CNC), has opened an investigation into Abertis Telecom (AT), a leading telecommunications infrastructure and services firm. The CNC is concerned that AT could have abused its dominant position in the digital television signals transport and broadcasting markets by denying third parties access to its signal distribution network. The CNC considers the distribution network to be an essential facility; it allows third parties to transport audiovisual signals to local and national TV stations.

Abertis owns the main site network for the broadcast and delivery of radio and television signals in Spain. More than 3,200 centers throughout Spain provide audiovisual signals for 12 million homes. *(Howrey, 12.04.10)*

FTC OKs Google AdMob Deal

The Federal Trade Commission (FTC) has closed its investigation of Google's proposed acquisition of mobile advertising network company AdMob after thoroughly reviewing the deal and concluding that it is unlikely to harm competition in the emerging market for mobile advertising networks. The combination of two leading mobile advertising networks raised serious antitrust issues.

The agency's concerns ultimately were overshadowed by recent developments in the market, most notably a move by Apple Computer Inc. – the maker of the iPhone – to launch its own, competing mobile ad network. In addition, a number of firms appear to be developing or acquiring smartphone platforms to better compete against Apple's iPhone and Google's Android, and these firms would have a strong incentive to facilitate competition among mobile advertising networks. *(FTC Press Release, 21.05.10)*

AGCM Investigate Telecom

Italy's antitrust authority, *the Autorità Garante della Concorrenza e del Mercato* (AGCM), has opened an investigation into alleged abuse of a dominant position by Telecom Italia SpA in Italy's telecommunications market. Telecoms Italia controls the national communication network but is obliged to unbundled final connections to allow rivals to compete.

Rival companies Fastweb SpA and Wind SpA have accused Telecoms Italia of refusing or delaying activation of new client accounts and offering large discounts for provision of services in areas where the market is open to competition compared to areas where the company's services were less open to competition. The prices charged by Telecoms Italia were allegedly below the costs of its competitors for wholesale unbundling. *(AGCM, 24.06.10)*

Raavan gets Nod for Ktaka Release

The Competition Commission of India (CCI) has passed an order restraining the Karnataka Film Chamber of Commerce (KFCC) from taking action to prevent exhibitors from screening the film *Raavan* or the Tamil language version *Raavanen* in Karnataka.

Reliance Big Pictures, the distributor of the film, complained to the CCI that the KFCC had not allowed them a large enough release of the film, saying that it needed more screens as it was released in two languages. The CCI said that the restrictions imposed by the KFCC were anti-competitive and constituted an abuse of a dominant market position.

(ET, 20.06.10; TH & ToI, 19.06.10)

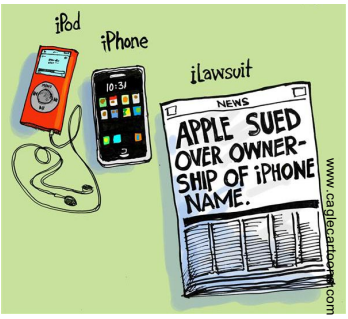
Google Books Hit with Lawsuit

France's antitrust regulator accused Google Inc of a lack of transparency over its keyword advertising service and ordered it to clarify conditions for the product within four months. The *Autorite de la Concurrence* was responding to a complaint filed by French GPS and smartphone data services company Navx, which alleged the world's top search engine had abused its dominant position by scrapping Navx's AdWords contract.

The watchdog ordered Google Ireland and Google Inc to clarify the scope and impact of the AdWords conditions applicable to devices aimed at evading traffic speed cameras and said Navx's AdWords account should be restored. *(Reuters, 30.06.10)*

Antitrust Worm in Apple?

The US Justice Department is examining Apple's tactics in the market for digital music, and its staff members have talked to major music labels and Internet music companies. Apple is by far the largest seller of online music in the US, with 69 percent of the market. It is also the largest seller of music, with 26.7 percent of the overall market, up from 12 percent in 2007.



Though the Justice Department's inquiry is preliminary, it represents additional evidence that Apple, once the perennial underdog in high tech, is now viewed by government regulators as a dominant company with considerable market power. More recently, Apple has encouraged new kinds of competition in the online music marketplace by allowing streaming music applications from companies like Pandora and Rhapsody onto Apple devices. *(BS, 26.05.10 & ET, 27.05.10)*

CARTELS

SAA Raided in Collusion Enquiry

South Africa's Competition Commission raided the offices of national airline South African Airways (SAA) and its low cost carrier as part of a cartel investigation. During the search, the commission seized documents and electronic data, which will now be analysed together with other information gathered to determine whether a contravention of the Competition Act has taken place.

In March 2010, SAA and its partners SA Airlink and SA Express denied that they had colluded with other airlines to hike prices during the football World Cup. High airfares during the World Cup period have sparked public uproar for several months. SAA filed a leniency application in December 2009, offering to cooperate with the investigation in exchange for being spared prosecution.

(www.smh.com.au, 07.04.10)

EC Fines Bathroom Cartel

The European Commission (EC) has fined 17 companies a total of US$761m for operating a price fixing cartel in the bathroom equipment manufacturing sector. The 17 firms fixed prices for baths, sinks, taps, and other bathroom fittings for 12 years in Austria, Belgium, France, Germany, Italy, and The Netherlands.

Despite the long duration and the gravity of the infringement, more than a third of the companies participating in the cartel had their fines reduced either due to their cooperation with the Commission or due to their inability to pay the fines given their financial situation. The US building products group Masco, which blew the whistle on the cartel, was exempted from all penalties. *(TT, 24.06.10)*

Court Winds up Thread Case

The General Court of the EU has confirmed the fines totalling US$30m that had been imposed by the EC on five undertakings for taking part in cartels on the industrial threads markets. The cartels were formed in the industrial thread market in Benelux (Belgium, Netherlands & Luxembourg) and the Nordic countries, the industrial thread market in the UK, and the automotive thread market in the European Economic Area (EEA).

Although the Court rejected the parties' arguments in support of their application for annulment of the Commission's decision, it has granted Belgian Sewing Thread an additional ten percent reduction of the fine for its cooperation in the Commission's investigation. *(WSJ, 28.04.10)*

Mexico Hits Trucking Cartel

Mexico's Federal Competition Commission (CFC) has fined five trucking companies upwards of US$2mn for allegedly colluding to raise prices to their customers to make up for increases in fuel costs. The Commission fined the companies after finding that they "agreed to transfer uniformly increased fuel prices to consumers".

The five companies that were fined included *Transpac, Transportes Mor, Auto Tanques de México, Refrigerados Rojo* and *Servicios Logísticos Interamericanos*. *Transpac* received the highest fine among the companies, at almost US$874,000.

The CFC says that the alleged collusion on the fuel adjustment charge prevented companies from deciding individually whether they would pass on the full additional costs to their customers or partially absorb them.

(LL, 17.06.10)

MAS Served with Statement of Claims

The Australian Competition and Consumer Commission (ACCC) issued a statement of claim on Malaysian Airline System (MAS) for allegedly breaching competition law. MAS said that it had served with an application and statement of claim from the ACCC in relation to its air freight investigation on fuel and security surcharges under the Trade Practices Act 1974.

MAS said the statement of claim did not indicate any quantum of fines that might ultimately be imposed in the event MAS is found by the ACCC to have breached competition law. MAS has a policy of compliance with all applicable laws, including competition laws, therefore it is seeking legal advice in relation to the statement of claim and the allegations imposed by the ACCC.

(TEM, 12.04.10)

Belgium Issues Record Fine

The Belgium Competition Council has fined four undertakings for participating in a cartel in heating radiators. The Council found that four producers of steel plate radiators, Masco, Quinn, Radson and Caradon, had made agreements involving the exchange of information and price coordination for wholesale prices. The four competitors intended to coordinate their behaviour in the market.

The Council considered that there was sufficient evidence to establish the existence of a cartel during the period 2003 until half 2006. Three of the four undertakings admitted their involvement in the cartel. The fines totalled just over US$4.5m, with a reduction for Quinn and immunity for Masco under the leniency programme.

(BCG Press Release, 20.05.10)

Electric Cable Manufacturers Investigated

The South African Competition Commission would conduct a search and seizure operation at the premises of four electrical cables manufacturers and suppliers on suspicion of price fixing, market allocation and collusive tendering. The companies are Aberdare Cables (Pty) Ltd, Alvern Cables (Pty) Ltd, South Ocean Electric Wire Company (Pty) Ltd, and Tulisa Cables (Pty) Ltd which are all based in Gauteng.

The operation follows a complaint initiated by the Commission on March 16, 2010. The companies produce both high voltage cables for industrial use and low and medium voltage cables for households. Important customers include power supply authorities, municipalities, railway and transport authorities and construction companies. *(SACC Press Release, 06.05.10)*

FINES & PENALTIES

Penalty on Construction Cos.

Gazdasági Versenyhivatal (GVH), the Hungarian competition authority has imposed fines totalling US$322mn against four construction companies accused of "hardcore cartel activity". The companies, plus a fifth that avoided a under leniency rules, are accused of bid rigging and setting up market sharing agreements in Hungary's railway maintenance sector.

The fines follow raids carried out in November 2007 on a total of 17 construction companies, however GVH found no evidence against 12 of these. The authority says the contracts affected by the cartel had a total value of US$108mn, and covered five tenders issued by the Hungarian government in 2004 and 2005. *(Reuters, 23.06.10)*

Chipmakers Fined

Ten producers of memory chips – including Samsung, Infineon, Hynix and Toshiba – are to pay a total US$409m in fines, in the first settlement deal over cartel offences with the European competition authorities.

Nine of the companies have had their fines reduced by 10 percent, because of their willingness to acknowledge their participation in the cartel, which operated for almost four years between 1998 and 2002. A tenth company – Micron – will pay no fine at all because it blew the whistle on the illegal price-fixing arrangements.

The deal is significant because it is the first time that competition officials at the EC have succeeded in getting suspected cartel participants to sign up to a deal under "fast track" settlement procedures. *(FT, 20.05.10)*

Fined for Exclusive Agreements

The Competition Commission of Singapore (CCS) has fined ticketing operator Sistic for entering into restrictive agreements with event organisers that excluded other ticketing companies.

The exclusive arrangements, dating from 2006, represented 60-70 percent of the market. The CCS issued a US$730,027 fine to Sistic, the maximum fine it is allowed to give, and the largest fine it has ever issued.

Sistic was also ordered to remove all of its clauses that require event organisers to use Sistic exclusively, which the CCS hope will give competitors such as Tickets.com and Gatecrash an opportunity to compete. Sistic has said it will appeal the decision. *(TST, 05.06.10)*

OFT Slams Tobacco Cos.

The Office of Fair Trading (OFT), UK issued its biggest fine for a breach of competition law, finding two tobacco groups and nine retailers guilty of colluding on cigarette prices. The consumer affairs watchdog fined the companies a record US$6.98m for fixing pricing levels between 2001 and 2003.

Imperial, the maker of Lambert & Butler cigarettes, was hit with a US$3.49m charge. The company said it planned to appeal against the decision. Gallaher, the producer of Benson & Hedges, was also found to have broken competition law and fined US$1.57m. *(Independent, 17.04.10)*

FSA Slaps JP Morgan

US investment bank JPMorgan Chase & Co has been fined a record US$49.12mn in Britain for failing to protect billions of dollars of client money over almost seven years. Issuing a stark warning to other banks operating in Britain, the country's Financial Services Authority (FSA) said that JPMorgan Securities Ltd, a UK unit of the bank, had failed to adequately protect between US$1.9bn and US$23bn of client money between November 2002 and July 2009.

Under FSA rules, companies have to ringfence client money from the firm's money and keep it in segregated accounts with trust status to protect it in the event of insolvency.

However, JPMorgan failed to segregate client money held by its futures and options business with JPMorgan Chase Bank N.A. following the merger of JPMorgan & Co and Chase Manhattan Corporation in 2000. *(BL, 03.06.10 & FT, 04.06.10)*

HSBC Fined for Misusing Funds

Stock market regulator Securities & Exchange Board of India has imposed a penalty of Rs 40 lakh on HSBC InvestDirect Securities for misusing client's funds and securities. HSBC InvestDirect was found guilty on several accounts – failure to segregate its own fund from that of its client's, not delivering securities as well as payments to its investors and for misuse of its client's funds and securities.

HSBC Securities & Capital Markets and HSBC Violet Investments Mauritius hold a stake of 46.49 and 43.4 percent respectively, in the stock broking arm. The final order came after HSBC sought settlement of enforcement actions by the regulator through a consent application. Sebi had pulled up HSBC's mutual fund arm for making fundamental changes to its gilt fund without informing its investors. *(FE, 22.05.10)*

France Fines Harbour Operators

The *Autorité de la Concurrence*, France's competition watchdog, has fined four container handling firms a total of US$806. Three of the firms met on several occasions to determine the manner in which they should share forthcoming handling capacity that would become available through the expansion plans of the port of Le Havre.

The *Autorité* only imposed symbolic fines in this respect in view of the limited effects of the conduct, since the attribution of the new capacity has not yet been carried out, and will be subject to an open tender process. The *Autorité* further fined two of the companies for the extensive way in which they applied in practice a non-compete clause deriving from a joint venture. *(Autorité de la Concurrence, 15.04.10)*

PRICE FIXING

Virgin Accused of Price Fixing

The UK Office of Fair Trading objected the path Virgin Atlantic and Pacific Airways has adopted. They have issued a statement which alleges the two of breaching the competition law. According to the authorities, the pricing cartel has happened on the London to Hong Kong route.

The employees of both the companies have been accused of acting as a bridge between the companies. This has lead to coordination among the two airlines and has been helpful in chalking out the pricing strategies related to the fares given by the passengers. It has been claimed that there have been an information exchange between both the companies. The Virgin-Cathay case adds up to the string of cases already being dealt by the OFT in the airline industry. *(FT, 23.04.10)*

KPPU Slams Cooking Oil Cos

The Indonesian Competition Authority, KPPU, fined 20 cooking oil producers, including companies from Wilmar Group, Musim Mas Group and Sinar Mas Group, a total of US$32.2mn after the agency found that the producers colluded in setting prices. PT Nagamas Palmoil Lestari was the only cooking oil producer that was not found to have violated competition laws.

The price-setting had caused consumers to suffer losses on purchases of branded and non-branded cooking bought from April to December 2008. During the period, crude palm oil prices slumped due to the global financial crisis, but the price of cooking oil remained high.

Several firms have planned to appeal the decision, claiming that no written or verbal deals were made despite the KPPU's assertion that two written agreements to set production levels and prices were signed. *(JP, 05.05.10)*

US-EU Scrutinise Shipping Rates

US regulators and EU competition authorities are looking for evidence of price fixing among container shipping companies. Regulatory suspicions have been aroused because freight rates continue to rise despite a flood of shipping capacity entering the market.

Shipping lines, including Maersk, deny operating a price fixing cartel, but the confusing conditions have provoked a "fact finding mission" by the US Federal Maritime Commission. The agency's mission is to ensure collusion among shipping lines does "not result in unreasonable increases in transportation costs or decreases in services. In Europe, regulators are "actively monitoring" the situation. *(ET, 07.06.10)*

EU Levy Fines on Steelmakers

The EU regulators fined steel producer ArcelorMittal US$395mn for secret deals to fix steel prices for nearly two decades with 16 other steel makers. The EC fined all of the companies a total of US$651mn, bringing to US$1.88bn the amount of fines it has levied in 2010 on businesses that formed cartels. It accuses the steel producers to fix prices across Europe and allocate customers for prestressing steel, long curled steel wires used by builders to make foundations, balconies or bridges.

ArcelorMittal received the largest fine based on the size of its operations and revenues — but also won a reduction for cooperating with investigators. It will consider an appeal to the EU courts and stressed that it now educates workers to make sure all business activity meets legal and ethical standards. *(AP, 30.06.10)*

Cycle Retailers/Wholesalers, Colluded

The South African Competition Commission referred its findings of price fixing against 28 bicycle wholesalers and retailers to the Competition Tribunal for adjudication. The firms face the allegation that they colluded to set the wholesale and retail prices of cycles and accessories, and excluded competitors from the market.

Bicycle retailers colluded to exclude competitors, including internet retailers, by asking the wholesaler to sell to independent retailers at a higher price. This conduct is likely to harm competitors and consumers. The Commission has asked the Tribunal to levy an administrative penalty of ten percent on the annual turnover of each of the firms involved. *(SACC, 28.06.10)*

Sanctions on Paper Giants

The Fair Trade Commission (FTC) of Taiwan announced the results of an investigation into recent price increases of paper and related products, saying it would fine three paper makers a total of US$313,000mn for price-fixing. The FTC's investigation showed that three paper makers of Taiwan – Cheng Loong Corp, Long Chen Paper Co and Yuen Foong Yu Group – were involved in price-fixing. The companies raised their prices by about 40 percent.

The three companies together control about 90 percent of the paper market, which means that their price-fixing activities have seriously affected the market. All three companies declined to comment until they had received the official documentation. *(TT, 15.04.10)*

Canada Fines Solvay for Conspiracy

Solvay Chemicals Inc. has been fined US$.35mn by the Federal Court after the company pleaded guilty to criminal charges for fixing the price of hydrogen peroxide sold in Canada. The fine follows a Competition Bureau investigation which revealed that Solvay Chemicals Inc. conspired with competitors to fix the price of hydrogen peroxide in Canada between July 1998-December 1999.

Solvay's total sales of hydrogen peroxide in Canada were approximately US$15mn. Solvay Chemicals Inc. is the second party to plead guilty to fixing the price of hydrogen peroxide in Canada: in November 2008, Akzo Nobel Chemicals International BV was fined US$3.15mn for its involvement in the conspiracy. The Bureau's investigation of other companies alleged to have participated in the conspiracy is ongoing. *(CCB Press Release, 12.05.10)*

Cartel Prevalence in Africa

Cartels are arguably the most harmful anti-competitive business conduct from a consumer point of view, as they are schemes by competing business units to 'gang up' and cover markets. Cartels remove all incentives by business to fight for buyer patronage as the agreements act as both assurance and insurance against risks that could come from corporate rivalry.

Why Africa is More Prone to Cartels?

The importance of competition for Africa can not be overlooked as has been pointed out by various experts. By digging into the literature on the economics of cartels and relating them to the African economy, it may not be difficult to understand why the continent is susceptible to cartelisation. The factors that generally facilitate the formation of cartels in Africa include: low level of expected punishment; low price elasticity of demand; high degree of market concentration; absence of countervailing buyer power; and existence of information exchange platforms for producers.

The economic implications of cartels are well known. Cartels enhance profits by reducing output and raising prices above competitive levels. This implies higher prices of the end product for consumers. Thus, consumers are overcharged and forced to pay more from their hard earned incomes.

Moreover, incentive for innovation and quality improvements diminish once a cartel is formed; forcing consumers to buy low quality goods. By targeting the most critical sectors of the economy, cartels ensure that consumers have no option but to tolerate high prices and pay large amounts of money for scarce goods and services of average or even bad quality. Given the extent of poverty in Africa, higher prices critically affect access to essential goods like food items, medicines, etc.

Implications

In Zambia, in 1999, nine oil marketing companies were prosecuted for participating in a price fixing conspiracy involving the supply of refined petroleum products. The companies had been acting collectively in making price adjustments since 1997. They would select one company to apply for a price adjustment to the sector regulator. They held regular meetings where exchanges of information regarding sales volumes and prices took place. The cartel leaders also forced other companies to comply with standard behaviour on prices.

The National Economic Council of Malawi expressed concern at the extremely small number of companies engaged in the business of purchasing raw cotton from growers, one of which is the Agricultural Development and Marketing Corporation of Malawi (ADMARC) and its subsidiary David Whitehead and Sons and Cotton Ginners. These companies colluded over the terms and prices they offered to farmers.

These examples demonstrate the extent to which cartels are prevalent in the African continent. These have some serious implications, which can be looked at from two perspectives. On the one hand, it is worrisome that cartels prevalent in most critical sectors of these developing economies have serious economic and social implications. On the other hand, intermediate products are also not spared from cartelisation. In cartelising critical services, producers ensure that the poor, with very tight budget constraints, are forced to pay high prices. This is a very big threat to the basic survival of the poor and their ability to meet social and economic obligations. This also implies challenges for governments in their quest for addressing the issues of poverty alleviation and meeting millennium development goals (MDGs).

Conclusion

Given the present low probabilities of cartels getting caught, it is important that competition authorities in Africa start thinking seriously about strategies to induce cartel members to inform the authorities in the hope of getting leniency in punishment. A combined effort by the government, the competition authorities and the civil society is the best way to fight cartels.

Expectedly, multinational companies based in countries which have the capacity to fight cartels are now targeting regions like Africa with little experience in this regard. It is important to devise strategies which would enable even countries without competition laws to use other means to fight cartels.

It would be fitting if a portion of the compensation proceeds extracted from proven international cartels in developed countries is paid into an international competition fund, which can be used for strengthening competition enforcement in African countries, among others.

– *Extracted from a Briefing Paper entitled, 'Cartel Prevalence in Africa: A Diagnostic Study' by Pradeep S Mehta and Cornelius Dube of CUTS, available at: http://www.cuts-ccier.org/pdf/Briefing_Paper10-Cartel_Prevalence_in_Africa-A_Diagnostic_Study.pdf*

Bharti Seals Zain Deal

Bharti Airtel, the country's largest mobile telecom service provider announced completion of its deal to acquire the African assets of Kuwait's biggest phone company, Mobile Telecommunications Company, also known as Zain, at an enterprise value of US$10.7bn. With this, Bharti enters 15 countries in Africa and becomes the world's fifth largest mobile phone company by subscribers. It gets access to a population of about 470 million people from the Atlantic coast to the Indian Ocean, with more than a third of them carrying mobile phones.

The combined business will have 180 million customers and generate earnings before interest, tax, depreciation and amortisation of US$4.7bn on revenue of US$12.4bn. Zain Africa will now be a 100 percent subsidiary of Bharti International and becoming No 3 globally is not far away.

(HT, 02.06.10)

Abbott to Buy Piramal Unit

In the second-largest deal ever in the Indian pharma industry, US-based Abbott Laboratories has acquired the pharmaceuticals solution business of Piramal Healthcare for US$3.72bn. The compensation includes an upfront payment of US$2.12bn, with an additional US$400mn annually for the next four years. The Indian drug maker insists it will remain in the industry and invest in the remaining business.

The deal is just behind Japanese drugmaker Daiichi Sankyo's US$4.2bn takeover of another homegrown drug major, Ranbaxy, in 2008. It will also catapult Abbott from just about nowhere to the top position in the Indian pharmaceutical market. Abbott will add 350 branded generic drugs from the Piramal portfolio, including Phensedyl, one of the top two pharma brands in the country.

(BL, 22.05.10)

Astellas Wins Rival OSI

Astellas Pharma, the Japanese drugmaker agreed to buy OSI Pharmaceutical, the US-based oncology specialist, for US$4bn in cash, following a long battle. Astellas secured the deal after sweetening its offer by more than 10 percent to US$57.50 a share.

Astellas said it aimed initially to acquire at least 50 percent of the company, after which it hoped to purchase the rest of the shares. The OSI acquisition would give Astellas instant profits from the US company's Tarceva cancer drug, as well as access to its product pipeline, and an enhanced geographical presence. It estimates that a majority stake in OSI would contribute US$367m to this fiscal year's revenue.

(FT, 18.04.10)

Shell Acquires Natural-Gas Firm

Royal Dutch Shell PLC agreed to buy East Resources Inc., a closely held US natural-gas explorer, for US$4.7bn, in a transaction that underscores the frenzied global interest in North American shale-gas production.

Warrendale, Pa.based East Resources is one of the biggest players in a natural-gas exploration area known as the Marcellus Shale, with control of 1.25 million acres across a territory that stretches from West Virginia to New York.

The sale will provide lavish returns for private-equity firm Kohlberg Kravis Roberts & Co., which invested US$350mn in East Resources for a substantial stake only. Shell's acquisition also includes mineral rights in the Eagle Ford Shale in south Texas.

(WSJ, 29.05.10)

Hinduja Holds KBC's Arm

Hinduja Group has paid US$1.69bn for the private banking arm of Belgium's KBC in one of the biggest overseas financial services acquisitions by an Indian family owned enterprise. For the Hinduja Group, whose interests include finance, oil and automotives in India, Europe and beyond, the deal offers the chance to strengthen its presence in the private banking market.

KBL is one of Europe's biggest independent onshore private banking firms and will build on Hinduja's existing presence in the industry in Switzerland. KBC said that the transaction included KBL's custody and life assurance businesses and the entire operation would continue to be headquartered in Luxembourg.

(FT, 21.04.10)

Glencore Considers Xstrata Merger

Glencore International AG is looking at a possible merger with Xstrata Plc that would create one of the largest global mining and trading companies. The combined entity would be worth US$84.5bn. Glencore, the world's biggest commodities trading company, would be part of a "reverse takeover" with Xstrata, and then reduce its stake in the group.

Xstrata's management would remain in power, including current Chief Executive Officer Mick Davis, and retain control over the company. So far, Glencore has made no formal proposal of merger.

(BL, 02.04.10)

Continental and United to Combine

The parent company of United Airlines and the Houston-based Continental Airlines has agreed to merge. The deal, valued at nearly US$3.2bn, would create the world's largest airlines. Under the terms of the transaction, United is expected to issue to Continental shareholders 1.05 of its shares for each of their Continental shares. The new company, which will keep the United name, will have the Continental colours and logo and be based in United's hometown of Chicago.

The United-Continental merger will also make up seven percent of global capacity, ahead of Delta, the current leader with six percent. United is currently the fourth largest domestic airline by capacity and Continental the sixth. It is believed that combining the two airlines will help the new company to work more effectively and efficiently.

(Livemint, 03.05.10)

Shinsei, Aozora Call off Merger

Shinsei wants to expand its retail banking business, which includes consumer finance, while Aozora wants to focus more on lending with Japanese regional banks. The banks announced their plans to merge in July 2009 after a combined loss of US$4.3bn for the year to March 2009. They have since returned to profit, meaning the merger may now be less of a priority than during the financial crisis.

Both banks have yet to fully repay the US$7.08bn of bailout money they received following Japan's banking crisis in the 1990s, which gives the Financial Services Agency (FSA) additional oversight over the institutions. The FSA is expected to urge the two banks to come up with new business strategies.

(FT, 15.05.10)

EC Approves Water Services Merger

The EC has cleared the acquisition of Sociedad General de Aguas de Barcelona S.A. (Agbar) of Spain by Suez Environnement S.A. of France. Both Suez Environnement and Agbar, currently jointly controlled by Suez Environnement and Criteria Caixa Corp S.A, are active in the operation and maintenance of water and wastewater treatment facilities to municipalities in Spain.

The Commission's investigation found only a moderate overlap in the activities of the merging parties and noted that the market share increment due to the transaction is not significant. Furthermore, the Commission noted that the merged entity will continue to face strong competition in the market from parties with sufficient financial resources and expertise.

(EC, 27.04.10)

Fujitsu, Toshiba Mobile Merger

Fujitsu and Toshiba Corp are in talks to merge their mobile phone businesses. The move would create Japan's second-largest handset maker. The deal would allow two electronics makers to share the heavy-cost burden of developing phones for the technologically advanced but shrinking Japanese market.

It would also be the latest case of Japanese makers teaming up to expand in the global market, where Nokia and Samsung Electronics dominate but smartphone makers like Apple and Research In Motion (RIM) are growing rapidly. The merged operations would trail Sharp Corp in Japan and be ahead of Panasonic Corp and NEC Casio, but it would still be a small player in the global market.

(FE, 11.06.10)

Godrej Consumer Buys Megasari

Consumer goods maker Godrej Consumer Products Ltd. (GCPL) has acquired the US$120mn Indonesian insecticides and personal care products firm PT Megasari Makmur Group and its distribution company.

The acquisition will add to GCPL's portfolio of insecticides and personal care products, which already includes brands such as Snuggy, Goodknight and Hit, marketed through its joint venture with the US-based Sara Lee Corp.

GCPL has paid two to two-and-a-half times for the company at US$240-US$280mn. The buyout comes less than a month after GCPL announced purchasing Nigeria-based personal care products firm Tura. In the past two years, it has also acquired Rapidol and Kinky in South Africa.

(Livemint, 07.04.10)

Car Groups Forge New Alliance

Renault, Nissan and Daimler revealed a strategic partnership that will see the three carmakers swap equity stakes and develop and build small cars, engines and vans together. The tie-up will allow the Franco-Japanese auto alliance and the German luxury group to pool efforts on new vehicles and technologies and add essential volumes to their production plants at a time of intense competition and rising production and environmental compliance costs in their industry.

The companies said the partnership would yield combined benefits of US$5.3bn over five years. The three automakers would collaborate on future products and that each would exchange shares in the other companies. Under the new agreement, Daimler will hold a 3.1-percent stake in Renault and Nissan and the existing alliance partners will hold an identical stake in the German company.

(FT, 08.04.10)

Qantas, Virgin Open to Bids

Qantas Airways and Virgin Atlantic Airways said they are open to merger proposals as efforts to cut costs and boost traffic push carriers to combine. Qantas, Australia's biggest airline, favours an inter-continental deal and would be "a great asset for anyone," chief executive officer Alan Joyce said.

Virgin is exploring options as US and European mergers squeeze its position in the North Atlantic market. Virgin, British Airways's biggest competitor at London's Heathrow airport, is reviewing its standalone stance after regulators said they would approve an expanded alliance between its rival and AMR Corp's American Airlines and after United Airlines agreed to combine with Continental Airlines Inc.

(FE, 08.06.10)

Largest Zinc Producer, Globally

India-focused mining group Vedanta Resources Plc bought Anglo American's zinc assets for US$1.34bn to boost its exposure to the metal. Vedanta will become the world's largest zinc producer, with 11 percent of the global market, after buying the assets, including the Skorpion mine in Namibia, lisheen in Ireland and Black Mountain in South Africa.

These high quality assets complement Vedanta's existing portfolio, creating the largest zinc and lead producer in the world. The sale for Anglo is one step on a divestment programme that seeks trim its portfolio and focus on key commodities, such as copper, iron ore and platinum.

(HT, 11.05.10)

Economic Times

Overseeing Pharma Mergers through Competition Lens?

– Pradeep S Mehta*

The merger & acquisition (M&A) spree in the Indian pharmaceutical market has the potential to distort competition and subject consumers to increase in prices of medicine. The health minister's concern is not at all unfounded. The utility of the Competition Act, 2002, as a forward looking tool for the protection of both business and consumers against possible abuse of dominance, cannot be re-emphasised.

While no one disputes the counter arguments that such M&As could help provide synergies between innovator and generic manufacturers, thereby helping Indian companies as well as the economy at large, the concerns regarding potential competition distortions and abuse of future dominance remain unanswered. In any case, having such cases under the lens of a competition authority does not imply that the companies will not be allowed to enter the Indian market, but rather fences would be put in place to regulate their behaviour. It is very rare that competition authorities have rejected mergers, but approve potentially harmful ones with some conditionalities.

Anticipated benefits from entrance of MNCs in the generic drug business would largely require the companies to help promote generic drug manufacturing once their patents have expired. Whether these companies would be happy to allow generic drugs to continue to compete with their original products is a big question, which, however, is not the main subject of this article.

The market is still far from being highly concentrated, as there are many firms in the market, with the top firm still below seven percent market share. A pattern is indeed developing where the market is being slowly transformed from a very competitive one to one dominated by few companies. If such companies were to dominate the market, there is nothing that can stop them from abusing the position if they believe they can get away with it. An interesting question then arises whether these companies have a history for respecting competition laws under different jurisdictions.

A look at the competition cases on the global scene over the past years will reveal that these companies are no saints, in so far as respecting competition laws. Sanofi-Aventis, for example, was part of the famous international vitamins cartel, which according to published research, has been convicted of price fixing for more than ten times in its history. GSK has been a subject of investigation under EU and Greece competition laws under allegations of abuse of dominance in the pharmaceutical market. A lawsuit was filed in April 2004 against Abbott Labs after it was accused of abusing its monopoly over an essential anti-retroviral drug to overcharge tens of thousands of AIDS patients. Early in 2010, Mexico's Federal Competition Commission fined Fresenius Kabi and two other firms for rigging government tenders for insulin.

In South Africa, GSK's merger with Aspen Pharmacare was approved but subject to conditions aimed at ensuring continued availability of generic medicines at cheaper prices by licensing other generic drug manufacturers. In the EU, Abbott's acquisition of Solvay Pharma was approved subject to the divestment of one business of Solvay's subsidiary (the Cystic Fibrosis testing business). The EU also approved the acquisition of Zentiva by Sanofi-Aventis on condition that it divest 15 drugs from their production line in six European Union member states.

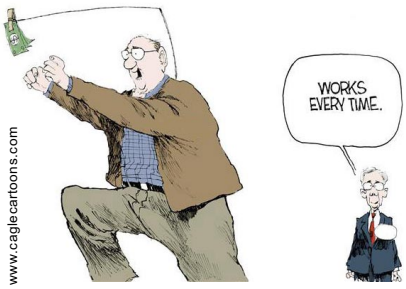
If the EU is afraid of letting the companies dominate the market, even with its investigative strength, should we also not worry? There is an urgent need for CCI to be empowered to assess and regulate all mergers. This is only to ensure that if they potentially harm competition, then steps are taken to ensure that the harmful effect is diluted. The argument is not, and has never been, that MNCs should be stopped from coming to India or Indian MNCs from going out.

Health minister Ghulam Nabi Azad is worried about the impact of mergers in the pharmaceutical sector on prices of medicines, while the corporate affairs minister, Salman Khurshid, is yet to decide whether the merger provisions of the Competition Act, 2002, are to be notified. The potential victims of unregulated mergers are the poor consumers, who may end up paying more, while a sound regulatory policy willed by the parliament to protect and promote their welfare is unable to evolve

* *Secretary General, CUTS International. Cornelius Dube of CUTS contributed to this article. Abridged from an article that appeared in the Financial Express, on June 20, 2010.*

No Bribe Vow in Russia

Dozens of international firms doing business in Russia have pledged not to offer bribes, in a move aimed at fighting corruption collectively. The accord, signed at an official ceremony in Moscow, was initiated by the companies, not the Kremlin, said the Russian–German Chamber of Commerce.



According to Anti-corruption group Transparency International bribery in Russia is worth US$300bn a year. Two recent bribery scandals in Russia have involved foreign firms. The agreement was praised by Russian Presidential Adviser Arkady Dvorkovich. Among more than 50 predominantly German companies which signed the agreement were Siemens, Deutsche Bank, Deutsche Bahn and Axel Springer AG.

(BBC, 20.04.10)

McDonalds Recalls 'Toxic' Glasses

McDonald's has had to recall 12 million pint glasses with the new Shrek film theme after the toxic metal cadmium was discovered in them. The substance, which causes kidney, lung, liver and bone damage, was found in paint used to decorate the glasses. The recall is likely to cost McDonald's millions, and legal actions alleging the sale of dangerous products could also follow.

The glasses were sold in outlets at about US$2 each. The US Consumer Product Safety Commission warned consumers to stop using the glasses immediately because cadmium could become mixed with food and drink. However, McDonald's says the glasses are safe and is recalling them 'out of an abundance of caution'. *(EP, 18.06.10)*

Daimler Admits Charges

German carmaker Daimler has pleaded guilty to corruption in the US and will pay US$185m to settle the case. The charges relate to US Justice Department and Securities and Exchange Commission's investigations into the company's global sales practices.

Daimler, the owner of Mercedes-Benz, admitted to paying tens of millions of dollars of bribes to foreign government officials in at least 22 countries. The offences were committed between 1998 and 2008 by Daimler's German-based exports subsidiary Export and Trade Finance, and its Russian business Mercedes-Benz Russia. *(BBC, 01.04.10)*

China Still Poor on CSR !

China is one of the developing world's riskiest economies for investors because of its poor performance on environmental, social and governance issues, reports new research from Eiris. This year's Country Sustainability Profiles for investors in sovereign wealth bonds, which compares countries likely to play key roles in global development in the near future, ranks China among the world's worst performers on Corporate Social Responsibility (CSR).

Egypt and Vietnam were, with China, considered the riskiest emerging economies, though Eiris says Thailand should also worry investors in sovereign wealth bonds because of its political instability and its downgraded credit rating. The best-performing emerging market countries were Brazil and Mexico, which both scored higher on environmental indicators than the US. *(EP, 22.06.10)*

Haiti in Hope

Coca-Cola has announced the launch of the 'Haiti Hope Project', a long-term multi-stakeholder partnership that will seek to raise the incomes of Haitian workers and help the country recover from the devastation caused by January's earthquake.

Coca-Cola has invested US$3.5m. It will provide funding for investment and entrepreneurship in the mango industry, and will also seek to improve the participation of women in farming. Coca-Cola's bottling partner in Haiti is the country's largest private sector employer. *(EP, 09.04.10)*

Korea to Spend on Green Initiatives

One of Asia's largest corporations has set aside US$18bn to spend on environmentally-friendly business practice over the next ten years. The LG group, which incorporates LG Electronics along with chemicals and telecommunications firms, will split the sum between green research, new facilities, and energy-efficient product development.

The South Korea-based company hopes to cut its greenhouse gas emissions by 40 percent by 2020, a reduction of 50 million tonnes per year, and bring its revenue from green products up to ten per cent of its total business. *(EP, 09.06.10)*

Fairtrade in Vegetables

Marks & Spencer is set to become the UK's first retailer to sell Fairtrade vegetables, following the conclusion of a two-year negotiation with the Fairtrade certification scheme.

Green beans from Kenya will go on sale in M&S stores as part of the company's Plan A strategy, which pledged to sell more fair trade goods. Sainsburys, however, says it is also due to offer Fairtrade green beans in the near future. M&S says other varieties of beans and fresh peas will follow. Sales of Fairtrade products at M&S increased 40 percent in 2009, compared to a rise of 12 percent in UK sales generally. *(EP, 02.06.10)*

Water Project for Ford

Ford has become the first car manufacturer to join the Carbon Disclosure Project's (CDP) Water Disclosure programme, which will publish water data from some of the world's largest corporations later in 2010. The auto giant will both help to shape the methodology of the questionnaire that will be used by companies in the disclosure process, and disclose its own water impacts.

Ford says that between 2000-2008 it reduced its water usage by 56 percent globally, and that it has now 'made it a priority to conserve water'. The Water Disclosure initiative will function as an extension of the CDP, which has established a reporting framework for carbon emissions used by 2500 large companies. *(EP, 08.04.10)*

China, India topple Europe

Foreign investors see markets such as China and India as their preferred route through the tough economic recovery as Western Europe struggles with meagre growth. China was ranked the most attractive foreign direct investment (FDI) destination for 2010, edging ahead of Western Europe, in an Ernst and Young (E&Y) survey of 814 companies.

Both China and India have improved their scores from 2009, when risk aversion was strong. China suffered a 2.6 percent drop in FDI in 2009, to US$90bn, with cash-strapped companies outside the country undoubtedly affected by the financial crisis. The country was the third biggest foreign investor into Europe in terms of job creation in 2009 and was the eighth biggest in number of projects, according to the E&Y survey.

(Livemint, 03.06.10)

Indonesia to Limit Hot Money

Indonesia took action to channel strong capital inflows away from short-term investments in the latest effort by an emerging market concerned that hot money could threaten financial stability. Indonesia's central bank announced various measures, including a minimum holding period for its bills and a wider overnight policy corridor, both designed to make short-term investments less attractive.

Analysts opine that the measures would not deter investors, who already own a record US$16bn in government bonds, or spur capital flight. Instead, they would be recognised as an attempt to encourage longer-term investment in a country enjoying a period of political stability and healthy economic growth expected by the International Monetary Fund to be six percent in 2010 and 2011.

(Livemint, 17.06.10)

Overseas Investments Decline

The quantum of overseas investments by India Inc has in 2009, despite a rise in the number of investment proposals cleared by the government. During April to December 2009, Indian companies have invested US$8.4bn in overseas Joint Ventures and wholly-owned subsidiaries. This was 34 percent below the US$12.7bn invested overseas during the corresponding period of 2008.

Following the global financial crisis, companies are shying away from investing in equities. As result, the share of equity in actual outward FDI has decreased to 70 from 80 percent. The government cleared 2,984 proposals worth US$14.3bn during April-December 2009 for investment in joint ventures and wholly-owned arms abroad.

(ET, 17.04.10)

New Companies Act in Action

When the new Companies Act takes effect, it will constitute the first general review of South African company law since 1974. The Companies Act 2008 is expected to become law in late 2010 or early 2011 and will replace the Companies Act 1973. The memorandum on the objectives of the Companies Bill, which preceded the promulgation of the act, stated that company law should be made compatible and harmonious with international best practice.

In addition, the memorandum made clear that although the new Companies Act is an overall review of company law, it is intended to develop a legal framework based on the principles reflected in the existing Companies Act and the common law. Under the existing Companies Act, schemes of arrangement involve a fairly lengthy and onerous process; however, this has been substantially streamlined under the new act.

(ILO, 02.06.10)

China Revamps FDI Rules

To attract more FDI, China revamped its regulations to improve conditions for foreign companies while restricting funding for environmentally-unsound projects. Under the new rules, FDI in high-tech industries, services sector, energy-efficient and environmental protection projects is encouraged, especially in the central and western regions.

Qualified foreign-funded companies will also be allowed to go public, issue corporate bonds or medium-term bills in China, said the new rules. These regulations come as FDI flow rose to US$23.44bn in the first quarter of 2010. A total of 5,459 overseas-funded ventures were set up in the past three months, up 19.9 percent from the same period in 2009.

(FE, 13.04.10)

Due Diligence: Deal Killer or Saver?

Every multinational company needs a China strategy. The country resilient economic performance during the global downturn has made it even more attractive to overseas investors, but how should such companies arrive at a realistic appraisal of the potential risks and opportunities of a specific deal?

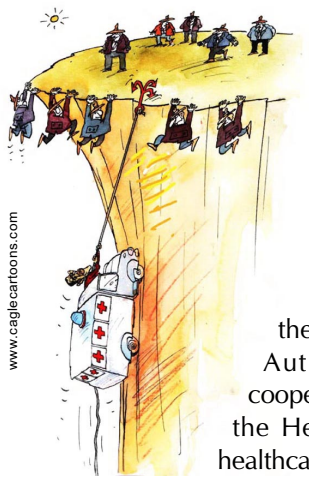
For many companies approaching a transaction, due diligence is a tool to confirm compliance or to seek confirmation that their project is not excessively risky. In the context of an acquisition in China, this is the wrong approach. Chinese companies are used to informal arrangements; as a result, non-compliance issues may arise in the fields of employment and social contributions, tax, licensing and intellectual property, among others.

However, if a Chinese company raises no compliance issues, it is almost certainly not a viable option for a project – the target does not need the acquirer and the acquirer is unlikely to be able to afford the target.

(ILO, 12.04.10)

New Healthcare Guidelines an Anvil

The Netherlands Competition Authority has published new guidelines on the application of the competition rules in the healthcare sector, to provide guidance to healthcare providers and health insurers on acceptable forms of cooperation.



The guidelines are partly based on various EC guidelines, such as: vertical restraints; horizontal cooperation agreements; the application of Article 101(3) of the Treaty on the Functioning of the EU; the assessment of horizontal mergers; and the assessment of non-horizontal mergers.

The guidelines also provide an overview of the market delimitations used by the Competition Authority in the healthcare sector and the cooperation between the Competition authorities and the Healthcare authorities in the investigation of healthcare cases. *(ILO, 29.04.10)*

NCC rejects Chunghwa's ADSL Plan

Chunghwa Telecom – the largest asymmetric digital subscriber line (ADSL) provider in Taiwan – submitted a plan to the National Communications Commission (NCC) whereby low-speed ADSL services would be upgraded free of charge. The NCC rejected this plan on the grounds of market competition and quality of service.

The free upgrade scheme does not incorporate the tariff cut regime implemented on April 01, 2010. On March 24, 2010 the NCC approved Chunghwa's price-cutting measures on ADSL circuit fees, charges for long-distance calls and various wholesale prices, in accordance with the new price cap formula. The new pricing plan is effective from April 01, 2010-March 31, 2011 and the NCC estimates that this tariff cut regime will benefit at least 2.6 million subscribers. *(ILO, 19.05.10)*

Nigeria Eyes Sale of Power

Nigerian officials have begun preparing a plan to sell the crippled state electricity system. Nigeria is sub-Saharan Africa's biggest oil and gas exporter, but the state power company provides only enough electricity to run a refrigerator for one in every 30 people among the 150 million population.

The proposals under discussion would break up the Power Holding Company of Nigeria (PHCN) – known to Nigerians as "Please Have Candles Nearby" – and invite bids for 11 regional electricity distribution companies and six generating companies. The government might earn US$4bn from the sale of existing power plants, along with others under construction, and a further US$3bn from the distribution companies. *(FT, 28.05.10)*

Beijing Plans Air Cargo 'Champion'

The Chinese government plans to create a "national champion" in the aviation cargo sector. The aim would be to combine the operations of some of the country's largest state-owned carriers to compete with international air cargo companies.

China's aviation administration would "encourage" mergers and acquisitions in the air cargo sector to improve economies of scale and make it more competitive internationally. The proposal also said the administration would "strengthen monitoring and regulation" of the Chinese operations of foreign cargo airlines, in what some analysts said was a signal that Beijing wanted to introduce policies that favoured domestic players. *(FT, 25.05.10)*

Draft Regulation on Opt-out Registry

In Italy, Law 166/2009 has introduced a fundamental change in the regulations governing the use of personal data, including telephone numbers, in public directories for the purpose of direct marketing, advertising and market survey activities by telephone.

The change in the law is particularly relevant for industries and businesses which rely on direct marketing activities, such as telecommunications operators, many of which have been investigated and fined in recent years for unsolicited marketing activities to existing or potential customers by telephone.

The Council of Ministers approved a draft regulation to establish the registry, including the terms and conditions of exercising the opt-out right. However, the draft has yet to be examined and approved by the competent authorities. *(ILO, 05.05.10)*

Insurers Lose Privileges

The EC has adopted EU Regulation 267/2010, which will remain in force until March 31, 2017. As expected, the commission has restricted the freedom that insurers have enjoyed in the past with the introduction of a new regulation, thereby increasing legal uncertainty. Insurers would have preferred the commission to renew the competition law privileges granted to them under Regulation 358/2003/EC.

The new regulation renews and modifies the rules on co-(re)insurance pools; renews and modifies the rules on industry-wide statistics and joint information; no longer exempts non-binding standard policy conditions; and no longer exempts joint security standards. *(ILO, 15.04.10)*

Brazil Announces Broadband Plan

The Brazilian government finally published the National Broadband Plan on May 05, 2010. The plan's objective is to boost broadband internet access in Brazil. The government intends to ensure that a broadband internet service at a speed of between 512 and 784 kilobytes a second is available for a maximum of US$19 a month.

The plan estimates that broadband access will rise from the present 11.9 million households to nearly 40 million households by 2014. It will be implemented by the revival of Telebrás, the state-owned company whose subsidiaries were sold in 1998 during the privatisation of the telecommunications sector. *(ILO, 26.04.10)*

Reform of Global Financial System

– Bimal Jalan*

By any reckoning, the global financial system is once again in turmoil. A couple of years ago, after the sub-prime fiasco, it was the US that was in trouble, and there were serious doubts about the future of the dollar as a reserve currency. Today, it is the euro, the currency of the EU, that is facing a crisis because of the acute fiscal problems of Greece and some other European countries

In the wake of the US crisis, and now the so-called "Euro-mess", there has been a lot of talk about an urgent need for financial and regulatory reforms. However, nothing much has happened. Except for rescue packages for individual countries in trouble, a global programme of action is still lacking.

In this context, it is useful to recall that this was also the case in the 1990s. The decade, in fact, saw many more financial crises than the previous five decades since the Great Depression. In addition to East Asia and Russia, other countries across the world, like Argentina, Brazil, Mexico and Turkey, were also badly affected.

As is the case now, exchange rates of major currencies like the dollar, the euro and the yen were highly volatile, and capital flows had become unstable and unpredictable. There were innumerable meetings among leading countries with the objective of setting stronger standards and codes, and putting in place a more sustainable exchange rate regime. But then, as now, nothing much happened – except "bailout" packages for the affected countries.

One major difference between the situation in the 1990s and the present one is that the most affected countries back then were developing nations and countries in Eastern Europe. Financial systems in industrialised countries, on the other hand, were generally considered to be safe. Today, barring nations like China and India, all major countries of the world are experiencing problems and calling for urgent global reforms.

The primary objective of global financial reforms should be to develop transparent "rules" of financial transactions among sovereign countries to promote international trade, commerce and capital flows. For the present, it may also be useful to concentrate on some "basics", rather than trying to cover the whole field. Few reforms that should be put in place as soon as possible.

First and foremost, it is important to agree on a globally acceptable exchange rate system. Different countries follow different systems with or without a band. One possible approach is to have a "dual" exchange rate system – one for three or four major currencies, and one for the rest of the world. Exchange rates among the top three or four currencies may be "fixed" but adjustable by agreement to reflect major changes in global trade. For the rest, currencies may be "pegged" or "floating" as a particular country decides. A similar system needs to be put in place for countries in the eurozone, with appropriate variations for a Union of independent states.

Second, an upper limit should be fixed for permissible levels of both fiscal and current account deficits as percentage of GDP. If a country exceeds that level, it should come under surveillance and scrutiny of an international financial agency like IMF.

Third, banks that are too big to fail, and whose international assets and/or deposits are more than "X" percent of total global assets/deposits, should remain banks. They should not be permitted to issue other kinds of securities, which effectively "create" money without adequate deposits.

Fourth, profits or capital gains of foreign institutional investments and reversible capital flows of less than one year should be taxed at the same rate as domestic corporate profits.

Fifth, investment banks should be just that – they should be free to advise and raise funds for their clients, but they should not be permitted to issue securities.

Finally, Articles of Agreement of Bretton Woods financial institutions – IMF and the World Bank – should be completely overhauled. IMF should have the primary responsibility for surveillance of agreed financial rules and procedures, and for issuing an annual report on compliance. The World Bank, on the other hand, should go back to its original role as a guarantor of loans raised by member countries from commercial sources.

These are a few aspects of the global financial system that require urgent attention. Perhaps India and China, two emerging powers of the 21st century, could take a lead in developing a global consensus as early as feasible.

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* *Chairman, Centre for Development Studies and former Governor, Reserve Bank of India. Abridged from an article that appeared in the Business Standard, on May 22, 2010.*

EU Plans Tax on Lenders

The EU countries will be required to impose an upfront levy on banks, with the proceeds to be paid into national funds to insure against future financial failures, under proposals to be unveiled. The scheme is designed to prevent future bank failures from destabilising the broader financial system.

The proposal is at a preliminary stage, and any legislation would have to be approved by EU member countries and the European parliament. The proposal will be controversial, especially if it is not accompanied by similar moves in the US and elsewhere. Commission officials are expected to stress the funds were not for bailing out banks but to ensure that failures and insolvencies were managed in an orderly way. *(FT, 24.05.10)*

Provisions on Remuneration Proposed

The FSA has proposed to amend Norway's capital requirements regulations by incorporating provisions on remuneration and bonuses in financial institutions. The proposal contains regulations for banks, other financial institutions, investment services firms and management firms for securities funds. Among other things, it imposes requirements to publish details of the remuneration of directors and officers who may have an impact on the risk profile of their institution.

The regulator has also issued guidelines for remuneration and compensation schemes which, among other things, require that (i) a minimum of 50 percent of bonuses consist of shares or similar instruments connected with the institution, and (ii) at least 40 percent of bonuses be withheld for a minimum of three years. *(ILO,09.04.10)*

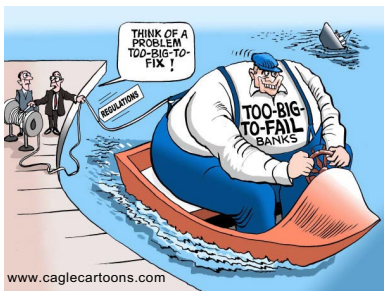
New Rules for Acquisitions

The Italian Legislative Decree 21/2010, which entered into force on March 10, 2010, implemented the EU Acquisitions Directive (2007/44/EC) in respect of acquisitions and increases in holdings in the financial sector.

Among other things, the new rules aim to increase transparency in the approval procedure for acquisitions of stakes in banks and financial intermediaries. In particular, the legislative decree makes significant changes to the Banking Law (385/1993) and the Consolidated Financial Law (58/1998), introducing: (i) new thresholds requiring prior clearance by the Bank of Italy for the acquisition of a stake or an increase in an existing holding in a bank or financial intermediary; and (ii) criteria by which the Bank of Italy will assess a potential acquirer before clearing the transaction. *(ILO, 09.04.10)*

Russia Tightens Banking Rules

The Russian central bank proposed to tighten sector regulation in order to fix weak links in the system hit by the crisis. The central bank wants the right to appoint special representatives into any bank if needed and is mulling stricter rules for merger and acquisitions as well as capital increases, in line with the latest changes in the global financial landscape.



The central bank has already acquired the right to appoint its special representatives to those banks that received government support during the crisis as Russian authorities want to be sure the funds will work for the economy's recovery. *(Reuters, 26.05.10)*

Cyprus Amends Registration Chagres

Cypriot legislation regarding the perfection of security by registration of charges was amended. According to the amendment, the following are expressly excluded from the requirement to register a charge in Cyprus for perfection purposes: (i) a pledge over shares of a Cypriot company and all rights attached thereto; and (ii) a financial collateral arrangement that falls within the ambit of the Financial Collateral Arrangements Law and is enforced from time to time.

The amendment is ambiguous in its reference to a pledge over shares. The registrar of companies has not altered its practice and continues to accept applications for registration of charges over Cypriot companies in relation to shares. *(ILO, 09.04.10)*

Consumer Credit Rules Takes Effect

The Hungarian Parliament, in an attempt to regulate certain aspects of financial institutions' lending activity and provide protection for the consumers, adopted the Consumer Credit Act 162/2009 in December 2009. The act brings Hungary's legal framework into line with the EU Consumer Credit Directive 2008/48/EC.

The scope of the act is similar to that of the directive in that it applies to credit agreements concluded with consumers. However, it covers a wider range of credit agreements, as some of its rules also apply to credit agreements secured by mortgages, and the total amount of credit does not automatically cause an agreement to fall outside the scope of the act. In addition, certain provisions of the act apply to financial lease agreements. *(ILO, 01.04.10)*

UK to Overhaul Financial Sector

British chancellor George Osborne has outlined plans to overhaul the way in which the country's financial sector is regulated. As part of the plans, the FSA – which has been the chief regulator of the industry – "will cease to exist in its current form".

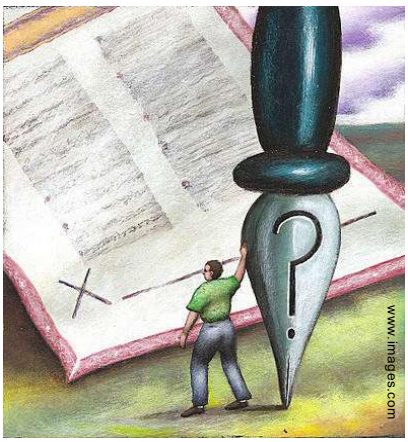
The division which monitors banks and other financial services firms will survive, but will act as a subsidiary of the Bank of England. Osborne went on to criticise the way in which financial regulation had worked before in the UK, in which responsibility was shared between the FSA, the Bank of England and the Treasury.

His plans have been welcomed by FSA chairman Lord Turner, who said the changes will help "bridge the gap between macro-prudential policy and the supervision of individual firms". *(www.bobsguide.com, 17.06.10)*

Competition Enforcement in Bangladesh

– Siddhartha Mitra* and Udai S Mehta**

The Bangladesh government is considering enacting a 'Competition Act' to help increase competition among businesses so that they offer quality goods and services at fair prices. Bangladesh will soon join the advanced group of close to over 120 countries across the globe which has enacted a Competition Law. Clearly, such enactment is timely as Bangladesh, similar to other developing countries, is plagued by anti-competitive cartels, hoarding and black marketing of commodities, etc. However, there is not much research or published material on market behaviour/practice in Bangladesh which may aid the formulation and implementation of competition law. Thus, there is a lot to learn from the experiences of neighbouring countries.



Evidence from across the globe indicates that strong leadership stands out as an essential attribute that has facilitated emergence of effective competition regulators

The Indian experience: In regard to the formulation of competition laws, the Indian experience might be worth emulating. In 2002, India adopted a brand new Competition Act, 2002 to replace the archaic Monopolies and Restrictive Trade Practices Act. This was a welcome step as dominance of a market is often achieved on the basis of superior efficiency; penalising such dominance thus serves as a huge disincentive in regard to efficiency enhancement.

The new act, ushered in through activism by organisations such as CUTS International, led to optimism about the promotion of inclusive growth through its enforcement by the newly formed Competition Commission of India (CCI). But the inertia thereafter proved to be a dampener.

The period between 2002 and 2007 was marked by uncertainty regarding the future of the CCI as certain weaknesses in the new act, which imbued the commission with the unacceptable combination of legislative, executive as well as judicial powers, came to the fore. Finally after 5 long years, the necessary amendment was made in 2007 and two years later, a full-fledged authority came into being and generated great expectations. It has been there for over one year, but is yet to hit the track on full steam — right now it has around 30 cases, of which 6 are in an advanced stage of dispensation, but there is no order as yet.

Clearly, the Indian experience in implementing and enforcing competition law is not the right one to follow. Here Pakistan and other young rookies such as Egypt and Mauritius can be good role models.

The examples of Pakistan, Mauritius & Egypt: The Competition Commission of Pakistan (CCP) has impressed all commentators through its initiatives, boldness, neutrality and professional skill in promoting competition in Pakistan's markets in an environment fraught with uncertainty. In February 2010, the CCP fined the state-owned Pakistan Steel Mills Rs. 25 million for abusing its dominant position in the low carbon steel market, an action which showed that it was not afraid to take on even the state if it was on the wrong side of the law. The CCP has also made laudable efforts to promote competition culture within Pakistan and in the South Asian region.

The CCP has unexpectedly found a close ally in powerful elements of the polity, possibly because of the appreciation for its efforts expressed by the media and elements of the private sector. This is demonstrated by the re-promulgation of the CCP in quick response to the March 26 nullification of the Competition Ordinance 2009 which could not be turned into a law.

However, the CCP is not the only example of an effective young competition agency. Exactly six months after its establishment, the Competition Commission of Mauritius (CCM) launched its first investigation in December 2009. The Competition Act 2007 was the second attempt by the island state. The agency is on a sound growth trajectory, not only in terms of developing its own fleet of enforcement officials, but also in terms of selecting the right cases, which when decided would provide even wider stakeholder support to the authority..

Like the CCM, The Egyptian Competition Agency (ECA) has made its intentions clear to operators in markets. Not only has ECA developed a formidable internal team of experts and practitioners to enforce the competition law it has also established effective lines of communication with big business houses, sensitising them of the value of competition compliance.

Strong leadership seems to be a common thread among all these 'young and successful' competition agencies. Early signs are very promising as these young agencies move from strength to strength and take up the challenge to prove themselves as the best among equals in the international competition circuit! There is much that Bangladesh can learn from the experience of these young rookies.

* *Research Director, CUTS International*
** *Policy Analyst, CUTS International.*
Abridged from an article that appeared in the Financial Express, Bangladesh on June 13, 2010.

Monsanto May Trump Antitrust Claims

– William McQuillen*

Monsanto, facing antitrust probes into its GM seeds, may benefit from previous court rulings in which intellectual property rights trumped competition concerns.

The US Department of Justice and 7 state attorneys general are investigating whether the world's largest seed company is using gene licences to keep competing technologies off the market.

At issue is how Monsanto sells and licences its patented trait that allows farmers to kill weeds with Roundup herbicide while leaving crops unharmed. Roundup Ready gene was in 93 percent of US soybeans in 2009.

Monsanto's seeds are so ubiquitous that they have become like AT&T's telephone lines before the company's 1984 breakup or Microsoft's Windows operating system in the 1990s, said James P Denvir, an attorney who represents rival seedmaker DuPont and led the government's AT&T case.

Monsanto's attorney, Dan Webb, defended Microsoft in 2002 against government antitrust claims. Webb credits Monsanto with "revolutionising the agriculture marketplace" and said antitrust claims such as those in DuPont's suit aren't an uncommon response to patent infringement cases such as Monsanto's.

While patents provide some protection from antitrust claims, giving a company a legal monopoly for a specified time, patent rights can be abused, DuPont lawyers and others said. The question becomes whether or not somebody in that position has engaged in some bad acts that either got it in that position or are designed to maintain that position or to extend that position to other markets, said Charles Rule, a lawyer who ran the Justice Department's antitrust unit under President Ronald Reagan. The department probably is looking at whether Monsanto's licencing restrictions on seeds have a legitimate business justification, said Rule.

This is because US courts tend to give intellectual property owners leeway to control licencing to make the property more valuable

www.a33.idata.over-blog.com

DuPont claims Monsanto protects its lead in biotech seeds, including the Roundup Ready seeds sold since 1996, by controlling whether competitors can add their own genetics. Monsanto also has begun switching seedmakers and growers from Roundup Ready soybeans to the newer Roundup Ready 2 Yield version in advance of the original's patent expiration in 2014. DuPont says Monsanto is using incentives and penalties to switch the industry to the new product in a way that unlawfully extends the Roundup Ready monopoly.

Monsanto has amended its practices to address some criticisms. The company will help the introduction of generic Roundup Ready soybeans by maintaining foreign import approvals during the transition, a process that will be followed for off-patent biotech seeds in the future, chief executive officer Hugh Grant said in a January interview. Monsanto last year stopped giving rebates to dealers who limited competing seeds' sales, said Kelli Powers, a spokeswoman.

DuPont filed its federal antitrust case in 2009 after Monsanto sued to block its rival from adding the Roundup Ready trait to seeds already modified to tolerate Roundup weed killer. Trait development has been stunted by the inability to get access to the Roundup Ready platform, Denvir said. Roundup Ready is "licenced so broadly that if you want to offer any trait, it has to be somehow combined with that trait". While Monsanto has promised to allow generic versions of its products to emerge, Denvir said he is unconvinced that will happen without government intervention.

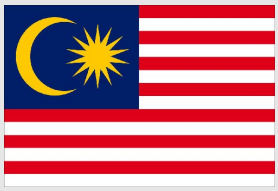
Monsanto got its lead in seed biotechnology because it invested in research long before DuPont and other competitors, said Webb, Monsanto's counsel. The company spent US$6bn on seed research in the 10 years through 2008 and US$1bn a year since then, said Powers, the company spokeswoman. In previous cases concerning Verizon and Xerox, US courts have given intellectual property owners leeway to control licencing to make the property more valuable, encourage the owner to widely license the technology and support further investment, said Rule, the former antitrust division head.

Monsanto persuaded US District Judge Richard Webber in September to separate the licencing case from DuPont's antitrust counterclaim. The seedmaker won an additional incremental victory in January when Webber ruled that DuPont violated the companies' licencing agreement by combining Monsanto's Roundup-tolerance gene with a DuPont gene that does the same thing.

* *Reporter, Bloomberg News. This article co-authored with Jack Kaskey appeared in the Financial Express, on March 15, 2010.*

About a Competition Law – Malaysia*

Malaysia is a Southeast Asian country separated into two regions by the South China Sea. The two parts are Peninsular Malaysia and Malaysian Borneo. Kuala Lumpur is its capital city. As of 2009, Malaysia's total population stands at over 28 million. Its neighbouring countries include Thailand, Indonesia, Singapore, and Brunei.



Economy

Historically, Malaysia has relied heavily on trade as a source of economic growth and development since its independence in 1957. Malaysian economy witnessed an economic boom in the 1970s, following which it expanded to become a multi-sector economy. The nature of the country's trade pattern has, however, undergone significant changes over the years. Malaysia has managed to transform itself from a major primary commodities exporter (in tin, rubber, oil palm) to a major manufacturing exporter. The Malaysian economy recorded a robust growth of 10.1 percent in the first quarter of 2010.

Competition Environment

The government has, since the 1980s, embarked on policies of deregulation and liberalisation of the economy. The continuous efforts towards deregulation of trade and investment, together with accelerated privatisation of trade-owned enterprises in traditionally monopolistic sectors such as power generation, distribution sector, telecommunications, transport and postal services have boosted overall market competitiveness. Malaysia is committed to the liberalisation of market place and will continue to pursue such outward orientation and free-market strategies.

Until now Malaysia did not have a comprehensive competition policy or law. While there was no comprehensive competition legislation in Malaysia, there was an array of statutes, which regulate trading, and business activities as well as protecting the consumer interests. In the absence of a national competition policy or law, a sectoral approach to competition regulation was adopted which has far been limited and ineffective.

Competition Act

The Competition Bill 2010, which was passed in May 2010 and expected to be implemented by mid or end of 2011, is aimed at creating a better business environment and check against anti-competitive practices. The Bill also creates a private right of action, under which any person who suffers loss or damage directly as a result of a violation of the anti-competitive agreement or abuse of dominance provisions may institute civil court proceedings. Such actions may be brought by such a person regardless of whether the plaintiff dealt directly or indirectly with the enterprise that violated the law.

A Competition Commission and a Competition Appeal Tribunal (CAT) will be established to ensure effective implementation of the law. The need for a competition law was felt when anti-competitive practices such as resale price maintenance, price collusion, tied selling and cartel agreements were detected; evidence was also found that the market structure in certain sectors of the economy in Malaysia was increasingly oligopolistic in nature.

Competition Appeal Tribunal

The Competition Bill establishes a CAT, consisting of a President and 7-20 other members appointed by the Prime Minister. The CAT will have exclusive jurisdiction to review any decision made by the Commission, including interim measures, findings of infringement and non-infringement. The CAT may remit a matter to the Commission, impose, revoke or vary the amount of a financial penalty, or make any decision, give any direction or take any other action that the Commission itself could have made, given or taken.

Competition Commission Bill

The Competition Commission Bill seeks to provide for the establishment of the Competition Commission and provide for its functions and powers. The Commission will consist of a chairman, four members representing the government, and between three to five other members with experience related to business, industry, commerce, law, economics, public administration and consumer protection. It will impose a duty on the Commission to furnish certain returns, reports, accounts and information to the minister or any public authority. The Competition Commission will be granted extensive investigative powers and will have the power to search premises and require documents and computerised information from firms under investigation.

Conclusion

The Competition Legislation will, undoubtedly, have to face a number of challenges in the future, one of which being that it does not create a merger control regime. Malaysia's enactment of the Bills is consistent with the goal of establishment of competition policies by all ten members of the Association of Southeast Asian Nations (ASEAN) by 2015, as set forth in the ASEAN Economic Community Blueprint.

* *Extracted from Competition Commission Bill 2010 of Malaysia, http://www.cljlaw.com/membersentry/bills/MY_FS_BIL_2010-_06.asp*

Economiquity

The monthly flagship newsletter of CUTS Centre for International Trade, Economics & Environment (CUTS CITEE) encapsulates an article entitled 'Doha Round Failure not an Option for Economic Recovery' in its cover story. The conclusion of the Doha Round in 2010 is an imperative for success on many fronts – global welfare reaching a new high through better exploitation of comparative advantages of countries and the reversal of decline in faith in trade as an engine of growth.


ECONOMIQUITY

Doha Round Failure not an Option for Economic Recovery

A wide range of news articles relevant to WTO and Doha Round and international trade are covered under section on world economic updates. Subsequent sections highlight news item around the world focusing upon climate change, migration, remittances, and development economics and economic literature covering research documents pertinent to development and international trade issues.

Besides, back page provides a quick overview of the various operations of the Centre and corresponding outputs/outcomes.

This newsletter can be accessed at:
http://www.cuts-citee.org/Economiquity.htm


BRIEFING PAPER

CUTS C-CIER

Cartel Prevalence in Africa – *A Diagnostic Study*

Cartel Prevalence in Africa: *A Diagnostic Study*

Most of the African continent is marked by poor competition enforcement – the reasons vary from absence of competition legislation to poor enforcement or structure of existing legislation to widespread corruption. One dangerous outcome of such poor enforcement is the free play of cartels in the African continent with adverse consequences in the form of high prices, low outputs and depressed demand. This paper examines cartels from the African perspective. It tries to relate existing literature on cartels to information on cartels in Africa with the aid of a few examples. The paper explores factors that have contributed to making the continent prone to cartelisation, and the economic implications of such cartels; it also explains why there should be more concern about cartels in Africa.

This Briefing Paper can be viewed at:
http://www.cuts-ccier.org/pdf/Briefing_Paper10-Cartel_Prevalence_in_Africa-A_Diagnostic_Study.pdf

Sources

AP: Associated Press; AGCM: *Autorità Garante della Concorrenza e del Mercato:* BBC: British Broadcasting Corporation; BCG: Belgian Competition Council; BL: The Hindu Business Line; BS: Business Standard; CCB: Canada Competition Bureau; DT: Daily Times; EP: Ethical Performance; ET: Economic Times; FE: Financial Express; FT: Financial Times; FTC: Federal Trade Commission; HT: Hindustan Times; ILO: International Law Office; JP: Jakarta Post; LL: Latin Lawyer; SACC: South Africa Competition Commission; TEM: The Edge Malaysia; TH: The Hindu; TOI: Times of India; TS: The Standard; TST: The Straits Times; TT: The Times, TT: Taipei Times; WSJ: Wall Street Journal

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